THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

SOCIAL SERVICES LEGISLATION AMENDMENT
(WELFARE REFORM) BILL 2017

REVISED EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Social Services, the Hon Christian Porter MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED
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OUTLINE

The Bill introduces the following measures:

1. Creation of the Jobseeker Payment
2. Cessation Widow B Pension
3. Cessation of Wife Pension
4. Cessation of Bereavement Allowance
5. Cessation of Sickness Allowance
6. Cessation of Widow Allowance
7. Cessation of Partner Allowance
8. Minister’s Rules (safety net for transitional arrangements)
9. Relief from activity test for persons aged 55 to 59
10. Start date for some participation payments
11. Removal of Intent to Claim provisions
12. Establishment of a drug testing trial
13. Removal of exemptions for drug or alcohol dependence
14. Changes to reasonable excuses
15. Targeted Compliance Framework
16. Streamlining Tax File Number collection
17. Information Management (Streamline Prosecution Referrals)
18. Aligning Social Security and Disability Discrimination Law

Schedule 1 – Creation of the Jobseeker Payment

From 20 March 2020, this Bill introduces a single Jobseeker Payment, to replace seven existing payments as the main payment for people of working age.

Schedule 2 – Cessation Widow B Pension

This Schedule ceases Widow B Pension from 20 March 2020.

Schedule 3 – Cessation Wife Pension

This Schedule ceases Wife Pension from 20 March 2020.

Schedule 4 – Cessation of Bereavement Allowance

This Schedule ceases Bereavement Allowance from 20 March 2020.

Schedule 5 – Cessation of Sickness Allowance

This Schedule ceases Sickness Allowance from 20 March 2020.
Schedule 6 – Cessation of Widow Allowance

Under this Schedule Widow Allowance will close to new entrants from 1 January 2018 and will cease on 1 January 2022, when all recipients have moved to Age Pension.

Schedule 7 – Cessation of Partner Allowance

This Schedule ceases Partner Allowance from 1 January 2022.

Schedule 8 – Minister’s Rules (safety net for transitional arrangements)

This Schedule will allow the Minister to make rules, by legislative instrument, of a transitional nature in relation to the amendments and repeals made by Schedules 1 to 7 to this Bill from the day after this Act receives the Royal Assent.

Schedule 9 – Relief from activity test for persons aged 55 to 59

This Schedule strengthens the employment focus of mutual obligations for job seekers aged 55 to 59 from 20 September 2018.

Schedule 10 – Start date for some participation payments

This embeds a stronger work focus in the existing RapidConnect arrangements by encouraging job seekers to connect more quickly with employment services from 1 January 2018.

Schedule 11 – Removal of Intent to Claim provisions

From 1 January 2018, this Schedule removes intent to claim provisions, which will result in social security claimants receiving payments from the date they lodge a complete claim.

Schedule 12 – Establishment of a drug testing trial

From 1 January 2018, this Schedule provides for the triallling of a new approach to identifying job seekers with substance abuse issues by drug testing 5000 new recipients of Newstart Allowance and Youth Allowance (other) in three locations over two years.

Schedule 13 – Removal of exemptions for drug or alcohol dependence

This Schedule ensures that job seekers whose substance abuse prevents them from looking for work remain actively engaged in appropriate activities, including treatment, rather than being exempt from all requirements from 1 January 2018.

Schedule 14 – Changes to reasonable excuses

From 1 January 2018, this Schedule changes the reasonable excuse rules to ensure that job seekers are not able to keep using drug or alcohol dependency as an excuse for failing to meet their requirements rather than seeking treatment.
Schedule 15 – Targeted Compliance Framework

This Schedule establishes a new, targeted compliance system that strengthens penalties for deliberate non-compliance while providing additional help for genuine job seekers to meet their requirements from 1 July 2018.

Schedule 16 – Streamlining Tax File Number collection

This Schedule streamlines legislation enabling the Department of Human Services to require applicants to provide their Tax File Number at the time of a claim from 1 January 2018.

Schedule 17 – Information Management (Streamline Prosecution Referrals)

This Schedule simplifies the process for referrals of welfare fraud prosecution by allowing information and documents obtained in the course of an administrative action by the Department of Human Services to be used in subsequent investigations and criminal proceedings starting from 1 January 2018.

Schedule 18 – Aligning Social Security and Disability Discrimination Law

FINANCIAL IMPACT STATEMENT

The measures in this Bill have the following estimated impact on the fiscal balance over the forward estimates to 2020-21 ($ million):

<table>
<thead>
<tr>
<th>MEASURE</th>
<th>FINANCIAL IMPACT OVER THE FORWARD ESTIMATES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schedule 1 – Creation of the Jobseeker Payment</td>
<td>Expense of $11.6 million</td>
</tr>
<tr>
<td>Schedule 2 – Cessation Widow B Pension</td>
<td>Expense of $0.1 million</td>
</tr>
<tr>
<td>Schedule 3 – Cessation Wife Pension</td>
<td>Expense of $6.3 million</td>
</tr>
<tr>
<td>Schedule 4 – Cessation of Bereavement Allowance</td>
<td>Savings of $1.04 million</td>
</tr>
<tr>
<td>Schedule 5 – Cessation of Sickness Allowance</td>
<td>Savings of $6.9 million</td>
</tr>
<tr>
<td>Schedule 6 – Cessation of Widow Allowance</td>
<td>Expense of $4.5 million</td>
</tr>
<tr>
<td>Schedule 7 – Cessation of Partner Allowance</td>
<td>Expense of $1.08 million</td>
</tr>
<tr>
<td>Schedule 8 – Minister’s Rules</td>
<td>Nil</td>
</tr>
<tr>
<td>(safety net for transitional arrangements)</td>
<td></td>
</tr>
<tr>
<td>Schedule 9 – Relief from activity test for persons aged 55 to 59</td>
<td>Expense of $47.8 million*</td>
</tr>
<tr>
<td>Schedule 10 – Start date for some participation payments</td>
<td>Savings of $198.0 million</td>
</tr>
<tr>
<td>Schedule 11 – Removal of Intent to Claim provisions</td>
<td>Savings of $68.0 million</td>
</tr>
<tr>
<td>Schedule 12 – Establishment of a drug testing trial</td>
<td>Not for publication</td>
</tr>
<tr>
<td>Schedule 13 – Removal of exemptions for drug or alcohol dependence</td>
<td>Expense of $28.8 million</td>
</tr>
<tr>
<td>Schedule 14 – Changes to reasonable excuses</td>
<td>Expense of $4.3 million</td>
</tr>
<tr>
<td>Schedule 15 – Targeted Compliance Framework</td>
<td>Savings of $204.7 million</td>
</tr>
<tr>
<td>Schedule 16 – Streamlining Tax</td>
<td>Expense of $5.5 million</td>
</tr>
<tr>
<td>File Number collection</td>
<td></td>
</tr>
<tr>
<td>Schedule 17 – Information Management (Streamline Prosecution Referrals)</td>
<td>Nil</td>
</tr>
<tr>
<td>Schedule 18 – Aligning Social Security and Disability Discrimination Law</td>
<td>Nil</td>
</tr>
</tbody>
</table>

* Note: this cost covers strengthening requirements for three cohorts by age. This legislative amendment only relates to one of the three groups. A breakdown per group is not available.
STATEMENTS OF COMPATIBILITY WITH HUMAN RIGHTS

The Statements of Compatibility with Human Rights appears at the end of this explanatory memorandum.
NOTES ON CLAUSES

Abbreviations used in this explanatory memorandum

- Social Security Act means the Social Security Act 1991;
- Social Security Administration Act means the Social Security (Administration) Act 1999;
- Family Assistance Act means the A New Tax System (Family Assistance) Act 1999;
- Family Assistance Administration Act means the A New Tax System (Family Assistance)(Administration) Act 1999;
- Farm Household Support Act means the Farm Household Support Act 2014;
- Veterans’ Entitlements Act means the Veterans’ Entitlements Act 1986;

Clause 1 sets out how the new Act is to be cited – that is, as the Social Services Legislation Amendment (Welfare Reform) Act 2017.

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

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.
Schedule 1 – Creation of the Jobseeker Payment

Summary

This Schedule will cease Newstart Allowance, and create a new Jobseeker Payment commencing 20 March 2020.

Background

The new Jobseeker Payment will be the main working age payment, consolidating seven current working age payments, and creating a single payment for those of working age with capacity to work now or in the near future. From 20 March 2020, Newstart Allowance, Sickness Allowance, Wife Pension, Bereavement Allowance and Widow B Pension will cease and most recipients of these payments will transition to Jobseeker Payment, Age Pension or Carer Payment, depending on their circumstances. Widow Allowance and Partner Allowance will cease from 1 January 2022 and all remaining recipients will transition to Age Pension. These payments are ceased by other Schedules of this Bill.

The Jobseeker Payment will simplify the income support system and treat people in similar circumstances consistently. The payment will have the same basic qualification, payability and rate as existing Newstart Allowance, however, the payment will be broader in scope than Newstart Allowance, and will include access for persons who have temporarily stopped working or studying to recover from illness or injury. The Jobseeker Payment will also provide bereavement assistance for persons who have recently experienced the death of their partner. Underlying qualification and payability will be broadened by other Schedules of this Bill where a payment is ceasing, and persons affected would not come within existing Newstart Allowance qualification and payability. No Newstart Allowance recipient who transitions to Jobseeker Payment will be worse off as a result.

Explanation of the changes

Part 1 – Main amendments

The main changes to create Jobseeker Payment and cease Newstart Allowance are made to the Social Security Act. Consequential changes to a range of Acts are also required.

Family Assistance Act

Item 1 consequentially amends the Family Assistance Act to substitute a reference to Jobseeker Payment for one reference to Newstart Allowance.

Farm Household Support Act

Items 2 to 11 consequentially amend the Farm Household Support Act to substitute reference to Jobseeker Payment for all references to Newstart Allowance.
_Income Tax Assessment Act 1936_

**Items 12 and 13** consequentially amend the _Income Tax Assessment Act 1936_ to substitute reference to Jobseeker Payment for references to Newstart Allowance.

_Income Tax Assessment Act 1997_

**Item 14** inserts a reference to Jobseeker Payment into section 52-10 of the _Income Tax Assessment Act 1997_ to provide the income tax treatment of Jobseeker Payment.

**Items 15 and 16** amend section 52-10 to repeal existing references to Newstart Allowance, and substitute where appropriate reference to Jobseeker Payment, to ensure the payment is tax exempt.

**Items 17 and 18** amend section 52-15 to repeal references to Newstart Allowance and insert reference to Jobseeker Payment to identify the supplementary amount of a social security payment for tax purposes.

**Items 19 to 21** amend subsection 52-30(1) to repeal references to Newstart Allowance and insert reference to Jobseeker Payment to identify the tax-free amount of various bereavement lump sum payments.

**Items 22 and 23** remove from section 52-40 references to Newstart Allowance and insert reference to Jobseeker Payment as a relevant provision of the social security Act under which social security payments are made that are wholly or partly exempt from income tax.

_Social Security Act_

**Items 24 to 64** amend various provisions of the Social Security Act, including definitions, which currently refer to Newstart Allowance, to substitute reference to Jobseeker Payment.

**Items 65 to 84** amend the provisions of existing Subdivision A of Division 1 of Part 2.12 which provides the basic qualification criteria for Newstart Allowance. The amendments made by these items substitute references to Newstart Allowance with reference to Jobseeker Payment. The amendments made by these items will ensure the basic qualification criteria for Jobseeker Payment are the same as those for the existing Newstart Allowance.

**Items 85 to 96** amend the provisions of existing Subdivisions B and BA of Division 1 of Part 2.12 regarding Newstart Allowance activity testing. The amendments made by these items substitute references to Newstart Allowance with reference to Jobseeker Payment, retaining the Newstart Allowance activity test rules for the new Jobseeker Payment.

**Items 97 to 123** amend the provisions of existing Subdivision C of Division 1 of Part 2.12 which provide for newstart employment pathway plans. The amendments made by these items substitute references to Newstart Allowance with reference to
Jobseeker Payment, retaining newstart employment pathway plans rules for the new Jobseeker Payment.

**Items 124 to 161** amend the provisions of existing Subdivisions D, E, G, GA and H of Division 1 of Part 2.12 which provide for situations where Newstart Allowance is not payable. The amendments made by these items substitute references to Newstart Allowance with reference to Jobseeker Payment, retaining the rules providing when Newstart Allowance is not payable for the purposes of the new Jobseeker Payment.

**Items 162 to 166** amend the provisions of existing Division 4 of Part 2.12 which provides for the rate of Newstart Allowance. As the rate of the new Jobseeker Payment will be the same as Newstart Allowance, the amendments made by these items substitute references to Newstart Allowance with reference to Jobseeker Payment.

**Items 167 to 177** amend the provisions of existing Division 9 of Part 2.12 which provides for bereavement payments in relation to Newstart Allowance. The amendments made by these items substitute references to Newstart Allowance with reference to Jobseeker Payment, as the new Jobseeker Payment will retain the same bereavement payment rules as existing Newstart Allowance.

**Items 178 to 248** amend various provisions of the Social Security Act, including definitions, which currently refer to Newstart Allowance, to substitute reference to Jobseeker Payment. This will ensure that the rates or eligibility for other payments that include a reference to Newstart Allowance will include a reference to Jobseeker Payment from commencement.

**Items 249 to 274** amend various provisions of the Social Security Act rate calculators which currently refer to Newstart Allowance to substitute reference to Jobseeker Payment.

**Items 275 to 307** amend various provisions of the Social Security Act, including definitions, which currently refer to Newstart Allowance to substitute reference to Jobseeker Payment.

**Social Security Administration Act**

**Items 308 to 336** amend various provisions of the Social Security Administration Act, dealing with administration of payments which currently refer to Newstart Allowance, to substitute reference to Jobseeker Payment. These amendments will ensure, for example, that claims for Jobseeker Payment and decisions about payment suspension or cancellation will operate in the same way as they do for Newstart Allowance.

**Veterans’ Entitlements Act**

**Items 337 to 341** make consequential amendments to various provisions of the Veterans’ Entitlements Act which currently refer to Newstart Allowance, to substitute reference to Jobseeker Payment.
Transitional and savings provisions

**Items 342 to 354** provide transitional and savings provisions for the introduction of the new Jobseeker Payment.

**Item 342** introduces a number of transitional provisions.

Subitem 342(1) maintains in force notices, determinations or other instruments relating to Newstart Allowance made before commencement as if they were made or given in relation to Jobseeker Payment.

Subitem 342(2) provides that any claim lodged for Newstart Allowance before commencement which was not determined has effect as if it was a claim for newstart allowance in respect of days prior to commencement and a claim for Jobseeker Payment for days on or after commencement.

Subitem 342(3) provides that, if prior to commencement, a person was subject to a waiting or preclusion period in relation to newstart, after commencement of this Schedule the person is taken to be subject to that period in relation to Jobseeker Payment. Any newstart employment pathway plan in force in relation to a period immediately before commencement has effect on or after commencement as if it were a jobseeker employment pathway plan.

**Item 343** provides a transitional provision for the Family Assistance Act, in relation to a provision to be inserted by the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017* from 2 July 2018, to consequentially substitute Jobseeker Payment for a reference to Newstart Allowance as a payment which may give rise to eligibility for the additional child care subsidy.

**Item 344** provides a savings provision for the Farm Household Support Act to ensure that provisions of that Act as in force prior to commencement continue to apply on and after commencement in relation to working out the rate of farm household allowance for days prior to commencement of the amendments made by this Schedule.

**Item 345** provides a savings provision for the tax treatment of Newstart Allowance which maintains that treatment even if the payment is made on or after commencement.

**Item 346** provides saving provisions for various definitions within the Social Security Act, to provide that such definitions continue to apply on or after commencement in working out whether a person comes within the definition, despite amendments made by this Schedule.

**Items 347 to 350** provide savings provisions for various qualification provisions within the Social Security Act, to provide that such provisions continue to apply on or after commencement in relation to working out whether a person was qualified for various payments and supplements, and their rate, in relation to days before commencement.
**Item 351** provides saving provisions for various concession card provisions within the Social Security Act, to provide that such provisions continue to apply on or after commencement in working out a person’s qualification for a concession card for days before commencement, despite amendments made by this Schedule.

**Item 352** provides saving and transitional provisions for various other Social Security Act provisions relating to ancillary matters such as means testing and debt recovery, ensuring those provisions continue to apply in relation to days before commencement, despite amendments made by this Schedule.

**Item 353** provides saving provisions for the Social Security Administration Act provisions relating to claims, payments and requirements made under that Act, ensuring those provisions continue to apply in relation to days before commencement, despite amendments made by this Schedule.

**Item 354** provides saving provisions for the Veterans’ Entitlements Act relating to payment calculated by reference to the rate of Newstart Allowance, or involving a payment of Newstart Allowance, ensuring the provisions continue to apply to a payment made before, on or after commencement, despite the amendments made by this Schedule.

**Part 2 – Amendments relating to cessation of Widow Allowance**

**Social Security Act**

**Items 355 and 356** make consequential amendments to section 603AC, inserted from 1 January 2018 by item 3 of Schedule 6. That section refers to Newstart Allowance, but is amended by these items from 20 March 2020 to refer to Jobseeker Payment, before then being repealed from 1 January 2022 by item 18 of Schedule 6.

**Part 3 – Amendments relating to start day for some participation payments**

**Social Security Administration Act**

**Items 357 to 360** make consequential amendments to provisions of the Social Security Administration Act inserted by Schedule 10 to this Bill relating to the start day for some participation payments. These amendments will be inserted from the later of 1 January 2018 and the day after Royal Assent. The items will be amended from 20 March 2020 to substitute reference to Jobseeker Payment for references to Newstart Allowance.

**Part 4 – Amendments relating to drug testing trial**

This Part makes amendments to provisions inserted by Schedule 12 to this Bill, establishing a drug testing trial. It is anticipated that Schedule 12 will commence prior to the commencement of this Schedule. From commencement of this Schedule, provisions inserted by Schedule 12 referring to Newstart Allowance will be substituted with reference to Jobseeker Payment.
**Farm Household Support Act**

**Items 361 and 362** amend the Farm Household Support Act to substitute reference to Jobseeker Payment with reference to Newstart Allowance.

**Social Security Act**

**Items 363 to 369** substitute references to Newstart Allowance, or the allowance, with reference to Jobseeker Payment, or the payment.

**Social Security Administration Act**

**Items 370 and 371** amend references to Newstart Allowance, to substitute reference to Jobseeker Payment.

**Item 372** inserts transitional provisions relating to the amendments made by this Part.

Subitem 372(1) maintains the operation of a Newstart Allowance drug test refusal waiting period after commencement, by providing that a person is taken to be subject to that period in relation to Jobseeker Payment.

Subitem 372(2) maintains the operation of a drug test repayment deficit in relation to a person, as if reference to a social security benefit after commencement included a reference to Newstart Allowance.

**Part 5 – Amendments relating to targeted compliance framework**

This Part makes amendments to provisions inserted by Schedule 15 to this Bill, setting up a targeted compliance framework. It is anticipated that Schedule 15 will commence prior to the commencement of this Schedule. From commencement of this Schedule, a provision inserted by Schedule 15 referring to Newstart Allowance will be substituted with reference to Jobseeker Payment by **item 373**.

**Part 6 – Amendments relating to enhanced residency requirements for pensioners**

This Part makes amendments to provisions which may be inserted by the **Social Services Legislation Amendment (Payment Integrity) Act 2017** (the Payment Integrity Act), creating enhanced residency requirements for pensioners. The Payment Integrity Act will commence on 1 July 2018, or the first 1 January or 1 July after royal assent, and hence will likely commence prior to the commencement of this Schedule. From commencement of this Schedule, provisions inserted by the Payment Integrity Act referring to Newstart Allowance will be amended to insert reference to Jobseeker Payment by **items 374 and 375**.
Schedule 2 – Cessation of Widow B Pension

Summary

This Schedule will cease Widow B Pension from 20 March 2020.

Background

Widow B Pension is a payment for certain older widows who have lost the financial support of their partner, and have limited means of support, who do not otherwise qualify for parenting payment. Widow B Pensions were closed to new applicants on 20 March 1997 and this Schedule will close Widow B Pensions entirely from 20 March 2020.

To qualify for Widow B Pension, a woman must have either been receiving a widow’s pension as a class B widow prior to 1 July 1987 or have turned 45 on or before 1 July 1987 and be receiving a supporting parent's benefit or a widow's pension as a class A widow on or after that day, or was receiving a sole parent's pension after 1 March 1989.

Alternatively, if a woman turned 50 on or before 1 July 1987 and met the residency requirements, was not a member of another couple and was not otherwise qualified for parenting payment, she might also have qualified for Widow B Pension if, in addition to meeting these requirements: her husband had died, she was a dependent female for the purposes of the social security law, she was divorced from her husband, she was legally married but deserted by her husband without just cause for at least six months, she was married to a man who was in gaol for at least six months or she was party to a purported marriage that was void and her purported husband deserted her without just cause for a period of at least six months.

A woman might not need to meet the residency requirements to be eligible for Widow B Pension, if she was not in Australia at the time of her husband’s death and prior to his death, she was receiving a partner service pension or a Wife Pension because her husband was receiving: an Age Pension, an invalid pension or a disability support pension, a special needs Age Pension or a special needs invalid pension or a special needs disability support pension.

All women in receipt of Widow B Pension immediately before 20 March 2020 will be of Age Pension age by the time the Widow B Pension ceases. A woman who is in receipt of Widow B Pension or the special needs Widow B Pension will be automatically transferred to the Age Pension without the need to apply.

Explanation of the changes

This Schedule ceases Widow B Pension from 20 March 2020. Item 15 repeals Part 2.8 of the Social Security Act, which provides for the qualification of and payability for Widow B Pension and item 32 repeals Part 3.4, which provides the pension rate calculator C.
Schedule 2 – Cessation of Widow B Pension

*Income Tax Assessment Act 1936 and Income Tax Assessment Act 1997*

**Items 1 and 2** make necessary consequential amendments to remove references to Widow B Pension from the *Income Tax Assessment Act 1936*.

**Items 3 to 6** make necessary consequential amendments to remove reference to Widow B Pension from the *Income Tax Assessment Act 1997*.

*Social Security Act*

**Items 7 to 13** make consequential amendments as a result of the repeal of Part 2.8 of the *Social Security Act*, to remove redundant references to Widow B Pension from repealed sections.

**Item 14** amends section 43, which provides the qualification for Age Pension. **New subsection 43(4)** provides that a woman is qualified for Age Pension if she was receiving a special needs Widow B Pension immediately before 20 March 2020 and is not otherwise qualified for Age Pension.

**Items 16 to 60** make necessary consequential amendments to remove references to Widow B Pension from various provisions of the *Social Security Act*.

All Widow B Pension recipients are over Age Pension age and will be automatically transferred to Age Pension as a result of this Schedule. However, the majority of Widow B Pension recipients reside overseas and may not meet the Age Pension residence requirements.

**Items 61 to 63** amend the current proportional portability rules in section 1220A so that recipients of Widow B Pension and special needs Widow B Pension who are currently exempt from proportionality rules will also be exempt from proportional portability when they are transferred to Age Pension. Proportional portability refers to the rate of pension to be paid after a pensioner has been absent from Australia for a continuous period of 26 weeks. It usually means that the pension rate overseas is based on the person's Australian Working Life Residence (Australian Working Life Residence refers to periods a person was an Australian Resident between the ages of 16 years to Age Pension age).

For recipients of Widow B Pension who are not exempt from proportional portability, when calculating the rate of Age Pension a former Widow B Pension recipient will receive, **item 64** provides that if her Australian working life residence is less than that of her partner's (immediately before that partner's death), the former Widow B Pension recipient's Australian working life residence will be taken to be equal to that of her partner's Australian working life residence prior to her partner's death. This will ensure that a former Widow B Pension recipient's rate of payment will remain unchanged as a result of the transition from Widow B Pension to Age Pension.

**Items 65 to 71** make necessary consequential amendments to remove references to Widow B Pension from various provisions of the *Social Security Act*. 
Schedule 2 – Cessation of Widow B Pension

*Social Security Administration Act*

**Items 72 to 75** make necessary consequential amendments to remove references to Widow B Pension from various provisions of the Social Security Administration Act.

*International Agreements Act*

**Items 76 and 77** make necessary consequential amendments to remove references to Widow B Pension from various provisions of the International Agreements Act.

*Veterans’ Entitlements Act*

**Items 78 to 81** make necessary consequential amendments to remove references to Widow B Pension from various provisions of the Veterans’ Entitlements Act.

**Saving and transitional provisions**

**Item 82** is a savings provision.

Subitem 82(1) ensures that former Part 2.8 and Part 3.4 of, and clauses 128A and 146 of Schedule 1A to, the Social Security Act continue to apply after commencement despite their repeal, to allow the qualification or rate of Widow B Pension to be worked out for days before commencement.

Subitem 82(2) provides that if a person was receiving Widow B Pension and dies before commencement, then section 407 of the Social Security Act will continue to apply on or after commencement.

Subitem 82(3) makes clear that no payment of Widow B Pension is to be made on or after commencement in relation to a day on or after commencement.

Subitem 82(4) ensures that Part 2.16 of the Social Security Act will continue to apply on and after commencement in relation to working out the qualification or rate of special needs Widow B Pension to be worked out for days before commencement.

Subitem 82(5) provides that if a person was receiving special needs Widow B Pension and dies before commencement, then section 830 of the Social Security Act will continue to apply on or after commencement.

Subitem 82(6) makes clear that no payment of special needs Widow B Pension is to be made on or after commencement in relation to a day on or after commencement.

**Items 83 and 84** are savings provisions in relation to maintaining the tax treatment of Widow B Pension payments, despite the repeal of the relevant provisions of the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*. 
Item 85 is a savings provision which ensures that the provisions for determining Australian residency, special residence and residents and the provision relating to working out whether a person is in severe financial hardship in the days prior to commencement will continue to apply after commencement in relation to Widow B Pension, despite the repeal of the relevant provisions.

Item 86 is a savings provision which maintains the effect of qualification provisions in respect of days before commencement, despite the repeal of the relevant provisions.

Item 87 is a savings provision which maintains the effect of rate provisions in respect of the days before commencement, despite the repeal of the relevant provisions.

Item 88 is a savings provision which maintains the effect of various advance payment provisions in respect of days before commencement, despite the repeal of the relevant provisions.

Item 89 is a savings provision which maintains the effect of the pension loans scheme in respect of days before commencement, despite the repeal of the relevant provisions.

Item 90 is a savings provision which maintains the effect of various means testing and debt provisions in respect of days before commencement, despite the repeal of the relevant provisions.

Item 91 is a savings provision which maintains the effect of various administration provisions after commencement of this Schedule in respect of days before commencement, despite the repeal of the relevant provisions.

Item 92 is a savings provision which maintains the effect of the Australian working life residence qualification provision of the International Agreements Act after commencement of this Schedule, in respect of days before commencement, despite the amendments made by this Schedule.

Item 93 is a savings provision which maintains the effect of rate provisions after the commencement of this Schedule in respect of days occurring before, on or after that commencement, despite the repeal of the relevant provisions in the Veterans’ Entitlements Act.
Schedule 3 – Cessation of Wife Pension

Summary

This Schedule will cease Wife Pension from 20 March 2020.

Background

Wife Pension is a non-activity tested income support payment paid at Age Pension rates to female partners of Age Pensioners or disability support pensioners who are not eligible for a pension in their own right. To qualify for Wife Pension, a person must have lodged their claim prior to 1 July 1995, which is when the payment was closed to new entrants. Wife Pension was closed to new entrants on 1 July 1995 in recognition that payments based on the assumption that women are economically dependent on a male partner no longer reflect social and economic norms. Payments to women based solely on the income support status of a male partner are not consistent with contemporary community expectations.

While Wife Pension has been closed to new applicants since 1 July 1995, this Schedule will cease the payment entirely from 20 March 2020. Transitional arrangements will allow women who cease receiving Wife Pension at that date to receive an alternative payment, where available. At the proposed implementation date of 20 March 2020, there will be an estimated 7,750 Wife Pension recipients.

Transition from Wife Pension to Jobseeker Payment

Around 2,900 recipients under Age Pension age will move to the Jobseeker Payment, with these recipients being automatically transferred to the payment under section 12 of the Social Security Administration Act. Section 12 allows the Secretary to determine that a person is taken to have made a claim for an income support payment if the person became qualified for the new payment immediately after ceasing to receive another income support payment.

This Schedule also provides for a transitional rate of jobseeker payment for former recipients of wife pension to maintain their current rate of entitlement. Recipients will have their transition rate calculated based on a frozen rate of wife pension as at 19 March 2020 and continue to receive any applicable supplements payable under pension rules. All recipients will be subject to pension assets test free areas frozen as at 19 March 2020 while in receipt of a transitional rate.

Recipients will be subject to either the pension income test (frozen as at 19 March 2020) or the jobseeker payment income test based on their circumstances leading up to commencement to ensure that existing recipients do not experience a nominal reduction in their fortnightly rate.

Recipients will continually have their entitlement assessed under jobseeker payment rules, with recipients transitioning to jobseeker payment once the rate provides an equal or higher rate for at least 42 days. Transitional arrangements would also cease once they no longer satisfy the wife pension qualification rules due to a change of circumstances, such as separating from their partner.
Schedule 3 – Cessation of Wife Pension

All recipients will continue to receive the pensioner concession card while in receipt of a transitional rate.

**Transition from Wife Pension to Age Pension**

Approximately 2,250 recipients over Age Pension age will move to the Age Pension.

**Transition from Wife Pension to Carer Payment**

A further 2,400 recipients, who are also in receipt of carer allowance, will move to Carer Payment.

**Explanation of the changes**

This Schedule ceases Wife Pension from 20 March 2020. **Item 19** repeals Part 2.4 of the Social Security Act, which provides qualification and payability for Wife Pension.

*Family Assistance Act and Child Support (Assessment) Act 1989*

**Items 1 and 2** make necessary consequential amendments to remove references to Wife Pension from the Family Assistance Act and the *Child Support (Assessment) Act 1989*.

*Income Tax Assessment Act 1936 and Income Tax Assessment Act 1997*

**Items 3 to 8** make necessary consequential amendments to remove references to Wife Pension from the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*.

*Veterans’ Entitlements Act*

**Items 93 to 97** make necessary consequential amendments to remove references to Wife Pension from the Veterans’ Entitlements Act.

*Social Security Act*

**Items 77 to 92** make necessary consequential amendments to the Social Security Administration Act to remove references to Wife Pension, as a result of the repeal of Part 2.4 of the Social Security Act.

**Items 9 to 17, 22, 26 to 37, 40 to 70 and 73 to 76** make necessary consequential amendments as a result of the repeal of Part 2.4 of the Social Security Act, to remove redundant references to Wife Pension or Wife Pension bereavement payment.
Item 18 adds new subsection 43(1A), which modifies the qualification for Age Pension provision. The new subsection provides that a woman is qualified for an Age Pension if, immediately before 20 March 2020, they were receiving a Wife Pension and they have reached Age Pension age and are not in receipt of carer allowance under Part 2.19, where they are not otherwise qualified for an Age Pension in their own right. The purpose of this provision is to allow Wife Pension recipients over Age Pension age who may not satisfy the Age Pension qualifying residence rules to automatically transfer to Age Pension upon commencement.

Item 20 adds new paragraph 197A(1)(j) to enable the addition of new section 198AD to the list of circumstances in which a person is qualified for Carer Payment. Item 21 adds new section 198AD, which provides that a woman is qualified for a Carer Payment if, immediately before 20 March 2020, they were receiving a Wife Pension and a carer allowance under Part 2.19, and they continue to receive that carer allowance, and they are not otherwise qualified for a Carer Payment in their own right. This provision enables Wife Pension recipients who are also receiving carer allowance to automatically transfer to Carer Payment.

Providing an automatic transfer is administratively simpler for affected recipients, and ensures that they continue to receive the same level of assistance. When a recipient stops receiving the carer allowance that they were receiving at the time of qualifying for Carer Payment, they will no longer be able to qualify for a Carer Payment under this section, and would need to test their qualification under the other payment provisions.

Item 23 amends section 611(1) so that the jobseeker asset test is applied subject to new section 654, which provides for the rate of Jobseeker Payment for former Wife Pension recipients. Under existing rules, a person receiving Wife Pension with assets in excess of the pension assets value limit would experience a reduction in their rate of pension. However, under Jobseeker Payment, if the value of a person’s assets exceeds the assets value limit, then the payment is not payable.

This amendment allows former Wife Pension recipients with assets over the Jobseeker Payment assets value limit, as provided under section 611, to transition to the Jobseeker Payment and have their rate calculated through the new transitional rate calculator as per Items 24 and 25 below. Former Wife Pension recipients will not be subject to the jobseeker assets test in section 611 until their rate is worked out in accordance with sections 643 and 644AAA (and not under section 654).

Item 24 amends section 643 so that a person’s Jobseeker Payment rate will be worked out subject to Division 4 of part 2.12, which provides for the qualification and payability of Jobseeker Payment. Item 25 adds new sections 654, 655 and 656.

New subsection 654(1) provides that the section applies if a recipient was receiving Wife Pension under Part 2.4 immediately before 20 March 2020 and the Secretary makes a determination under section 12 of the Social Security Administration Act that the woman is taken to have made a claim for Jobseeker Payment because the woman became qualified for that payment immediately after ceasing to receive Wife Pension.
New subsection 654(2) provides that the Secretary must disregard section 611, which is the jobseeker assets test, when determining a claim as described in subsection 654(1). In conjunction with item 23 above, this amendment allows for former wife pension recipients who receive an assets reduced rate under pension rules to retain payability for jobseeker payment.

New subsection 654(3) sets out the method statement for working out the payment rate for former Wife Pension recipients who receive Jobseeker Payment on a day on or after 20 March 2020 (the *transition day*), which is subject to new subsection 654(6).

Subsection 654(6) provides that where a woman, on or after 20 March 2020, would not have qualified for a Wife Pension, then on or after that day, subject 611 will apply to that woman, and her Jobseeker Payment rate is to be worked out under sections 643 and 644AAA (and not under section 654). This provision provides that transitional arrangements would cease once a woman no longer satisfies the wife pension qualification rules due to a change of circumstances, such as separating from their partner. Paragraph 654(3)(b) provides that section 611 is to be disregarded when determining whether Jobseeker Payment is payable to a woman who would be qualified for wife pension on the relevant day.

The method statement at new subsection 654(3) provides as follows:

- **Step 1** – this step directs that the jobseeker rate on the transition day is to be worked out in accordance with section 643, which is the provision for working out a person’s jobseeker payment rate, and directs the reader to the Benefit Rate Calculator B at the end of section 1068 and 644AAA, which provides for the approved program of work supplement.
- **Step 2** – this step requires that the woman’s Wife Pension transition rate is to be worked out on the transition day and an accompanying note provides that the definition of Wife Pension transition rate is found at subsection (4).
- **Step 3** – this step provides that if the rate at step 2 exceeds the rate at step 1, the woman’s Jobseeker Payment rate on the transition day is the rate at step 2.
- **Step 4** - this step provides that if the rate at step 2 does not exceed the rate at step 1, the woman’s Jobseeker Payment rate on the transition day is the rate at step 1.

New subsection 654(4) provides that a woman’s Wife Pension transition rate on a transition day is the rate worked out in accordance with new section 655 or new section 656.

New section 655 provides for the Wife Pension transition rate method 1. Pursuant to new subsection 655(1) a woman’s Wife Pension transition rate will be worked out in accordance with this section if on 19 March 2020, the recipient was receiving the maximum rate of Wife Pension (i.e. no reduction in rate due to income or assets under the Pension Rate Calculator A in section 1064), and the recipient would not have experienced an income reduction for income in excess of the income free area on each day under the Benefit Rate Calculator B in section 1068 during the period commencing on 6 February 2020 and ending on 19 March 2020.
This has the effect that the Wife Pension recipient’s circumstances will be considered for a six week period in the lead up to the commencement of this Schedule to ensure their transitional arrangements reflect their circumstances over a sustained period leading up to 19 March 2020.

New subsection 655(2) provides that the woman’s Wife Pension transition rate on the relevant day will be the rate of Wife Pension worked out under the Pension Rate Calculator A, however new subsection 655(3) sets out the modifications that will apply to the calculation.

Paragraphs 655(3)(a), (b) and (d) provide that amounts at steps 1, 1A and 9 of the Pension Rate Calculator A will effectively freeze as at 19 March 2020, and there will be no further indexation of those amounts, for the purposes of this section. The effect of freezing these amounts is that former Wife Pension recipients will not experience a reduction in their rate of payment following their transition to Jobseeker Payment, and that they will continue to receive this transitional rate until a rate worked out in accordance with section 643 and 644AAA provides an equal or higher rate of Jobseeker Payment. Paragraph 655(3)(c) provides that the income test to be used will be the jobseeker income test, which affects both the treatment of ordinary income and income free areas.

New section 656 provides for the Wife Pension transition rate method 2. Pursuant to new subsection 656(1) a woman’s Wife Pension transition rate will be worked out in accordance with this section if on any day during the period commencing 6 February 2020 and ending on 19 March 2020, the recipient was receiving the maximum rate of Wife Pension, but would have experienced an income reduction for income in excess of the income free area under the Benefit Rate Calculator B in section 1068, or they were in receipt of a part rate of Wife Pension by way of either an income or assets reduction pursuant to the Pension Rate Calculator A in section 1064. As with new subsection 655(1), this ensures that a former Wife Pension recipient’s transitional arrangements reflect their circumstances over a sustained six week period ending on 19 March 2020.

New subsection 656(2) provides that the woman’s Wife Pension transition rate on the relevant day will be the rate of Wife Pension worked out under the Pension Rate Calculator A, however new subsection 656(3) sets out the modifications that will apply to the calculation.

New subsection 656(3) provides that amounts at steps 1, 1A, 5 and 9 of the Pension Rate Calculator A will effectively freeze as at 19 March 2020, and there will be no further indexation of those amounts, for the purposes of this section. The effect of freezing these amounts is that former Wife Pension recipients will not experience a reduction in their rate of payment following their transition to Jobseeker Payment, and will continue to receive this transitional rate until a rate worked out in accordance with section 643 and 644AAA provides an equal or higher rate of Jobseeker Payment.

New subsection 656(4) provides that if a woman was, immediately before 20 March 2020, receiving a Wife Pension rate based on the 2009 dual rate calculation
transitional arrangements, she will continue to have her Wife Pension transition rate worked out taking into account the provisions of clause 146 of Schedule 1A. New subsection 656(4) also provides that the transitional calculation amounts referred to in clause 146 will effectively freeze as at 19 March 2020, and there will be no further indexation of those amounts, for the purposes of this section.

New subsection 654(5) provides that if, for a period of 42 consecutive days, a woman’s jobseeker rate is the rate at step 1 of the method statement, then section 654 will no longer apply in relation to the woman at the end of that period. After this period, the person’s jobseeker payment will be worked out in accordance with sections 643 and 644AAA, and section 611 will apply, and the value of the woman’s assets throughout that period did not exceed the asset value limit under section 611 if section 611 had applied, then section 654 will no longer apply in relation to the woman at the end of that period.

This amendment accounts for cases where a temporary or episodic change in circumstances would provide a higher result under step 1, and ensure that former Wife Pension recipients will retain access to a Wife Pension transition rate until the step 1 rate provides an equal or higher result over a sustained six week period.

Paragraph 654(5)(b) also specifies that during this period of 42 consecutive days, the value of the woman’s assets did not exceed the asset value limit under section 611. The intention of paragraph 654(5)(b) is to ensure that recipients whose jobseeker payment rate is equal to or higher than their transitional rate would not lose transitional status until such time that the jobseeker assets value limit equals or exceeds the value of their assets. This is achieved by the hypothetical application of section 611 to the woman’s circumstances on each day to ensure recipients who receive a transitional jobseeker payment rate under section 654 would not cease to be payable pursuant to section 611 immediately after 42 days.

Item 38 inserts new subsection 1061ZA(2E), which provides for a new qualification for the pensioner concession card. New subsection 1061ZA(2E) provides qualification on a day if a woman is receiving a Jobseeker Payment and new section 654 applies to that woman on that day. This provides for former Wife Pension recipients who move to the Jobseeker Payment to continue to receive their pensioner concession card as long as they continue to receive a transitional rate calculation under the new section 654. Item 39 makes a necessary consequential amendment to subsection 1061ZA(3) to list new subsection 1061ZA(2E) as requiring that a person is in Australia and an Australian resident for the new subsection to apply.

Item 71 inserts new subsection 1220A(5) into the provisions that relate to proportional portability and the Age Pension rate. The new subsection ensures that where a woman was receiving a Wife Pension and clause 128 of Schedule 1A applied to the woman, subsection 1220A(1) will not apply to the woman’s rate of Age Pension, such that the rate will not be calculated using the Pension Portability Rate Calculator.

This insertion enables Wife Pension recipients who are not subject to the pension portability rate calculator through the existing savings provision provided by
clause 128 of Schedule 1A, to retain this treatment when they are transitioned to Age Pension. Preserving this treatment will prevent these recipients from being subjected to lower or nil rates of payment due to proportional portability.

**Item 72** inserts a **new point 1221-A4** at the end of Module A of the Pension Portability Rate Calculator in section 1221. The new point provides that where a woman was receiving a Wife Pension, was a member of a couple and the rate of the woman’s Wife Pension was required to be worked out having regard to her period of Australian working life residence (AWLR) and for those purposes her AWLR was taken to be equal to the period of AWLR of her partner, then, after the commencement of this Schedule, the woman’s AWLR is taken to be equal to the period of AWLR of the woman’s partner, if the woman is a member of that same couple and her rate of Age Pension is worked out under section 1220A.

This provision preserves the treatment of some Wife Pension recipients who are required to have their proportional portability rate calculated using their partner’s AWLR. Enabling Wife Pension recipients who are transitioned to Age Pension continue to use their partner’s AWLR will ensure that they are not subject to a rate reduction due to proportional portability.

**Saving and transitional provisions**

**Item 98** is a savings provision.

Subitem 98(1) ensures that former Part 2.4 and Part 3.2 of, and clause 146 of Schedule 1A to, the Social Security Act continue to apply after commencement despite their repeal, to allow the qualification or rate of Wife Pension to be worked out for days before commencement.

Subitem 98(2) provides that if, before commencement, a person was receiving Wife Pension and the woman’s partner dies, then Division 9 of Part 2.4 of the Social Security Act will continue to apply on or after commencement, as if the amendments made by this Schedule had not been made, such that a woman would continue to receive Wife Pension for the bereavement period.

Subitem 98(3) makes clear that no payment of Wife Pension is to be made in accordance with Part 4.2 of the Social Security Act, which deals with portability, including unlimited portability, of social security payments, on or after commencement in relation to a day on or after commencement.

Subitem 98(4) provides that a person is not qualified for an Age Pension under Part 2.2 of the Social Security Act in respect of a day on or after the commencement if the person receives Wife Pension in relation to that day, such as where Division 9 of Part 2.4 of the Social Security Act applies to the person.
Subitem 97(5) provides that if a woman is qualified for a Carer Payment under section 198AD of the Social Security Act, section 203 will not apply in relation to the claim for that payment, such that there will be no seasonal workers preclusion period in relation to that claim. This will enable Wife Pension recipients who also receive carer allowance, and have had seasonal employment, to automatically transfer to Carer Payment.

Item 99 is a savings provision in relation to maintaining the tax free treatment of a payment of Wife Pension in relation to adjustable taxable income, which is made before, on or after commencement, despite the repeal of the relevant provisions of the Family Assistance Act.

Item 100 is a savings provision in relation to maintaining the tax free treatment of a payment of Wife Pension, which is made before, on or after commencement, despite the repeal of the relevant provisions of the Child Support (Assessment) Act 1989.

Items 101 and 102 are savings provisions in relation to maintaining the tax treatment of a payment of Wife Pension that is made before, on or after commencement, despite the repeal of the relevant provisions of the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997.

Item 103 is a savings provision in relation to definitions.

Subitem 101(1) provides that for the purposes of working out whether a person was in severe financial hardship pursuant to section 19D of the Social Security Act in relation to days before the commencement, Wife Pension will continue to be taken into account.

Subitem 101(2) provides that for the purposes of working out whether woman is receiving Wife Pension at a time before, on or after commencement, paragraph 23(4A) (g) of the Social Security Act will continue to apply in relation to days before, on or after the commencement.

Item 104 is a savings provision, which maintains the effect of qualification provisions in respect of days before commencement, despite the repeal of the relevant provisions.

Item 105 is a savings provision, which maintains the effect of rate provisions in respect of the days before commencement, despite the repeal of the relevant provisions.

Item 106 is a savings provision, which maintains the effect of qualification for concession card provisions in respect of days before commencement, despite the repeal of the relevant provisions.

Item 107 is a savings provision, which maintains the effect of various advance payment provisions in respect of days before commencement, despite the repeal of the relevant provisions.
**Item 108** is a savings provision, which maintains the effect of the pension loans scheme in respect of days before commencement, despite the repeal of the relevant provisions.

**Item 109** is a savings provision, which maintains the effect of various means testing and debt provisions in respect of days before commencement, despite the repeal of the relevant provisions.

**Item 110** is a savings provision which maintains the effect of various administration provisions after commencement of this Schedule in respect of days before commencement, despite the repeal of the relevant provisions.

**Item 111** is a savings provision which maintains the effect of rate provisions after the commencement of this Schedule in respect of days occurring before, on or after that commencement, despite the repeal of the relevant provisions in the Veterans’ Entitlements Act.
Schedule 4 – Cessation of Bereavement Allowance

Summary

This Schedule ceases Bereavement Allowance from 20 March 2020.

From 20 March 2020, a person qualified for Youth Allowance or Jobseeker Payment will be able to receive a one-off, higher payment if their partner dies, in addition to their regular fortnightly payments.

Certain exemptions from the ordinary waiting period, the liquid assets test waiting period, the income maintenance period and the seasonal work preclusion period will also apply to newly bereaved claimants of Youth Allowance or Jobseeker Payment.

Background

Ceasing Bereavement Allowance

Bereavement Allowance is a short-term income support payment that provides financial assistance to recently bereaved persons in the period immediately following the death of their partner.

Bereavement Allowance is paid under the pension income and assets tests and is generally payable for up to 14 weeks following the death of a person’s partner. If a woman is pregnant at the time of her partner’s death, Bereavement Allowance is payable from the time of claim until the birth of the child, the end of the pregnancy or for up to 14 weeks (which ever results in the longest period).

The amendments made by Schedule 4 will cease Bereavement Allowance from 20 March 2020.

The one-off higher payment

The amendments made by this Schedule provide for a one-off higher payment to be made to new claimants or existing recipients of Youth Allowance or Jobseeker Payment following the death of their partner. This payment will provide newly bereaved recipients of Youth Allowance or Jobseeker Payment some additional financial assistance, above their standard payment.

The one off payment is calculated by reference to either the day on which the person claims Youth Allowance or Jobseeker Payment or the day on which the existing recipient notifies the Secretary that their partner has died. The person’s daily rate for that day is multiplied by 14 and by 2 to give an approximate payment amount for two fortnights. When this lump sum payment is made along with a person’s usual fortnightly payment, they will receive an amount that is approximately triple their usual fortnightly payment.

An existing recipient of Jobseeker Payment or Youth Allowance will only be eligible for the payment where they have elected not to receive other bereavement payments that they may be entitled to as a result of their partner’s death.
The person must claim or report their partner’s death within 14 weeks starting on the date of death of their partner in order to be eligible for the payment. A woman who is pregnant when her partner dies has either 14 weeks or until the birth of the child to report her partner’s death (whichever results in a longer period of time).

**Exemptions from certain requirements**

The amendments made by this Schedule will exempt newly bereaved recipients of Youth Allowance and Jobseeker Payment from the liquid assets test waiting period, the income maintenance period and the seasonal work preclusion period (where relevant) in circumstances where their partner has recently died. In order for the exemptions to apply, the person must lodge their claim for one of these payment types within the period of 14 weeks starting on the date of death of their partner or, for a woman who is pregnant, before the birth of the child (where that results in a period of time longer than 14 weeks).

Recipients of parenting payment, Youth Allowance, Jobseeker Payment and special benefit that are recently bereaved will also be exempt from activity testing requirements. The exemption from these requirements will be for a period of 14 weeks starting on the date of death of the person’s partner or, for a pregnant woman, until the birth of the child (if that results in a longer exemption period).

The amendments made by this Schedule commence on 20 March 2020.

**Explanation of the changes**

*Income Tax Assessment Act 1997*

Amendments to the *Income Tax Assessment Act 1997* remove references to Bereavement Allowance and insert references to the new one off higher payment of Jobseeker Payment (new section 660LH of the Social Security Act) and Youth Allowance (new section 567FA of the Social Security Act). The new one off higher payment will be treated as a lump sum payment and will be tax exempt up to the tax free amount as calculated under subsection 52-30(3) of the *Income Tax Assessment Act 1997*.

**Item 1** repeals table item 3.1 in section 52-10 to remove references to Bereavement Allowance from the table.

**Item 2** removes the reference to Bereavement Allowance in table item 1 of section 52-15.

**Item 3** removes the reference to paragraph 567(1)(f) in table item 5A of subsection 52-20(3) and replaces it with references to subsection 567(1) and section 567FA of the Social Security Act.

**Item 4** removes the reference to subdivision AA in table item 6 of subsection 52-20(3).
Item 5 removes a reference to paragraph 660LA(1)(f) in table item 6 of subsection 52-20(3) and replaces it with a reference to subsection 660LA(1) and section 660LH of the Social Security Act.

Item 6 repeals table item 3 in section 52-40 to remove the reference to Bereavement Allowance from the table.

Note that Schedule 1 to the Bill amends the reference to Jobseeker Payment in the table in section 52-40 and includes a reference to section 660LH of the Social Security Act.

Item 7 adds a reference to section 567FA of the Social Security Act in table item 35 of section 52-40.

Social Security Act

Item 8 repeals paragraph 7(4)(d) to remove the reference to Part 2.7 of the Act from the definition of Australian resident.

Item 9 repeals paragraph (f) of the definition of social security pension in subsection 23(1) of the Act to remove the reference to Bereavement Allowance.

Item 10 repeals the whole of Part 2.7 of the Act which relates to Bereavement Allowance.

Parenting payment

Item 11 repeals and substitutes the heading to section 501E of the Act to make it more accurately describe the new provision. The heading to section 501E will change from ‘Parenting Payment Employment Pathway Plans – suspension of plans in cases of domestic violence etc.’ to ‘Parenting Payment Employment Pathway Plans – suspension of plans’.

Item 12 inserts a reference to section 502BA into section 501E. The effect of this amendment is that when a person’s partner dies, their Parenting Payment Employment Pathway Plan is taken to be suspended for the period of their participation exemption.

Item 13 inserts new section 502BA into the Act.

New section 502BA sets out circumstances under which a new claimant or existing recipient of parenting payment will be covered by a participation exemption in relation to their Parenting Payment Employment Pathway Plan.

Under new subsection 502BA(1) a person will be covered by a participation exemption where they make a new claim for parenting payment on or after commencement and after the death of their partner (which must also occur after commencement).
Ordinarily, for the participation exemption to apply, the claim for parenting payment must be made within the period of 14 weeks starting on the day the person’s partner died. However, for a woman who was pregnant when her partner died, the claim must be made within the period of 14 weeks starting on the day her partner died or before the birth of the child or end of the pregnancy (whichever results in a longer period).

Under new subsection 502BA(2), a person will also be covered by a participation exemption where they are an existing recipient of parenting payment on or after commencement and their partner dies.

Ordinarily, for the participation exemption to apply, the person must notify the Secretary of their partner’s death within the period of 14 weeks starting on the day their partner died. However, for a woman who was pregnant when her partner died, the notification must occur within the period of 14 weeks starting on the day her partner died or before the birth of the child or end of the pregnancy (whichever results in a longer period).

For both new claimants and existing recipients of parenting payment, the period of the participation exemption is 14 weeks from the date of the partner’s death. However, for a woman who was pregnant when her partner died, the participation exemption will start on the day her partner died and end after 14 weeks or on the birth of the child or end of the pregnancy (whichever results in a longer period).

**Youth Allowance**

**Item 14** inserts new subsection 542(ca) to make it clear that a Youth Allowance recipient is not required to satisfy the activity test if the person has a death of partner exemption under section 542EA.

**Item 15** inserts new section 542EA into the Act.

Section 542EA sets out circumstances under which a new claimant or existing recipient of Youth Allowance will be covered by a death of partner exemption in relation to the Youth Allowance activity test set out in section 541 of the Act.

Under new subsection 542EA(1) a person will have a death of partner exemption where they make a new claim for Youth Allowance on or after commencement and after the death of their partner (which must also occur after commencement).

Ordinarily, for the death of partner exemption to apply, the claim for Youth Allowance must be made within the period of 14 weeks starting on the day the person’s partner died. However, for a woman who was pregnant when her partner died, the claim must be made within the period of 14 weeks starting on the day her partner died or before the birth of the child or end of the pregnancy (whichever results in a longer period).

Under new subsection 542EA(2), a person will also be covered by a death of partner exemption where they are an existing recipient of Youth Allowance on or after commencement and their partner dies.
Ordinarily, for the death of partner exemption to apply, the person must notify the Secretary of their partner's death within the period of 14 weeks starting on the day their partner died. However, for a woman who was pregnant when her partner died, the notification must occur within the period of 14 weeks starting on the day her partner died or before the birth of the child or end of the pregnancy (whichever results in a longer period).

For both new claimants and existing recipients of Youth Allowance, the period of the death of partner exemption is 14 weeks from the date of their partner’s death. However, for a woman who was pregnant when her partner died, the participation exemption will start on the day her partner died and end after 14 weeks or on the birth of the child or end of the pregnancy (whichever results in a longer period).

Item 16 inserts paragraph 544A(2)(baa) so that a person that has a death of partner exemption under section 542EA is not required to enter into a Youth Allowance Employment Pathway Plan.

Item 17 inserts paragraph 544E(aa). The effect of this amendment is that when a person’s partner dies, the person’s Youth Allowance Employment Pathway Plan is taken to be suspended for the period of their death of partner exemption under section 542EA.

Item 18 inserts subsection 549A(7) so that where a person claims Youth Allowance after commencement and after the death of their partner (which must also occur after commencement) they will not be subject to the liquid assets test waiting period.

The person must apply for Youth Allowance within the period of 14 weeks starting on the day their partner died. However, for a woman who was pregnant when her partner died, the claim must be made within the period of 14 weeks starting on the day her partner died or before the birth of the child or end of the pregnancy (whichever results in a longer period).

The exemption from the liquid assets test waiting period is 14 weeks from the date of the partner’s death. However, for a woman who was pregnant when her partner died, the exemption will start on the day her partner died and end after 14 weeks or on the birth of the child or end of the pregnancy (whichever results in a longer period).

Item 19 includes a reference to subsection 549CA(5) in subsection 549CA(2).

Item 20 inserts subsection 549CA(5) so that where a person claims Youth Allowance after commencement and after the death of their partner (which must also occur after commencement) the ordinary waiting period will not apply.

The person must apply for Youth Allowance within the period of 14 weeks starting on the day their partner died. However, for a woman who was pregnant when her partner died, the claim must be made within the period of 14 weeks starting on the day her partner died or before the birth of the child or end of the pregnancy (whichever results in a longer period).
Item 21 inserts subsection 553C(6) so that where a person claims Youth Allowance after commencement and after the death of their partner (which must also occur after commencement) the seasonal work preclusion period will not apply.

The person must apply for Youth Allowance within the period of 14 weeks starting on the day their partner died. However, for a woman who was pregnant when her partner died, the claim must be made within the period of 14 weeks starting on the day her partner died or before the birth of the child or end of the pregnancy (whichever results in a longer period).

Item 22 repeals and substitutes the heading to Subdivision A of Division 10 of Part 2.11 of the Act so it more accurately describes the amended subdivision. The heading will change from ‘Subdivision A – Bereavement payments on death of partner’ to ‘Subdivision A – Ongoing payments for death of partner’.

Item 23 repeals and substitutes the heading to section 567 of the Act to refer to Subdivision rather than Division. The heading will change from ‘Qualification for payments under this Division’ to ‘Qualification for payment under this Subdivision’.

Items 24-26, 28-32, 34 and 36-38 remove references to ‘Division’ and replaces those references with ‘Subdivision’ in paragraph 567(1)(f), subsection 567(1), subsection 567(2), paragraph 567(3)(b), subsection 567(4), section 567A, paragraph 567B(a), section 567C, paragraph 567D(a), paragraphs 567E(1)(a), (d) and (e), paragraph 567E(2)(a) and section 567F.

Item 27 adds a note at the end of subsection 567(2) to make it clear that by choosing not to receive a payment under Subdivision A of Division 10 of Part 2.11, a person may qualify for the new one off higher payment under Subdivision AA.

Example
A person and their partner both receive Youth Allowance. The person’s partner dies on 1 May 2020 and they notify Centrelink of their partner’s death the following day. The person qualifies for bereavement payments under Subdivision A of Division 10 of Part 2.11, but under subsection 567(2), they elect not to receive those payments. As a result, they qualify for a one off lump sum payment under section 567FA.

Item 33 repeals and substitutes the heading to section 567D of the Act to refer to Subdivision rather than Division. The heading to section 567D will change from ‘Effect of death of person entitled to payments under this Division’ to ‘Effect of death of person entitled to payments under this Subdivision’.

Item 35 repeals and substitutes the heading to section 567E of the Act to refer to Subdivision rather than Division. The heading to section 567E will change from ‘Matters affecting payments under this Division’ to ‘Matters affecting payments under this Subdivision’.

Item 39 inserts Subdivision AA – One off payment for death of partner.

Under section 567FA, a person qualifies for a lump sum payment if:
• they notify the Secretary that their partner died;
• they are qualified for Youth Allowance on that day and Youth Allowance is payable to them on that day;
• before that day (but after commencement) the person was a member of a couple and stopped being a member of a couple because their partner died;
• the person is not a member of a new couple;
• when the person’s partner died, both the person and their partner were Australian residents;
• the day on which the person notifies the Secretary of their partner’s death occurs within the period of 14 weeks starting on the day that the person’s partner died or, for a woman who is pregnant, within the period of 14 weeks starting on the day that her partner died or before the birth of the child or end of the pregnancy (whichever results in a longer period); and
• if the person is qualified for bereavement payments under section 567, they have chosen not to receive those payments under subsection 567(2).

Section 567FB sets out the formula for working out the amount of the lump sum payment. The amount is determined by reference to the daily amount of Youth Allowance that is payable to the person on the day that they notify the Secretary of their partner’s death. That daily amount is multiplied by 14 and then by 2 to give an amount that will be around double what the person would ordinarily get in a fortnight. The practical result is that a recently bereaved Youth Allowance recipient will be entitled to around three times their ordinary payment of Youth Allowance (i.e. their usual payment plus the bereavement lump sum) in the fortnight after they notify the Secretary of their partner’s death.

**Jobseeker Payment**

**Item 40** inserts a reference to subsection 598(8B) into subsection 598(1).

**Item 41** inserts subsection 598(8B) so that where a person claims Jobseeker Payment after commencement and after the death of their partner (which must also occur after commencement) they will not be subject to the liquid assets test waiting period.

The person must apply for Jobseeker Payment within the period of 14 weeks starting on the day their partner died. However, for a woman who was pregnant when her partner died, the claim must be made within the period of 14 weeks starting on the day her partner died or before the birth of the child or end of the pregnancy (whichever results in a longer period).

The exemption from the liquid assets test waiting period is 14 weeks from the date of the partner’s death. However, for a woman who was pregnant when her partner died, the exemption will start on the day her partner died and end after 14 weeks or on the birth of the child or end of the pregnancy (whichever results in a longer period).

**Items 42 and 43** repeal the notes to subsections 601(1) and 601(5). Item 42 also inserts new notes to subsections 601(1) which clarify that subsections 601(2A) and 601(2B) set out what paid work is unsuitable and that Subdivisions B and BA set out
situations in which a person is taken to satisfy, or is not required to satisfy, the activity test.

**Item 44** inserts new section 602AA into the Act. Section 602AA sets out circumstances under which a new claimant or existing recipient of Jobseeker Payment will not be required to satisfy the activity test set out in section 601 of the Act.

Under new subsection 602AA(1) a person will not be required to satisfy the activity test where they make a new claim for Jobseeker Payment on or after commencement and after the death of their partner (which must also occur after commencement).

Ordinarily, for a person not to be required to satisfy the activity test, the claim for Jobseeker Payment must be made within the period of 14 weeks starting on the day the person’s partner died. However, for a woman who was pregnant when her partner died, the claim must be made within the period of 14 weeks starting on the day her partner died or before the birth of the child or end of the pregnancy (whichever results in a longer period).

Under new subsection 602AA(2), a person will also not be required to satisfy the activity test where they are an existing recipient of Jobseeker Payment on or after commencement and their partner dies.

Ordinarily, for a person not to be required to satisfy the activity test, the person must notify the Secretary of their partner’s death within the period of 14 weeks starting on the day their partner died. However, for a woman who was pregnant when her partner died, the notification must occur within the period of 14 weeks starting on the day her partner died or before the birth of the child or end of the pregnancy (whichever results in a longer period).

For both new claimants and existing recipients of Jobseeker Payment, the period that they will not to be required to satisfy the activity test is 14 weeks from the date of their partner’s death. However, for a woman who was pregnant when her partner died, the participation exemption will start on the day her partner died and end after 14 weeks or on the birth of the child or end of the pregnancy (whichever results in a longer period).

**Item 45** inserts a reference to section 602AA into subsection 605(2C) so that a person who is not required to satisfy the activity test under section 602AA is not required to enter into a Jobseeker Employment Pathway Plan under subsection 605(1) or 605(2).

**Item 46** repeals the words ‘in cases of domestic violence etc.’ in the heading to section 607C so the heading more accurately describes the new provision.

**Item 47** inserts a reference to section 602AA in section 607C. The effect of this amendment is that when a person’s partner dies, their Jobseeker Employment Pathway Plan is taken to be suspended for the period that the person is not required to satisfy the activity test because of section 602AA.
Item 48 inserts a reference to subsection 620(4) in subsection 620(1).

Item 49 inserts subsection 620(4) so that where a person claims Jobseeker Payment after commencement and after the death of their partner (which must also occur after commencement) the ordinary waiting period will not apply.

The person must apply for Jobseeker Payment within the period of 14 weeks starting on the day their partner died. However, for a woman who was pregnant when her partner died, the claim must be made within the period of 14 weeks starting on the day her partner died or before the birth of the child or end of the pregnancy (whichever results in a longer period).

Item 50 inserts subsection 633(6) so that where a person claims Jobseeker Payment after commencement and after the death of their partner (which must also occur after commencement) the seasonal work preclusion period will not apply.

The person must apply for Jobseeker Payment within the period of 14 weeks starting on the day their partner died. However, for a woman who was pregnant when her partner died, the claim must be made within the period of 14 weeks starting on the day her partner died or before the birth of the child or end of the pregnancy (whichever results in a longer period).

Item 51 repeals and substitutes the heading to Subdivision AA of Division 9 of Part 2.12 of the Act to make it more accurately describe the amended subdivision. The heading will change from ‘Subdivision AA – Death of partner’ to ‘Subdivision AA – Ongoing payments for death of partner’.

Item 52 adds a note at the end of subsection 660LA(2) to make it clear that by choosing not to receive a payment under Subdivision AA of Division 9 of Part 2.12, a person may qualify for payment under Subdivision A.

Example
A person and their partner both receive Jobseeker Payment. The person’s partner dies on 1 May 2020 and they notify Centrelink of their partner’s death the following day. The person qualifies for bereavement payments under Subdivision AA of Division 9 of Part 2.12, but under subsection 660LA(2), they elect not to receive those payments. As a result, they qualify for a one off lump sum payment under section 660LH.

Item 53 substitutes the reference to ‘Division’ in section 660LG with a reference to ‘Subdivision’.

Item 54 inserts Subdivision A – One off payment for death of partner.

Under section 660LH, a person qualifies for a lump sum payment if:

- they notify the Secretary that their partner died;
- they are qualified for Jobseeker Payment on that day and Jobseeker Payment is payable to them on that day;
• before that day (but after commencement) the person was a member of a couple and stopped being a member of a couple because their partner died;
• the person is not a member of a new couple;
• when the person’s partner died, both the person and their partner were Australian residents;
• the day on which the person notifies the Secretary of their partner’s death occurs within the period of 14 weeks starting on the day that the person’s partner died or, for a woman who is pregnant, within the period of 14 weeks starting on the day that her partner died or before the birth of the child or end of the pregnancy (whichever results in a longer period); and
• if the person is qualified for payments under section 660LA, they have chosen not to receive those payments under subsection 660LA(2).

Section 660LI sets out the formula for working out the amount of the lump sum payment. The amount is determined by reference to the daily amount of Jobseeker Payment that is payable to the person on the day that they notify the Secretary of their partner’s death. That daily amount is multiplied by 14 and then by 2 to give an amount that will be around double what the person would ordinarily get in a fortnight. The practical result is that a recently bereaved Jobseeker Payment recipient will be entitled to around three times their ordinary payment of Jobseeker Payment (i.e. their usual payment plus the bereavement lump sum) in the fortnight after they notify the Secretary of their partner’s death.

**Special benefit**

**Item 55** inserts new section 731DAA into the Act.

Section 731DAA sets out circumstances under which a new claimant or existing recipient of special benefit will not be required to satisfy the activity test set out in section 731A of the Act.

Under new subsection 731DAA(1) a person will not be required to satisfy the activity test where they make a new claim for special benefit on or after commencement and after the death of their partner (which must also occur after commencement).

Ordinarily, for a person not to be required to satisfy the activity test, the claim for special benefit must be made within the period of 14 weeks starting on the day the person’s partner died. However, for a woman who was pregnant when her partner died, the claim must be made within the period of 14 weeks starting on the day her partner died or before the birth of the child or end of the pregnancy (whichever results in a longer period).

Under new subsection 731DAA(2), a person will also not be required to satisfy the activity test where they are an existing recipient of special benefit on or after commencement and their partner dies.

Ordinarily, for a person not to be required to satisfy the activity test, the person must notify the Secretary of their partner’s death within the period of 14 weeks starting on the day their partner died. However, for a woman who was pregnant when her partner died, the notification must occur within the period of 14 weeks starting on the
day her partner died or before the birth of the child or end of the pregnancy (whichever results in a longer period).

For both new claimants and existing recipients of special benefit, the period that they will not be required to satisfy the activity test is 14 weeks from the date of their partner’s death. However, for a woman who was pregnant when her partner died, the participation exemption will start on the day her partner died and end after 14 weeks or on the birth of the child or end of the pregnancy (whichever results in a longer period).

**Item 56** inserts a reference to section 731DAA in subsection 731L(3) so that a person who is not required to satisfy the activity test under section 731A is not required to enter into a Special Benefit Employment Pathway Plan under subsections 731L(1) and 731L(2).

**Item 57** repeals the words ‘in cases of domestic violence etc.’ in the heading to section 731R so the heading more accurately describes the new provision.

**Item 58** inserts a reference to section 731DAA in section 731R. The effect of this amendment is that when a person’s partner dies, their Special Benefit Employment Pathway Plan is taken to be suspended for the period that the person is not required to satisfy the activity test because of section 731DAA.

**Item 59** is a consequential amendment related to item 10 that removes the reference to Bereavement Allowance from subparagraph 1061T(1)(a)(iii). Section 1061T sets out qualification for utilities allowance.

**Item 60** is a consequential amendment related to item 10 that removes the reference to Bereavement Allowance from subparagraph 1067F(1)(d)(viii) of the definition of *long term income support student*.

**Item 61** adds section 1067G-H12A to create an exemption to points 1067G-H11 and 1067G-H12. This section operates so that if a person makes a claim for Youth Allowance after commencement and after the death of their partner (which must also occur after commencement), the income maintenance period for leave payments or termination payments do not apply.

The period which the income maintenance period does not apply is 14 weeks from the date of their partner’s death. However, for a woman who was pregnant when her partner died, the exemption will start on the day her partner died and end after 14 weeks or on the birth of the child or end of the pregnancy (whichever results in a longer period).

**Item 62** is a consequential amendment related to item 10 that repeals table item 5 in Module L of the Youth Allowance Rate Calculator in section 1067G to remove the reference to Bereavement Allowance.

**Item 63** is a consequential amendment related to item 10 that repeals the reference to Bereavement Allowance in subparagraph 1067K(1)(d)(vii).
Item 64 adds section 1068-G7AI to create an exemption to points 1068-G7AG and 1068-G7AH. This section operates so that if a person makes a claim for Jobseeker Payment after commencement and after the death of their partner (which must also occur after commencement), the income maintenance period for leave payments or termination payments do not apply.

The period which the income maintenance period does not apply is 14 weeks from the date of their partner's death. However, for a woman who was pregnant when her partner died, the exemption will start on the day her partner died and end after 14 weeks or on the birth of the child or end of the pregnancy (whichever results in a longer period).

Items 65 and 66 repeal subparagraph 1133(1)(a)(vi) which refers to Bereavement Allowance and makes a technical amendment to replace 'or' with 'and' at the end of the preceding subparagraph. Section 1133 sets out qualification for participation in the pension loans scheme.

Item 67, 69-73 and 75-77 are consequential amendments to the amendments made by item 10. These amendments remove references to allowance from paragraph 1133(1)(b), paragraph 1134(1)(e), subsection 1134(2), subsection 1135(1), method statement, steps 1 and 3 in subsection 1135(3), paragraph 1136(1A)(c), paragraphs 1137(1)(b) and (d), section 1141 and subsection 1142(1).

Item 68 repeals and substitutes the heading to section 1134 of the Act to make it more accurately describe the amended subdivision. The heading will change from 'Effect of participation in pension loans scheme – pension or allowance rate' to 'Effect of participation in pension loans scheme – pension rate'.

Item 74 repeals and substitutes the heading to section 1137 to make it more accurately describe the amended section. The heading will change from 'Need for a request to later nominate or change guaranteed amount or rate of pension or allowance' to 'Need for a request to later nominate or change guaranteed amount or rate of pension'.

Items 78-83 are consequential amendments to the amendments made by item 10. These amendments remove references to Bereavement Allowance from subparagraph 1187(1)(a)(v), subparagraph 1188C(1)(a)(vi), table items 8 and 9 in subsection 1188C(5), subparagraph 1188D(2)(a)(vi), subparagraph 1188F(2)(b)(vi) and table item 7 in section 1217.

Items 84 and 85 are consequential amendments to the amendments made by item 10. These amendments remove the reference to Bereavement Allowance in subsection 1220(1)(d)(iii) and make a technical amendment to replace 'or' with 'and' at the end of the preceding subparagraph.

Items 86-88 and 91-93 are consequential amendments to the amendments made by item 10. These amendments remove references to Bereavement Allowance from paragraph 1220(1)(e), subsection 1220(1), paragraph 1220(2)(e) and subsection 1220(2).
Items 89 and 90 are consequential amendments to the amendments made by item 10. These amendments remove the reference to Bereavement Allowance in subsection 1220(2)(d)(iii) and makes a technical amendment to replace ‘or’ with ‘and’ at the end of the preceding subparagraph.

Item 94 is a consequential amendment that removes the reference to Bereavement Allowance in subparagraph 146(1)(a)(v) of Schedule 1A.

Social Security Administration Act

Items 95–98 are consequential amendments to the amendments made by item 10. These amendments remove references to Bereavement Allowance from paragraph 52(1)(b), paragraph 66(1)(b), subsection 124PD(1) (subparagraph (b)(ii) of the definition of trigger payment) and subclause 1(1) of Schedule 1 (paragraph (e) of the definition of social security bereavement payment).

Item 99 inserts a reference to Subdivision AA of Division 10 of Part 2.11 in paragraph (h) of the definition of social security bereavement payment to include a reference to the new one off Youth Allowance payment for the death of a partner.

Item 100 inserts a reference to Subdivision A of Division 9 of Part 2.12 in paragraph (j) of the definition of social security bereavement payment to include a reference to the new one off Jobseeker Payment for the death of a partner.

International Agreements Act

Items 101-103 are consequential amendments to the amendments made by item 10. These amendments remove references to Bereavement Allowance from the heading to section 21, paragraph 21(a) and paragraph 21(b).

Veterans’ Entitlements Act

Item 104 repeals paragraph (e) of the definition of bereavement payment provisions in subsection 118ND(4) to remove the reference to Bereavement Allowance.

Item 105 provides for saving provisions for Bereavement Allowance.

Subitem (1) operates so that if a person was receiving Bereavement Allowance in relation to the death of their partner before commencement, all relevant provisions of the Social Security Act and Social Security (Administration) Act as in force immediately before commencement will continue to apply to that person.

Example

A person’s partner dies on 1 March 2020 and they start receiving Bereavement Allowance under Part 2.7 of the Social Security Act on 15 March 2020. On 20 March 2020 they continue to receive Bereavement Allowance. The person travels overseas on 15 April 2020. Sections 1214 and 1217 of the Social Security Act, as in force immediately prior to
commencement, apply so that they continue to receive Bereavement Allowance while they are overseas. The person stops receiving Bereavement Allowance on 6 June 2020, 14 weeks after the death of their partner.

**Example**
A person’s partner dies on 1 March 2020 and they start receiving Bereavement Allowance under Part 2.7 of the Social Security Act on 15 March 2020. On 21 March 2020 the person applies for Youth Allowance. On that day they qualify for Youth Allowance and Youth Allowance is payable to them. Subsection 321(2) of the Social Security Act, as in force immediately prior to commencement, applies so that Bereavement Allowance is no longer payable to the person. The person does not qualify for a lump sum payment under section 567FA because they first notified Centrelink of their partner’s death before the day on which they qualified for Youth Allowance and Youth Allowance was payable to them (subsection 567FA(h) of the Act).

Subitem (2) operates so that where a person qualified for Bereavement Allowance under section 315 of the Social Security Act prior to commencement, all relevant provisions of the Social Security Act and Social Security (Administration) Act as in force immediately before commencement continue to apply to that person.

**Example**
A person’s partner dies on 10 March 2020 and they lodge a claim for Bereavement Allowance on 21 March 2020. The person met the qualification requirements set out in section 315 of the Social Security Act on 10 March 2020, therefore they are able to be granted Bereavement Allowance after 20 March 2020.

**Item 106** is a saving provision for the purpose of the *Income Tax Assessment Act 1997* which provides that item 3.1 of the table in section 52-10 and section 52-15 of that Act, as in force immediately prior to commencement, continue to apply to Bereavement Allowance. This ensures that Bereavement Allowance paid after commencement receives the same taxation treatment that it did prior to commencement.

**Item 107** provides for saving and transitional provisions for the Social Security Act.

Subitem (1) provides that despite the amendments made by this Schedule, subsection 7(4) of the Social Security Act, as in force immediately prior to commencement, continues to apply in relation to working out whether a person is an Australian resident for the purposes of Part 2.7 of the Act.

Subitem (2) provides that despite the amendments made by this Schedule, subparagraph 1061T(1)(a)(ii) of the Social Security Act, as in force immediately prior to commencement, continues to apply in relation to working out qualification for utilities allowance.
Subitem (3) provides that despite the amendments made by this Schedule, subparagraphs 1067F(1)(d)(viii) and 1067K(1)(d)(vii) of the Social Security Act, as in force immediately prior to commencement, continue to apply in relation to working out whether a person is a long term income support student.

Subitem (4) provides that despite the amendments made by this Schedule, table item 5 in Module L of the Youth Allowance Rate Calculator in section 1067G of the Social Security Act, as in force immediately prior to commencement, continues to apply in order to work out if a person is a family member in relation to another person for the purpose of Part 2.11 of the Act or working out if a person is exempt from the parental income test.

Subitem (5) provides that paragraph 1070(b) of the Social Security Act, as in force immediately prior to commencement, continues to apply in relation to working out qualification for, or the rate of, rent assistance in relation to Bereavement Allowance.

Subitem (6) provides that if a person made a request to participate in the pension loans scheme under section 1136 of the Social Security Act prior to commencement in relation to Bereavement Allowance and that request had not been decided, it is taken to have been refused.

Subitem (7) provides that despite the amendments made by this Schedule, Division 4 of Part 3.12 of the Social Security Act, as in force immediately prior to commencement, continues to apply in relation to a payment of Bereavement Allowance.

Subitem (8) provides that despite the amendments made by this Schedule, subparagraph 1187(1)(a)(v) of the Social Security Act, as in force immediately prior to commencement, continues to apply in relation to Bereavement Allowance payable to a person.

Subitem (9) provides that despite the amendments made by this Schedule, Divisions 2 and 3 of Part 3.15A of the Social Security Act, as in force immediately prior to commencement, continue to apply in relation to Bereavement Allowance payable to a person.

Subitem (10) provides that despite the amendments made by this Schedule, Chapter 5 of the Social Security Act, as in force immediately prior to commencement, continues to apply in relation to overpayments and debt recovery relating to a payment of Bereavement Allowance.

**Item 108** provides for specific saving provisions in the Social Security Administration Act.

Subitem (1) provides that despite the amendments made by this Schedule, Part 3 of the Social Security Administration Act, as in force immediately prior to commencement, continues to apply in relation to making claims for Bereavement Allowance (where the person qualified prior to commencement), making payments of Bereavement Allowance and making determinations or requirements in relation to Bereavement Allowance.
Subitem (2) provides that despite the amendments made by this Schedule, Parts 3B and 3D of the Social Security Administration Act, as in force immediately prior to commencement, continue to apply in relation to payment of Bereavement Allowance or of a social security bereavement payment in relation to Bereavement Allowance.

Subitem (3) provides that despite the amendments made by this Schedule, Parts 4 and 4A of the Social Security Administration Act, as in force immediately prior to commencement, continue to apply to a decision in relation to Bereavement Allowance made before, on or after commencement.

**Item 109** is a saving provision for the purposes of the International Agreements Act which provides that section 21 of that Act, as in force immediately prior to commencement, continues to apply on and after commencement in relation to working out the rate of Bereavement Allowance.

**Item 110** is a saving provision for the purpose of the Veteran’s Entitlements Act which provides that sections 118ND and 118NE of that Act, as in force immediately prior to commencement; continue to apply on and after commencement in relation to working out the rate of Bereavement Allowance.
Schedule 5 - Cessation of Sickness Allowance

**Summary**

This Schedule will cease Sickness Allowance from 20 September 2020. However, there will be no new entrants to Sickness Allowance from 20 March 2020.

**Background**

Sickness Allowance is a short-term income support payment for working age people (aged between 22 years and Age Pension age), who have a temporary incapacity due to illness or injury and who have a job or study to return to after their recovery. Recipients need a medical certificate from a doctor declaring that they are temporarily unfit for work. Sickness Allowance recipients are not subject to an activity test or participation requirements. Sickness Allowance is generally paid for the period specified on the person’s medical certificate or 13 weeks, whichever is less. This period can generally be extended in 13 week increments if further medical certificates are provided. Sickness Allowance can also be paid to people undertaking a rehabilitation program in certain circumstances for a period of up to 208 weeks.

From 20 March 2020, there will be no new grants of Sickness Allowance. People who are current recipients on that date will remain on Sickness Allowance. However, there would be no capacity for the Secretary to extend their maximum allowance period, as at 20 March 2020. When their maximum period ends, the person would cease to qualify for Sickness Allowance and, if appropriate, would transfer to the new Jobseeker Payment (or return to employment or study).

The qualification conditions for Jobseeker Payment would be modified to allow people who are temporarily incapacitated for work or study because of illness or accident to qualify for Jobseeker Payment in similar circumstances to those presently covered by Sickness Allowance. People who qualify for Jobseeker Payment on the basis of these new rules could be subject to the activity test or may be exempt from the activity test if a relevant exemption applies (for example, the temporary incapacity exemption in Subdivision BA of Division 1). A new exemption from the activity test would be included for people who are undertaking a rehabilitation program in certain circumstances.

To ensure that there is an adequate amount of time to transfer all recipients to Jobseeker Payment without being disadvantaged, a six month period has been provided before ceasing Sickness Allowance. The amendments contained in this Schedule will cease Sickness Allowance from 20 September 2020. People who are on Sickness Allowance will be transitioned to the new Jobseeker Payment.
Explanation of the changes

Part 1 – Amendments commencing 20 March 2020

Social Security Act

Section 593 of the Social Security Act sets out the qualification conditions for Newstart Allowance (which will be replaced by Jobseeker Payment from 20 March 2020).

Subsection 593(1) requires, among other things, that a person be unemployed or a CDEP participant throughout the relevant period (paragraph (a) refers). Item 2 amends paragraph (a) to provide for another category of qualification, as set out in new subsection 593(1A) (inserted by item 4). New subsection 593(1A) applies if:

- the person is incapacitated for work or study because of sickness or accident;
- the incapacity is caused by a medical condition arising from the sickness or accident;
- the incapacity is, or is likely to be, temporary; and
- one of the following applies:
  - the person was employed immediately before the incapacity occurred and has employment to return to after the incapacity ends; or
  - the person was in full-time education and receiving ABSTUDY immediately before the incapacity occurred and is committed to resuming full-time study when the incapacity ends; or
  - the person was undertaking qualifying study and receiving austudy payment immediately before the incapacity occurred and is committed to resuming study when the incapacity ends.

Item 4 also inserts new subsections 593(1AA) and (1AB).

New subsection 593(1AA) ensures that a person cannot qualify under new subsection 593(1A) if their incapacity is brought about with a view to obtaining Jobseeker Payment or other specified payments. There is currently a similar rule for Sickness Allowance.

New subsection 593(1AB) defines work for the purposes of new subsection 593(1A), consistent with the definition that currently applies for Sickness Allowance.

A person who satisfies these new requirements would also need to satisfy the remaining qualification requirements in subsection 593(1), namely activity testing (unless exempt), participation requirements (as appropriate), age and residence requirements.

Items 1 and 3 make necessary consequential amendments.
The rules relating to the liquid assets test waiting period are set out in section 598 of the Social Security Act. **Items 5 to 16** make consequential adjustments to the liquid assets test waiting period provisions for Jobseeker Payment so that these provisions can also apply in relation to people who are incapacitated for work or study because of sickness or accident and who qualify for Jobseeker Payment under the new rules described above. These changes incorporate elements of the liquid assets test waiting period rules that currently applies to Sickness Allowance as needed.

**Item 17** inserts new section 602D. Under this new provision, a person is not required to satisfy the activity test if the person qualifies for Jobseeker Payment under new subsection 593(1A) (subparagraph 593(1)(a)(iii) applies to the person), the person is undertaking a rehabilitation program that is intended to enhance the person’s ability to work and the person’s participation in that program is likely to last between 6 and 208 weeks. The period of this exemption is as determined by the Secretary.

**Item 18** makes a related amendment to subsection 605(2C) to include a reference to new section 602D. The means that if a person is exempt from the activity test under new section 602D they will also not be required to enter into an Employment Pathway Plan.

**Item 19** inserts a new section 666A into Division 1 of Part 2.14 of the Social Security Act.

New subsection 666A(1) ensures that Sickness Allowance cannot be granted to a person unless the person claims Sickness Allowance before 20 March 2020 and they satisfy the qualification and payability conditions for that allowance before 20 March 2020. A note at the end of this provision informs the reader that a claim for Sickness Allowance can be backdated under the deemed claim provisions in section 12 or 15 of the Social Security Administration Act.

New subsection 666A(2) ensures that this new rule does not affect the operation of section 85 of the Social Security Administration Act (which provides for restoration of payment after suspension or cancellation in certain circumstances).

Section 669 of the Social Security Act provides for a time limit on qualification for Sickness Allowance. **Item 20** inserts a new subsection 669(8) which ensures that a person’s maximum allowance period (their period of qualification) cannot be extended on or after 20 March 2020.

**Item 21** sets out some transitional arrangements.

Subitem (1) addresses the situation where a person claims Sickness Allowance before 20 March 2020 and does not satisfy the qualification or payability conditions for Sickness Allowance before that date because a specified waiting period applies. In this situation, the person is taken to have claimed Jobseeker Payment on 20 March 2020 and any equivalent waiting period for Jobseeker Payment is taken to have started when the waiting period for Sickness Allowance started. This ensures that waiting periods served for Sickness Allowance count for the purposes of Jobseeker Payment.
Subitem (2) addresses the situation where a person’s claim for Sickness Allowance is granted in anticipation of their qualification because the person was subject to a seasonal work preclusion period. In this situation, the decision to grant Sickness Allowance is taken to be a decision to grant Jobseeker Payment and, for the purposes of applying the preclusion period, the person is taken to have lodged the claim for Jobseeker Payment on the day they lodged their Sickness Allowance claim.

**Part 2 – Amendments commencing 20 September 2020**

*A New Tax System (Medicare Levy Surcharge – Fringe Benefits) Act 1999*

**Items 22 to 25** make consequential amendments to remove references to paragraph 251U(1)(c) of the *Income Tax Assessment Act 1936* from paragraphs 13(2)(a) and 14(2)(a) of the *A New Tax System (Medicare Levy Surcharge – Fringe Benefits) Act 1999* and the notes at the end of these provisions.

These changes are necessary because paragraph 251U(1)(c) of the *Income Tax Assessment Act 1936* is repealed by **item 30**.

*Income Tax Assessment Act 1936*

**Items 26 to 31** make consequential amendments to various provisions in the *Income Tax Assessment Act 1936* as a result of the repeal of Sickness Allowance from 20 September 2020. A reference to Part 2.14 of the Social Security Act is omitted from the definition of *rebatable benefit* in subsection 160AAA(1), references to Sickness Allowance are omitted from paragraphs 202CB(6)(a) and 202CE(7)(a), paragraph 251U(1)(c) (which refers to Sickness Allowance under Part 2.14 of the Social Security Act) is repealed and a reference to this paragraph is removed from subsection 251R(6A) and paragraph 251U(3)(b).

*Income Tax Assessment Act 1997*

**Items 32 to 39** also make consequential amendments to various provisions in the *Income Tax Assessment Act 1997* to remove references to Sickness Allowance and to make other necessary related changes.

*Income Tax Rates Act 1986*

**Item 40** makes a consequential amendment to the definition of *eligible pensioner* in section 16 to remove reference to Part 2.14 of the Social Security Act (which provides for Sickness Allowance).

*Social Security Act*

Part 2.14 of the Social Security Act provides for Sickness Allowance. **Item 71** repeals this Part.
Benefit Rate Calculator B (in section 1068 of the Social Security Act) sets out the process for calculating the rate of Sickness Allowance and other specified social security benefits including Newstart Allowance (Jobseeker Payment from 20 March 2020).

**Items 92 to 106** amend various provisions in section 1068 and Benefit Rate Calculator B so as to remove references to Sickness Allowance and make other amendments consequential upon the repeal of Sickness Allowance and technical amendments.

**Items 41 to 70, 72 to 91 and 107 to 129** amend various provisions in the Social Security Act as a result of the repeal of Sickness Allowance. References to Sickness Allowance are removed, references to Part 2.14 of the Social Security Act and provisions in this Part are removed and other necessary consequential amendments and technical amendments are made.

**Social Security Administration Act**

Section 32 of the Social Security Administration Act is a claim provision relating to Sickness Allowance. This provision is repealed by **item 131**. **Item 130** removes a reference to section 32 from subsection 29(1) and (2).

Section 65 sets out requirements for obtaining medical certificates in relation to Sickness Allowance. With the repeal of Sickness Allowance, this provision is no longer required and repealed by **item 134**.

**Items 132, 133 and 135 to 137** similarly make amendments consequential upon the repeal of Sickness Allowance.

**Veterans’ Entitlements Act**

Subsection 118ND(4) lists bereavement payment provisions in the Social Security Act. Paragraph (l), which refers to Part 2.14 of the Social Security Act and Sickness Allowance, is repealed by **item 138**.

**Savings and transitional provisions**

**Item 139** sets out savings and transitional provisions for amendments relating to Sickness Allowance contained in the Social Security Act.

Subitem (1) ensures that Parts 2.14 and 3.6 continue to apply in working out qualification for, or rate of Sickness Allowance, in relation to days occurring before commencement.

Subitem (2) ensures that if a person who qualified for Sickness Allowance under section 667 of the Social Security Act, Sickness Allowance is not payable to the person on and after commencement.
Subitems (3) and (4) preserve the operation of certain bereavement and portability provisions despite amendments made by this Part (allowing a person to continue to receive Sickness Allowance after commencement in limited circumstances). However, subitem (5) ensures that the person cannot qualify for Jobseeker Payment for a day in respect of which they receive Sickness Allowance.

**Item 140** sets out savings provisions for amendments to the *Income Tax Assessment Act 1936*. These amendments ensure that section 160AAA continues to apply on and after commencement in relation to a payment of Sickness Allowance before, on or after commencement and that paragraph 251U(1)(c) continues to apply on and after commencement in relation to a recipient of Sickness Allowance.

**Item 141** sets out a saving provision for amendments to *Income Tax Assessment Act 1997*. The saving provision maintains the tax treatment of Sickness Allowance for payments made before, on or after commencement.

**Item 142** sets out savings provisions for amendments to certain definitions in the *Social Security Act* relevant to Sickness Allowance so that they can continue to apply as relevant after commencement.

**Item 143** sets out savings provisions for amendments relating to qualification for Sickness Allowance.

Subitems (1) and (2) save the effect of qualification provisions relating to disability support pension and Partner Allowance, to enable these provisions to continue to apply on or after commencement in relation to working out whether a person was qualified for the payments, in relation to days or a period (as relevant) before commencement.

Subitem (3) saves the effect of the Partner Allowance bereavement provisions where they applied before commencement in certain circumstances involving receipt of Sickness Allowance by the deceased, to enable the provisions to continue to apply as if the amendments had not been made.

Subitem (4) saves the effect of qualification provisions relating to telephone allowance to enable the provisions to continue to apply on or after commencement in relation to working out whether a person is qualified for telephone allowance before, on or after commencement.

**Item 144** sets out savings provisions for amendments to specified provisions that are used to work out the amount of a person’s crisis payment and the rate of Youth Allowance, to enable these provisions to apply on and after commencement in relation to days before commencement. The effect of paragraph 1070(e) (relating to rent assistance) is also saved on and after commencement for days in respect of which Sickness Allowance is payable.
Item 145 provides savings provisions for various concession card provisions within the Social Security Act, to provide that such provisions continue to apply on or after commencement in working out a person’s qualification for a card for days before, on or after commencement, despite amendments made by this Schedule. For a person who ceased to receive Sickness Allowance before commencement, the effect of section 1061ZM of the Social Security Act is saved in relation to working out the person’s qualification for a health care card before commencement.

Item 146 provides savings provisions for various other Social Security Act provisions relating to ancillary matters, such as means testing, debt recovery and compensation recovery, such that those provisions continue to apply in relation to Sickness Allowance as specified, despite amendments made by this Schedule.

Item 147 provides savings provisions for certain Social Security Administration Act provisions. Subitem (1) saves the effect of Part 3 so that it continues to apply on and after commencement to allow Sickness Allowance to be paid to a person to whom it is payable and to continue a determination or requirement in relation to Sickness Allowance. Subitem (2) saves the effect of Parts 3B and 3D (quarantining payments) in relation to the payment of Sickness Allowance or a bereavement payment in relation to Sickness Allowance made before, on or after commencement. Similarly, subitem (3) saves the effect of Parts 4 and 4A (review of decisions) for decisions relating to Sickness Allowance made before, on or after commencement. Subitem (4) ensures the validity of a specified automatic cancellation is not affected by the amendments made by this Part.

Item 148 saves the effect of specified Veterans’ Entitlements Act provisions so that they continue to apply on and after commencement in relation to working out the rate of Sickness Allowance for days occurring before, on or after commencement.
Schedule 6 – Cessation of Widow Allowance

Summary

This Schedule will close Widow Allowance to new entrants from 1 January 2018, and cease the payment entirely from 1 January 2022.

Background

Widow Allowance provides income support for older working age women who lose the support of a partner and face barriers to employment. Widow Allowance is payable to women born on or before 1 July 1955, who are no longer partnered and have become widowed, divorced or separated since turning 40 years of age, and have no recent workforce experience. This Schedule will close Widow Allowance to new entrants from 1 January 2018, and cease the payment entirely from 1 January 2022.

From 1 January 2018, women who claim Newstart Allowance who would have otherwise qualified for Widow Allowance will be exempted from the activity test requirements. Women who would have qualified for Widow Allowance and who are over pension age and not residentially qualified for Age Pension could claim special benefit.

All women in receipt of Widow Allowance immediately before 1 January 2022, or who could have qualified for Widow Allowance had they claimed it prior to 1 January 2018 will be of pension age by 1 January 2022. A woman who is receiving Widow Allowance immediately before 1 January 2022 will be transferred to Age Pension under transitional arrangements which deem them to satisfy the requirements to qualify for Age Pension. Any women who reach Age Pension age after 1 January 2018 who would have qualified for Widow Allowance but had not claimed it prior to 1 January 2018 will be transferred from newstart to Age Pension, if residentially qualified, or special benefit if not so qualified.

Explanation of the changes

Part 1 – amendments closing claims for Widow Allowance

This Part closes Widow Allowance to new entrants from 1 January 2018, or the day after Royal assent, if this is after 1 January 2018.

Social Security Act

Section 408AA provides a limitation on granting Widow Allowance, limiting it to persons born on or before 1 July 1955. Items 1 and 2 amend section 408AA.

Item 1 adds (1) prior to the existing content of section 408AA, to enable the addition of new subsections 408AA(2) and (3) by item 2.
New subsection 408AA(2) limits the grant of Widow Allowance to a woman unless the woman’s claim for the allowance is made before the commencement of the subsection, and the woman qualified for the allowance before that day. New subsection 408AA(3) creates an exception where Widow Allowance becomes payable in accordance with section 85 of the Social Security Administration Act. Section 85 allows the Secretary to reconsider a decision to cancel or suspend a payment, and to substitute a decision that the payment was or is payable to the person, including retrospectively (although subject to the date of effect rules in Division 9 of Part 3 of the Social Security Administration Act.

Item 3 modifies the activity test which ordinarily applies to Newstart Allowance, provided for by Subdivision B of Part 2.12 of the Act, by inserting **new section 603AC**. New subsection 603AC(1) provides that a woman is not required to satisfy the activity test for a period, if she made the claim for Newstart Allowance on or after the commencement of the section, she was born on or before 1 July 1955, she was a member of a couple when she turned 40 and has ceased to be a member of that couple, is not a member of a couple throughout the relevant period and she satisfies the Secretary that she has no recent workforce experience on the day she made the claim for Newstart Allowance. This category of women would previously have qualified for Widow Allowance.

New subsection 603AC(2) provides a definition of ‘recent workforce experience’. Employment of 20 hours or more a week for a total of 13 weeks or more at any time during the 12 months immediately before the day the woman made the claim for Newstart Allowance would constitute recent workforce experience, and prevent the exemption in subsection 603AC(1) applying. This duplicates the former qualification requirements for Widow Allowance.

Item 4 is consequential to item 3, and inserts a reference to new section 603AC into subsection 605(2C), which provides an exemption from the requirement for a Newstart Employment Pathway Plan for a person who satisfies new section 603AC.

**Part 2 – amendments commencing 1 January 2022**

This Part ceases Widow Allowance from 1 January 2022. **Item 17** repeals Part 2.8A of the Social Security Act which sets out the qualification and payability criteria for Widow Allowance.

*Income Tax Assessment Act 1936 and Income Tax Assessment Act 1997*

**Items 5 to 8** are necessary consequential amendments to remove references to Widow Allowance from the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*.

*Social Security Act*

**Items 9 to 15** make a number of consequential amendments to remove references to Widow Allowance from various provisions of the Social Security Act.
Item 16 amends section 43, which provides the qualification for Age Pension. A person will qualify for Age Pension if the person was receiving Widow Allowance immediately before reaching Age Pension age. **New subsection 43(1C)** additionally provides that a woman is qualified for Age Pension if the woman was receiving Widow Allowance immediately before 1 January 2022, and is not otherwise qualified for Age Pension.

Item 18 repeals section 603AC, inserted by item 3 above as a temporary mechanism to allow persons who would previously have qualified for Widow Allowance to be exempt from the activity test. This exemption will no longer be required after 1 January 2022 because any women who could have qualified for Widow Allowance will have reached pension age. **Item 19** consequentially removes the reference to section 603CA from subsection 605(2C).

Items 20 to 59 are necessary consequential amendments to remove references to Widow Allowance from various provisions of the Social Security Act.

Items 60 to 62 are necessary consequential amendments to remove references to Widow Allowance from various provisions of the Social Security Administration Act.

Item 63 is a savings provision, ensuring that former Parts 2.8A and 3.6 of the Social Security Act continue to apply after commencement despite their repeal, to allow the qualification or rate of Widow Allowance to be worked out for days before commencement.

However, subitem 63(2) makes clear that no payment of Widow Allowance is to be made on or after commencement in relation to a day on or after commencement.

Items 64 and 65 are savings provisions maintaining the tax treatment of Widow Allowance payments, despite repeal of the relevant provisions.

Items 66 and 67 are savings provisions which maintain the effect of qualification provisions in respect of days before commencement, despite the repeal of the relevant provisions in the Social Security Act.

Item 68 is a savings provision which maintains the effect of rate provisions in respect of the calculation of rates for days before commencement, despite the repeal of the relevant provisions.

Item 69 is a savings provision which maintains the effect of qualification for concession card provisions in respect of days before commencement, despite the repeal of the relevant provisions.

Item 70 is a savings provision which maintains the effect of various advance payment provisions in respect of days before commencement, despite the repeal of the relevant provisions.

Item 71 is a savings provision, which maintains the effect of various means testing and debt provisions in respect of days before commencement, despite the repeal of the relevant provisions.
Item 72 is a savings provision, which maintains the effect of various administration provisions in respect of days before commencement, despite the repeal of the relevant provisions.
Schedule 7 – Cessation of Partner Allowance

Summary

This Schedule will cease Partner Allowance from 1 January 2022.

Background

Partner Allowance is a non-activity tested income support payment for older partners of income support recipients, who face barriers to finding employment because of their previous limited participation in the workforce. To qualify for Partner Allowance, a person must have lodged their claim prior to 20 September 2003, which is when the payment was closed to new entrants. Recipients of Partner Allowance must have been born on or before 1 July 1955, they must be an Australian resident, they must not have qualified for parenting payment during the period they are seeking Partner Allowance, and they must not have any recent workforce experience. Recipients must also be a member of a couple, where their partner is at least 21 years old and also receiving income support, during the period they are claiming Partner Allowance.

While Partner Allowance has been closed to new applicants since 20 September 2003, this Schedule will cease the payment entirely from 1 January 2022. By the time this measure takes effect on 1 January 2022, all persons in receipt of Partner Allowance immediately before 1 January 2022 will be of pension age. As a result, all recipients of Partner Allowance are expected to have transitioned into Age Pension by the time this measure comes into effect.

Explanation of the changes

This Schedule ceases Partner Allowance from 1 January 2022. Item 21 repeals Part 2.15A of the Social Security Act, which provides qualification and payability for Partner Allowance.


Item 1 is a necessary consequential amendment to remove references to Partner Allowance from the Income Tax Assessment Act 1936.

Items 2 to 6 are necessary consequential amendments to remove references to Partner Allowance from the Income Tax Assessment Act 1997 and substitute references to Jobseeker Payment, created by Schedule 1 to this Bill, where appropriate, to reflect the introduction of Jobseeker Payment which will replace several working age payments from 20 March 2020.

Social Security Act

Items 7 to 63 make consequential amendments as a result of the repeal of Part 2.15A of the Social Security Act 1991, to remove redundant references to Partner Allowance or partner bereavement payment.
Schedule 7 – Cessation of Partner Allowance

Social Security Administration Act

**Items 64 to 66** make consequential amendments to the Social Security Administration Act to remove references to Partner Allowance as a result of the repeal of Part 2.15A of the Social Security Act.

Veterans’ Entitlements Act

**Item 67** makes a consequential amendment to remove references to Partner Allowance from the Veterans’ Entitlements Act.

**Item 68** is a savings provision.

Subitem 68(1) provides that former Part 2.15A and Part 3.6 of the Social Security Act continue to apply after commencement, despite their repeal, to allow the qualification or rate of Partner Allowance to be worked out for days before commencement.

Subitem 68(2) provides that if a person was receiving Partner Allowance and the person’s partner died before commencement, then Division 9 of Part 2.15A will continue to apply on or after commencement.

Subitem 68(3) makes clear that no payment of Partner Allowance is to be made on or after commencement in relation to a day on or after commencement.

Subitem 68(4) states that if a person continues to receive Partner Allowance after the commencement date of this measure, for instance as a result of a bereavement period, the Partner Allowance recipient does not qualify for Age Pension before that bereavement period has passed.

**Items 69 and 70** are savings provisions in relation to maintaining the tax treatment of Partner Allowance payments, despite the repeal of the relevant provisions.

**Item 71** is a savings provision ensuring that the provision for determining any qualifying residence exemption for Partner Allowance and the provision relating to working out whether a person is in severe financial hardship in the days prior to commencement will continue to apply after commencement in relation to Partner Allowance, despite the repeal of the relevant provisions.

**Item 72** is a savings provision, which maintains the effect of qualification provisions after commencement of this Schedule in respect of days before commencement, despite the repeal of the relevant provisions.

**Item 73** is a savings provision which maintains the effect of Partner Allowance rate provisions after commencement of this Schedule in respect of days before commencement, despite the repeal of the relevant provisions.

**Item 74** is a savings provision which maintains the effect of qualification for concession card provisions after commencement of this Schedule in respect of days before commencement, despite the repeal of the relevant provisions.
Item 75 is a saving and transitional provision which maintains the effect of various means testing, payment, compensation recovery and debt provisions after commencement of this Schedule in respect of days before commencement, despite the repeal of the relevant provisions.

Item 76 is a savings provision which maintains the effect of various administration provisions after commencement of this Schedule in respect of days before commencement, despite the repeal of the relevant provisions.

Item 77 is a savings provision which maintains the effect of rate provisions after commencement of this Schedule in respect of days occurring before, on or after that commencement, despite the repeal of the relevant provisions in the Veterans’ Entitlements Act.
Schedule 8 – Minister’s rules

Summary

This Schedule will allow the Minister to make rules of a transitional nature in relation to the amendments and repeals made by Schedules 1 to 7 to this Bill.

Background

Schedules 1 to 7 to this Bill contain a number of transitional provisions that may, amongst other things: facilitate the transfer of individuals from a payment that is being ceased into an alternative payment, maintain the tax exempt status of certain payments after commencement, as well as maintaining the effect of qualification provisions, rate provisions, means testing and debt provisions in respect of days before commencement.

Explanation of the changes

Item 1 gives the Minister the ability to make rules by legislative instrument about transitional matters (including savings or applications provisions) regarding the amendment or repeals made by Schedules 1 to 7 to the Bill. These rules are intended to give flexibility to allow the Minister to make further transitional arrangements, should they become necessary, for example, as a result of an anomalous or unexpected consequence or otherwise following commencement of this Schedule (the day after this Bill receives the Royal Assent).

The Minister’s rule making power is subject to limits and safeguards. The Minister does not have the power to make a rule which would create an offence or civil penalty, provide powers of arrest or detention or entry, search or seizure, impose a tax, or set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in, or directly amend the text of, this Bill.
Schedule 9 – Changes to activity tests for persons aged 55 to 59

Summary

This Schedule amends the Social Security Act to remove the ability of Newstart Allowance and certain Special Benefit recipients aged 55 – 59 (‘relevant recipients’) to be taken to satisfy the activity test by engaging in voluntary work for at least 30 hours per fortnight. The amendments will allow relevant recipients to be taken to satisfy the activity test if they are engaged, for at least 30 hours per fortnight, in a combination of approved unpaid voluntary work and suitable paid work, at least 15 hours of which must be in suitable paid work.

Background

Currently, job seekers on Newstart Allowance and Special Benefit – Nominated Visa Holders who are aged 55 or over are taken to satisfy the activity test if they are engaged in at least 30 hours per fortnight of approved voluntary work, paid work (including self-employment), or a combination of these in a fortnight – unless the Secretary considers that they should not be exempt from the activity test due to the opportunities for employment available to the person. The activity test is a requirement to actively look for, and be willing to undertake, any suitable paid work.

This means that if relevant recipients volunteer for 30 hours a fortnight, they do not have to actively seek or be willing to undertake any suitable paid work. This creates potential for job seekers aged 55 or over to remain indefinitely on income support while engaging in large amounts of volunteer work, while not necessarily improving their prospects of finding suitable paid work.

While volunteering has a range of benefits, participation in paid work and reduced reliance on income support should be the ultimate goal for job seekers. Work is the best pathway to a higher standard of living and delivers benefits to the individual, their family and the community. Further, planned increases to the Age Pension Age reflect a community expectation that years of working life are longer. It is expected that those in the 55-59 age bracket should actively engage in suitable paid work where possible.

Therefore, this Schedule amends the Social Security Act so that relevant recipients may only satisfy the activity test through at least 30 hours per fortnight of paid work or a combination of paid work and approved voluntary work, at least 15 hours of which must be in paid work. However, those 60 years of age and over will be unaffected by the amendments.

The intention of these amendments is to strengthen the employment focus of mutual obligation requirements, and better connect mature age job seekers aged 55 – 59 with the labour market, while still recognising that volunteering can be a valuable stepping stone into paid work. The amendments made by this Schedule will not affect the operation of current provisions relating to the circumstances in which, regardless of age, recipients who are principal carer parents, or have a partial capacity to work, may be taken to satisfy the activity test.
To complement these changes, the Australian Government is also investing over $100 million to increase the skills and experience of mature age job seekers from 1 July 2018.

The amendments made by this Schedule commence on 20 September 2018.

**Explanation of the changes**

*Social Security Act*

**Item 1** inserts new subsection 603AA(1A). This provides that a Newstart Allowance recipient who is at least 55 and under 60 years of age is taken to satisfy the activity test in respect of a 2 week period if the person is engaged, for at least 30 hours in that period, in a combination of approved unpaid voluntary work and suitable paid work, at least 15 hours of which must be in suitable paid work.

Currently, under subsection 603AA(1), a Newstart Allowance recipient who is at least 55 years of age is taken to satisfy the activity test if they are engaged in at least 30 hours of approved unpaid voluntary work, suitable paid work, or any combination of these in a relevant period.

The effect of Item 1 is that a Newstart Allowance recipient aged 55 – 59 will no longer be taken to satisfy the activity test through 30 hours of approved unpaid voluntary work alone in a relevant period, or where approved unpaid voluntary work makes up more than 15 hours of the combined 30 hours of voluntary work and suitable paid work in a relevant period.

**Item 2** amends subsection 603AA(1) of the Act by substituting the reference to ‘55 years’ in subsection 603AA(1), with ‘60 years of age’.

Those 60 years of age and over will be unaffected by the amendments made by Schedule 9. Item 2 ensures that subsection 603AA(1) will continue to provide relief from the activity test for those 60 years and over in the circumstances set out in that subsection.

**Item 3** amends subsection 603AA(1) of the Act by inserting the words ‘of 2 weeks’ after the words ‘in respect of a period’ in subsection 603AA(1).

This amendment clarifies that the ‘relevant period’ referred to in subsection 603AA(1) is a 2 week period. The ‘relevant period’ in subsection 603AA(1) has always been considered and administered as a 2 week (fortnightly) period; item 3 would simply spell this out for clarity.

The amendment also ensures consistency with subsection 731G(1), which specifically refers to a 2 week period as the ‘relevant period’ within which special benefit recipients aged 55 and over are taken to satisfy the activity test in the same circumstances.
Items 4 to 6 substitute the word ‘period’ with the words ‘the relevant period’ in paragraphs 603AA(1)(a), 603AA(1)(b) and 603AA(1)(c) of the Act.

This amendment corrects typographical errors in the current provisions and ensure consistency in the drafting of subsection 603AA(1). The word ‘period’ in paragraphs 603AA(1)(a), 603AA(1)(b) and 603AA(1)(c) should be ‘relevant period,’ because this is the phrase specified in subsection 603AA(1) to refer to the period within which approved unpaid voluntary work and/or suitable paid work should be carried out.

Item 7 substitutes the phrase ‘approved voluntary unpaid work’ with the phrase ‘approved unpaid voluntary work’ in paragraph 603AA(4)(a).

This amendment corrects a typographical error in the current provision. The relevant phrase in paragraph 603AA(4)(a) should be ‘approved unpaid voluntary work’ (not ‘approved voluntary unpaid work’) to reflect the same phrases used in paragraph 603AA(1)(a), subparagraph 603AA(1)(b)(i), and proposed new subpara 603AA(1A)(a)(i). Item 7 corrects this error by substituting ‘approved voluntary unpaid work’ with ‘approved unpaid voluntary work’.

Item 8 inserts new subsection 731G(1A). This provides that a special benefit recipient (nominated visa holder) who is at least 55 and under 60 years of age is taken to satisfy the activity test in respect of a relevant period if the person is engaged, for at least 30 hours in that period, in a combination of approved unpaid voluntary work and suitable paid work, at least 15 hours of which must be in suitable paid work.

Currently, under subsection 731G(1), a special benefit recipient (nominated visa holder) who is at least 55 is taken to satisfy the activity test if they are engaged in at least 30 hours of approved voluntary work, suitable paid work, or a combination of these in a relevant period.

The effect of Item 8 is that a relevant special benefit recipient aged 55 – 59 will no longer be taken to satisfy the activity test through 30 hours of approved unpaid voluntary work alone in a relevant period, or where approved unpaid voluntary work makes up more than 15 hours of the combined 30 hours of voluntary work and suitable paid work in a relevant period.

Item 9 amends subsection 731G(1) of the Act by substituting the reference to ‘55 years’ in subsection 731G(1), with ‘60 years of age’.

Those 60 years of age and over will be unaffected by the amendments made by Schedule 9. Item 9 ensures that subsection 731G(1) will continue to provide relief from the activity test for those 60 years and over in the circumstances set out in that subsection.

Item 10 substitutes the word ‘period’ with the phrase ‘relevant period’ in paragraph 731G(1)(c).
This amendment corrects a typographical error and ensures consistency in the drafting of subsection 731G(1). The word ‘period’ in paragraph 731G(1)(c) should be ‘relevant period,’ because this is the phrase specified in subsection 731G(1) to refer to the 2 week period in which approved unpaid voluntary work and/or suitable paid work should be carried out.

**Item 11** inserts a new definition into subsection 731G(4). This is the definition of ‘approved unpaid voluntary work.’ ‘Approved unpaid voluntary work’ would mean work that is either full-time or otherwise, and which has been approved by the Secretary for the purposes of section 731G.

This amendment corrects a typographical error in the current provision. The relevant definition in subsection 731G(4) should be of ‘approved unpaid voluntary work’ (not of ‘approved voluntary unpaid work’) to reflect the same phrases used in paragraph 731G(1)(a), subparagraph 731G(1)(b)(i), and proposed new subparagraph 731G(1A)(a)(i). Item 11 and item 12 (below), correct this error.

**Item 12** removes the definition of ‘approved voluntary unpaid work’ in subsection 731G(4).

This amendment corrects a typographical error in the current provision. The definition of ‘approved voluntary unpaid work’ in subsection 731G(4) is not required as there is no other reference to ‘approved voluntary unpaid work’ in section 731G.

**Item 13** is an application provision and provides that the amendments made by Schedule 9 apply in relation to relevant periods beginning on or after the commencement of item 13, i.e. on or after 20 September 2018.

The effect of item 13 is that the amendments made by Schedule 9 apply to all new and existing Newstart Allowance and applicable special benefit recipients, from the first relevant period beginning on or after 20 September 2018.
Schedule 10 – Start day for some participation payments

Summary

This Schedule amends the Social Security Administration Act so that, if a person who is claiming or transferring to Newstart Allowance or Youth Allowance (other than a new apprentice or a full-time student) is subject to RapidConnect, their income support payments will be payable from the day the person attends their initial appointment with their employment services provider, unless their employment services provider is unable to offer an appointment within two business days, or the person is not qualified for the allowance on the day. These amendments are aimed at ensuring that job seekers claiming Newstart or Youth Allowance (other) connect as quickly as possible with their employment services provider (for example, jobactive or Transition to Work). This Schedule also amends the Social Security Act so that the ordinary waiting period for job seekers subject to RapidConnect continues to commence on the same day as for people not subject to RapidConnect.

This Schedule implements the faster connection to employment services initiative forming part of the ‘Better Targeting of Assistance to Support Jobseekers’ measure announced in the 2017-18 Budget.

Background

Under RapidConnect, certain unemployed people claiming income support are assisted to join the workforce by being required to promptly access employment opportunities through an employment services provider. Exemptions to RapidConnect apply (such as where the person is assessed as having multiple barriers to employment).

Currently, a person who claims Newstart Allowance or Youth Allowance (other) and is subject to RapidConnect is required to attend an initial interview with an employment services provider before their income support is payable. If the person attends the interview as required, the start day for their payment is the day on which the claim is made. In some circumstances, this is the date on which the person first contacted the Department of Human Services in relation to the claim.

If the person fails to attend their initial interview, existing sections 547AA and 615 of the Social Security Act have the effect that the income support payment is generally not payable until the person meets that requirement. However, if the Secretary determines that section 547AA or section 615 should cease to apply (for example because the person had a reasonable excuse for the failure or because of circumstances beyond the person’s control), the income support payment is typically backdated to the date on which the claim for the payment was made.

This Schedule amends the Social Security Administration Act so that from the commencement of this Schedule, for job seekers subject to RapidConnect, their Newstart Allowance or Youth Allowance (other) payment will be payable from the date the job seeker attends their initial appointment with an employment services provider, unless their employment services provider is unable to offer an
appointment within two business days, or the person is not qualified for the allowance on the day, instead of the date the claim for the payment was made.

Employment services providers are contractually required to have appointment times available for job seekers to attend interviews within two business days. When a job seeker registers with Department of Human Services (DHS), DHS staff will be able to access employment service providers’ calendars. If there is availability with the job seeker’s preferred provider on the day the job seeker registers with DHS and the job seeker is able to attend an appointment, DHS staff will then book this into the employment service provider’s calendar.

Where there is no availability, DHS may contact the employment service provider to request available time be made to accommodate the appointment.

Alternatively the job seeker may be able to choose a different employment service provider in their local area. DHS will then review the new employment service provider’s calendar for availability and book the appointment for that day as long as the job seeker is able to attend.

If an employment services provider does not have an appointment available within two business days the job seeker will not be penalised. If a job seeker cannot attend an interview within two business days because no provider appointment is available, the job seeker will have their income support backdated to the date on which the requirement to attend an interview was imposed.

If a job seeker elects to attend an interview more than two business days after the Secretary imposes the requirement, or fails to attend the interview as required without a reasonable excuse, their income support payment will not be payable until they comply with the requirement to attend an interview.

However, if a person fails to attend their initial interview, the amendments made by this Schedule interact with existing sections 547AA and 615 of the Social Security Act to allow the Secretary to take account of their individual circumstances and the reasons why they failed to attend an interview to determine the relevant start day for their income support payments. That is, if the Secretary is satisfied that it is appropriate to do so (for example, because the person had a reasonable excuse for failing to attend the appointment or because of circumstances beyond the person’s control), the Secretary may determine that section 547AA or section 615 should cease to apply at an earlier time such that their income support will be payable from the date of the appointment they missed, rather than that of the subsequent appointment.

This Schedule also amends the Social Security Act so that the ordinary waiting period for job seekers subject to RapidConnect continues to commence on the same day as for people not subject to RapidConnect.

An ordinary waiting period is a 7 day waiting period which certain income support claimants are subject to, and which generally commences on a person’s start day. Due to the amendments made by this Schedule, a RapidConnect participant’s start day will usually be later than the start day of a Newstart Allowance or Youth
Schedule 10 – Start day for some participation payments

Allowance (other) claimant who is not a RapidConnect participant, which would result in their ordinary waiting period commencing (and expiring) later than is currently the case.

Therefore, this Schedule will also preserve the way a start day is currently worked out for the purposes of determining:
- when an ordinary waiting period commences for a RapidConnect participant; and
- whether a RapidConnect participant is subject to an ordinary waiting period in circumstances where they:
  o received an income support payment in the 13 weeks immediately prior to the person’s start day; or
  o are experiencing a personal financial crisis (which may include being subject to domestic violence or severe financial hardship in the 4 weeks immediately prior to the person’s start day).

This Schedule will not apply to job seekers who are exempt from RapidConnect (for example, highly disadvantaged job seekers including those with a partial work capacity or who are principal carers of a child) or those referred to the Community Development Program or Disability Employment Services.

This Schedule will not affect individuals who make a claim for Youth Allowance who are new apprentices or undertaking full-time study.

The amendments made by this Schedule commence on the later of 1 January 2018 and the day after Royal Assent.

Explanation of the changes

Social Security Act

Item 1A inserts a reference to clause 4A of Schedule 2 to the Social Security Administration Act, into paragraph 549CA(2)(a).

Paragraph 549CA(2)(a) currently provides that, subject to subsection 549CA(3), a person who is qualified for youth allowance (other) is subject to an ordinary waiting period unless, at some time in the 13 weeks immediately before the person’s start day (which is worked out disregarding clause 5 of Schedule 2 to the Social Security Administration Act), the person received an income support payment. Item 1A amends paragraph 549CA(2)(a) to provide that a person’s start day for the purposes of that paragraph is worked out disregarding both clause 4A and clause 5 of Schedule 2 to the Social Security Administration Act.

This amendment ensures that the amendments made by Item 2 (that is, the insertion of new clause 4A into Schedule 2 to the Social Security Administration Act), will not affect how the start day is worked out for the purposes of determining whether a youth allowance (other) claimant who is also a RapidConnect participant is subject to an ordinary waiting period under paragraph 549CA(2)(a). The 13 week period referred to in paragraph 549CA(2)(a) will be worked out by reference to a start day that will be the same for both youth allowance (other) claimants who are
RapidConnect participants, and youth allowance (other) claimants who are not RapidConnect participants.

Another effect of the amendment in Item 1A is that the calculation of certain time periods relating to whether a RapidConnect participant is subject to an ordinary waiting period in circumstances where they are experiencing a personal financial crisis will not be affected by the amendments made by Item 2. The 4 week periods referred to in subsections 19DA(2), 19DA(3) and paragraph 19C(4)(a)(iv) of the Social Security Act will also be based on the start day worked out disregarding both clauses 4A and 5 of Schedule 2 to the Social Security Administration Act (see below).

Under paragraph 549CA(2)(b), a person who is qualified for youth allowance (other) is subject to an ordinary waiting period unless the Secretary is satisfied that the person is ‘experiencing a personal financial crisis’. The definition of when a person is ‘experiencing a personal financial crisis’ is contained in section 19DA of the Social Security Act, and is when a person is in severe financial hardship, and either subsection 19DA(2), (3) or (4) applies to the person. Subsection 19DA(2) applies where the person was subject to domestic violence at some time in the 4 weeks immediately before the person’s start day mentioned in, relevantly, paragraph 549CA(2)(a). Subsection 19DA(3) applies where the person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure in the 4 weeks immediately before the person’s start day mentioned in, relevantly, paragraph 549CA(2)(a). The definition of ‘unavoidable or reasonable expenditure’ in paragraph 19C(4)(a)(iv) provides that unavoidable or reasonable expenditure includes the reasonable costs of living that the person is taken to have incurred in respect of the 4 weeks immediately before the person’s start day mentioned in, relevantly paragraph 549CA(2)(a).

By ensuring that new clause 4A of Schedule 2 is disregarded in the calculation of the start day in paragraphs 549CA(2)(a), the relevant 4 week periods referred to in subsections 19DA(2), 19DA(3) and paragraph 19C(4)(a)(iv) of the Social Security Act will also be worked out by reference to a start day that will be the same for both youth allowance (other) claimants who are RapidConnect participants, and youth allowance (other) claimants who are not RapidConnect participants, as is currently the case.

Item 1B inserts a reference to clause 4A of Schedule 2 to the Social Security Administration Act into subsection 549CB(1).

Subsection 549CB(1) currently provides that, subject to subsections 549CB(2) and (4), if a youth allowance (other) claimant is subject to an ordinary waiting period, the ordinary waiting period is the period of 7 days that starts on the person’s start day (worked out disregarding clause 5 of Schedule 2 to the Social Security Administration Act). Item 1B amends subsection 549CB(1) to provide that a person’s start day for the purposes of that subsection is worked out disregarding both clause 4A and clause 5 of Schedule 2 to the Social Security Administration Act.

This amendment ensures that the amendments made by Item 2 will not affect how the start day is worked out for the purposes of determining when an ordinary waiting
period commences for a youth allowance (other) claimant who is also a RapidConnect participant. The day an ordinary waiting period commences under subsection 549CB(1) will be the same for both youth allowance (other) claimants who are RapidConnect participants, and youth allowance (other) claimants who are not RapidConnect participants.

Item 1C inserts a reference to clause 4A of Schedule 2 to the Social Security Administration Act into paragraph 549CB(2)(b).

This amendment is consequential to the amendment made by Item 1B. Subsection 549CB(2) determines when an ordinary waiting period commences for a youth allowance (other) claimant where the person would otherwise be subject to an ordinary waiting period of 7 days that starts on the person’s start day (worked out disregarding clause 5 of Schedule 2 to the Social Security Administration Act), but where the person is subject to one or more exclusion periods. Item 1C amends paragraph 549CB(2)(b) to provide that a person’s start day for the purposes of that paragraph is worked out disregarding both clause 4A and clause 5 of Schedule 2 to the Social Security Administration Act.

Item 1D inserts a reference to clause 4A of Schedule 2 to the Social Security Administration Act into paragraph 620(1)(a).

Paragraph 620(1)(a) currently provides that, subject to subsection 620(2), a newstart claimant is subject to an ordinary waiting period unless, at some time in the 13 weeks immediately before the person’s start day (which is worked out disregarding clause 5 of Schedule 2 to the Social Security Administration Act), the person received an income support payment. Item 1D amends paragraph 620(1)(a) to provide that a person’s start day for the purposes of that paragraph is worked out disregarding both clause 4A and clause 5 of Schedule 2 to the Social Security Administration Act.

As discussed above regarding the amendments made by Item 1A in relation to youth allowance (other) claimants, this amendment ensures that the amendments made by Item 2 will not affect how the start day is worked out for the purposes of determining whether a newstart claimant who is also a RapidConnect participant is subject to an ordinary waiting period under paragraph 620(1)(a).

Another effect of the amendment in Item 1D is that the calculation of certain time periods relating to whether a RapidConnect participant is subject to an ordinary waiting period in circumstances where they are experiencing a personal financial crisis will not be affected by the amendments made by Item 2. The 4 week periods referred to in subsections 19DA(2), 19DA(3) and paragraph 19C(4)(a)(iv) of the Social Security Act will also be based on the start day worked out disregarding both clauses 4A and 5 of Schedule 2 to the Social Security Administration Act.

Under paragraph 620(1)(g), a newstart claimant is subject to an ordinary waiting period unless the Secretary is satisfied that the person is ‘experiencing a personal financial crisis’. As discussed above in relation to the amendments made by Item 1A, the definition of when a person is ‘experiencing a personal financial crisis’ is contained in section 19DA of the Social Security Act, and is when a person is in
severe financial hardship, and either subsection 19DA(2), (3) or (4) applies to them. Subsections 19DA(2) and (3) refer to a person being subject to domestic violence, or in severe financial hardship due to unavoidable or reasonable expenditure in the 4 weeks immediately prior to the person’s start day mentioned in, relevantly paragraph 620(1)(a). Similarly, the relevant definition of ‘unavoidable or reasonable expenditure’ in paragraph 19C(4)(a)(iv) also refers to the reasonable costs of living that the person is taken to have incurred in respect of the 4 weeks immediately before the person’s start day mentioned in, relevantly, paragraph 620(1)(a).

By ensuring that clause 4A of Schedule 2 is disregarded in the calculation of the start day in paragraph 620(1)(a), the relevant 4 week periods referred to in subsections 19DA(2), 19DA(3) and paragraph 19C(4)(a)(iv) of the Social Security Act will also be worked out by reference to a start day that will be the same for both newstart claimants who are RapidConnect participants, and newstart claimants who are not RapidConnect participants, as is currently the case.

**Item 1E** inserts a reference to new clause 4A of Schedule 2 to the Social Security Administration Act into subsection 621(1).

Subsection 621(1) currently provides that, subject to subsections 621(3) and (5), if a newstart claimant is subject to an ordinary waiting period and is not disqualified for newstart under section 589 (liquid assets test), the ordinary waiting period is the period of 7 days that starts on the person’s start day (worked out disregarding clause 5 of Schedule 2 to the Social Security Administration Act). Item 1E amends subsection 621(1) to provide that a person’s start day for the purposes of that subsection is worked out disregarding both clause 4A and clause 5 of Schedule 2 to the Social Security Administration Act.

As discussed above regarding the amendments made by Item 1B in relation to youth allowance (other) claimants, this amendment ensures that the amendments made by Item 2 will not affect how the start day is worked out for the purposes of determining when an ordinary waiting period commences for a newstart claimant who is also a RapidConnect participant.

**Example:**

Jenny makes a claim for newstart allowance on 1 February 2018 and is identified as a RapidConnect participant. On 2 February, Jenny is given a notice under section 63 of the Social Security Administration Act to attend an appointment with her employment provider on the next business day, 5 February 2018. She attends that appointment on 5 February 2018 as required.

Jenny is subject to an ordinary waiting period under subsection 620(1) of the Social Security Act. The day the waiting period commences is determined under subsection 621(1) and will be Jenny’s start day which is worked out disregarding clause 4A and clause 5 of Schedule 2 to the Social Security Administration Act. Jenny’s start day for the purposes of subsection 621(1) of the Social Security Act is therefore worked out under clause 3(1) of Schedule 2 to the Social Security Administration Act, which is the day she made her claim (1 February 2018). Consequently, Jenny’s ordinary waiting period is the 7 day period from 1 February 2018 – 7 February 2018. This
would have been Jenny’s ordinary waiting period even if she was not a RapidConnect participant.

Jenny’s actual start day is worked out under clause 5 of Schedule 2 to the Social Security Administration Act. As a RapidConnect participant, if she was not subject to an ordinary waiting period, Jenny’s start day would be worked out under clause 4A(4) of Schedule 2, and would be the day she attended the appointment with her employment provider (5 February 2018). However, because she is serving an ordinary waiting period on 5 February 2018, her start day is worked out under clause 5(1)(a) of Schedule 2 instead. This is the day after her ordinary waiting period ends. Because Jenny’s ordinary waiting period ends on 7 February 2018, the start day for her newstart allowance is 8 February 2018.

**Item 1F** inserts a reference to new clause 4A of Schedule 2 to the Social Security Administration Act into paragraph 621(3)(b).

This amendment is consequential to the amendment made by Item 1E. Subsection 621(3) determines when an ordinary waiting period for a newstart claimant commences where the person would otherwise be subject to an ordinary waiting period of 7 days that starts on the person’s start day (worked out disregarding clause 5 of Schedule 2 to the Social Security Administration Act), but where the person is subject to one or more exclusion periods. Item 1F amends paragraph 621(3)(b) to provide that a person’s start day for the purposes of that paragraph is worked out disregarding both clause 4A and clause 5 of Schedule 2 to the Social Security Administration Act.

**Social Security Administration Act**

**Item 1** inserts a note at the end of subclause 3(1) of Schedule 2. Subclause 3(1) provides the general rule for determining a person’s start day in relation to a social security payment. The note informs the reader that in certain circumstances, new clause 4A applies instead of subclause 3(1) to claims for newstart allowance and youth allowance. This amendment is consequential to the amendment to be made by item 2.

**Item 2** would insert new clause 4A. In certain circumstances, clause 4A will apply instead of subclause 3(1) to determine the start day in relation to a person’s claim for newstart allowance or youth allowance.

Subclause 4A(1) provides that clause 4A applies instead of subclause 3(1) in relation to a person’s claim for newstart allowance or youth allowance (where the person is not a new apprentice or undertaking full-time study) if the Secretary gives the person a notice under section 63 requiring the person to attend a particular place for an interview on a day specified in the notice. The ‘interview’ is generally their initial appointment with an employment services provider.

The note to subclause 4A(1) advises the reader that clause 5 of Schedule 2 to the Social Security Administration Act may override a person’s start day in certain circumstances. One example of this will be where a person attends an initial appointment with their employment services provider, but does not enter into either a Newstart Employment Pathway Plan or a Youth Allowance Employment Pathway
Plan if required such that subparagraph 547AA(1)(b)(ii) or subparagraph 615(1)(b)(ii) applies to them on the day that would otherwise be their start day. In that case, the person’s start day is worked out under clause 5(1) (see clause 5(2)(e)).

Subclause 4A(2) gives the Secretary the power to decide, in accordance with any guidelines made under new subclause 4A(3), that new clause 4A does not apply to a person. This power is needed to allow flexibility in the application of the clause. The power will be exercised in relation to the variety of people who are exempt from RapidConnect (for example, someone who is assessed as having multiple barriers to employment, a partial work capacity, or who is a principal carer of a child).

Subclause 4A(3) gives the Secretary the power to make guidelines to be complied with when deciding whether clause 4A applies to a person. Any such guidelines will be in a legislative instrument.

Subclause 4A(4) provides that the start day for a person to whom clause 4A applies is to be worked out using the table in that subclause.

Currently, if a person who is subject to RapidConnect is required by the Secretary to attend an interview under section 63 (that is, usually, to attend an initial appointment with an employment services provider), and the person attends the interview, their start day is generally the day on which their claim was made, in accordance with subclause 3(1). However, the effect of new subclause 4A(4) will be that a person’s start day will generally be the day on which the person complies with the requirement to attend an interview.

The table in subclause 4A(4) provides that if the period between the time the Secretary imposes the requirement under section 63, and the specified day (that is, the initial appointment day), is two business days or less, the person’s start day will be the specified day. If that period is more than two business days for reasons other than at the person’s request, the person’s start day will be the day on which the Secretary imposes the requirement under section 63. If the period is more than two business days at the request of the person, the person’s start day will be the specified day.

Subclause 4A(5) provides that, despite subclause 4A(4), if the person does not comply with the requirement to attend a particular place for an interview on a specified day, and because of that failure, section 547AA or 615 of the Social Security Act applies to the person, the person’s start day will be the day on which section 547AA or section 615 (as applicable) ceases to apply to the person.

Sections 547AA and 615 of the Social Security Act apply to a youth allowance or newstart allowance recipient (respectively) who is subject to RapidConnect, and who fails to comply with a requirement to attend an interview as required, and/or fails to enter into a Newstart Employment Pathway Plan, or Youth Allowance Employment Pathway Plan as required, in certain circumstances. Sections 547AA and 615 generally cease to apply to a person on the day the person complies with the relevant requirements, or any requirements the Secretary has required them to undertake instead of those requirements. The effect of this is that the start day of a person who is subject to RapidConnect, and who fails to attend their initial
appointment with their employment services provider, will generally be the day that they attend the appointment.

However, in some circumstances, sections 547AA and 615 may cease to apply to a person on an earlier day if the Secretary is satisfied that this is appropriate (for example, because the person had a reasonable excuse for failing to attend the appointment, or because of circumstances beyond the person’s control) (see paragraphs 547AA(4)(b) and 615(4)(b)). If this occurs, the person’s start day is that earlier day.

Subclause 4A(6) provides that, despite subclauses 4A(4) and 4A(5), if a person is not qualified for the allowance on the day that would, but for subclause 4A(6), be the person’s start day, their start day is the first day, after what would otherwise (under subclauses 4A(4) or 4A(5)) be the person’s start day, on which the person is qualified for the allowance. This means that a person’s start day will not occur prior to the person becoming qualified for the relevant payment.

For example, if, due to the application of subclause 4A(5), a person’s start day will be the day on which section 547AA or 615 of the Social Security Act ceases to apply to them, but on that day the person is not qualified for their allowance, then subclause 4A(6) will apply such that the person’s start day will be the day they are first qualified for the allowance. This subclause essentially postpones their start day until they are qualified.

Subclause 4A(7) provides that clause 4A will cease to apply if the Secretary revokes the requirement to attend a particular place for an interview before the specified day. The effect of subclause 4A(7) is that if the Secretary revokes a requirement made under section 63, clause 4A will cease to apply to the person and subclause 3(1) will apply instead. A note to be included under subclause 4A(7) advises the reader that in the event that the Secretary were to revoke the requirement before the specified day, subclause 3(1) will apply.

**Item 3** omits the references to sections 547AA and 615 of the Social Security Act in paragraph (e) of the definition of ‘exclusion period’ in subclause 5(2), and replaces them with references to subparagraphs 547AA(1)(b)(ii) and 615(1)(b)(ii), respectively.

Subclause 5(1) determines the start day of a person who is subject to an ‘exclusion period’ on the day that would, apart from clause 5, be the person’s start day. Currently, a period during which a person’s youth allowance or newstart allowance is not payable because of the operation of section 547AA or 615 of the Social Security Act is included in the definition of ‘exclusion period’ in subclause 5(2).

By amending the definition of ‘exclusion period’, item 3 removes the application of subclause 5(1) to a person subject to RapidConnect who falls within the circumstances set out in subparagraph 547AA(1)(b)(i) or subclause 615(1)(b)(i) of the Social Security Act – that is, where the person does not attend an interview with a specified person at a specified time or place as required. This is because the new start date for these people is set out in the amendments made by item 2 of this Schedule.
However, item 3 will preserve the operation of subclause 5(1) of Schedule 2 in relation to a person subject to RapidConnect who falls within the circumstances set out in subparagraphs 547AA(1)(b)(ii) or 615(1)(b)(ii) of the Social Security Act – that is, if they fail to comply with a requirement to enter into a Newstart Employment Pathway Plan or a Youth Allowance Employment Pathway Plan in certain circumstances. This is because it is not intended that the amendments made by Schedule 10 will affect the current start day of these people.

Item 4 is an application provision and provides that the amendments which will be made by Schedule 10 will apply in relation to claims made on or after the commencement of Schedule 10. Schedule 10 commences on the later of 1 January 2018 and the day after Royal Assent.

The effect of item 4 is that any claims for newstart allowance or youth allowance (where the claim is not based on the claimant being a new apprentice or undertaking full-time study) made before the commencement date will not be affected by the amendments made by Schedule 10.
Schedule 11 – Removal of intent to claim provisions

Summary

This Schedule will amend the Social Security Administration Act by removing the current deemed claim provisions that allow a claimant to receive payments from the date on which they initially contacted the Department of Human Services.

Background

The deemed claim provisions in relation to a person contacting the Department of Human Services about a claim for a social security payment or concession card are set out under sections 13 and 14 of the Social Security Administration Act.

These provisions allowed leniency for claimants by effectively backdating their entitlement to payment to the date they initially contacted the Department of Human Services and indicated their intention to claim.

These provisions were introduced at a time when claim forms were mailed to claimants, completed by the claimants, and then returned by mail to the Department of Human Services. With the advent of technology that allows people to gather and submit documentation quickly and easily (such as online banking, email, and electronic storage of information), and the progressive rollout of online claiming, this level of assistance is no longer necessary or appropriate.

The purpose of removing these provisions is to encourage claimants to take greater personal responsibility for understanding their payment entitlements, and submit claims in a timely manner.

If this Act receives the Royal Assent before 1 November 2017, the amendments made by this Schedule commence on 1 January 2018.

If the Act receives the Royal Assent on or after 1 November 2017, the amendments made by this Schedule will commence on the first 1 April, 1 July, 1 October and 1 January that occurs after the end of the period of 2 months beginning on the day this Act receives the Royal Assent.

Explanation of the changes

Social Security Administration Act

Item 5 repeals sections 13 and 14 of the Act, which achieves the policy outcome of removing the deemed claim provisions that allow a claimant to receive payments from the date on which they initially contacted the Department of Human Services.

Items 1, 2, 3, 4 and 6 are consequential to the amendments made by item 5, and adjust references to the repealed sections.

Item 7 provides that amendments made by this Schedule do not apply in relation to contacts with the Department of Human Services made prior to the commencement of the amendments.
Schedule 12 – Establishment of a drug testing trial

Summary

This Schedule provides for a two year trial in three regions involving mandatory drug testing for 5,000 new recipients of Newstart Allowance and Youth Allowance (other).

Background

This Schedule will enable mandatory drug testing to be trialled for two years from 1 January 2018 in three regions for new recipients of Newstart Allowance and Youth Allowance (other).

Substance abuse is a major barrier to social and economic participation and is not consistent with community expectations around receiving taxpayer funded welfare payments. The aim of the trial is to improve a recipient’s capacity to find employment or participate in education or training by identifying people with drug use issues and assisting them to undertake treatment. The trial will test the effectiveness of decreasing substance abuse through random drug testing, in an effort to improve employment outcomes for trial participants.

The trial will be conducted in three locations. These locations will be selected by considering a range of factors, including crime statistics, drug use statistics, social security data and health service availability. The trial locations will not include Community Development Program areas.

Precondition of claim

A person making a claim for Newstart Allowance or Youth Allowance (other) will be required to acknowledge in the claim form that they may be required to undergo drug testing as a condition of payment. The consequence of failing to acknowledge in the claim form that they may be subject to drug testing for claimants who reside in a trial region, is that their claim will be rejected.

Drug testing regime

New recipients of Newstart Allowance and Youth Allowance (other) after 1 January 2018 will be randomly selected to undertake a drug test. Recipients selected will be notified to attend an appointment at their local Centrelink office consistent with standard Department of Human Services appointment requirements.

At the appointment, recipients will be notified they are required to undertake a random drug test. Drug testing of selected Newstart Allowance and Youth Allowance (other) recipients will be administered by third party drug testing providers contracted for that purpose, adhering to strict privacy principles specified in legislation.
Recipients who test positive to this initial drug test will be subject to income management for a 24 month period. If the recipient’s payment is cancelled during the 24 month period and later reclaims, they will return to income management for the remainder of the 24 months. If the recipient’s first test is negative they will not be subject to income management.

Recipients who test positive to the initial drug test, in addition to being placed on income management, will be subject to further random tests during the trial period, the first of which will occur within 25 working days of the initial positive test.

Recipients who test positive to more than one drug test in the 24 month period will be referred to a Department of Human Services’ contracted medical professional for assessment. If the medical professional recommends treatment, the recipient will be required to complete one or more treatment activities designed to address their substance abuse as part of their Employment Pathway Plan. These activities may include rehabilitation, counselling or ongoing drug testing. Where treatment is not immediately available, recipients will be required to take appropriate action such as being on a waiting list to satisfy part of their mutual obligation requirements. Recipients with a drug treatment activity in the plan may still be required to undertake other activities, including job search depending on their circumstances.

Further drug test/s will be conducted during the 24 months of the trial period.

Recipients, who fail to meet the terms of their Employment Pathway Plan including any drug treatment activities, would be subject to the participation payment compliance framework. Reasonable excuse provisions would continue to apply; however, not where the reason is wholly or substantially attributable to drug or alcohol use.

Recipients who refuse to take the test (whether first or subsequent tests) will have their payment cancelled with effect from the day on which the refusal occurred, unless the person has a reasonable excuse. Suspension will not be an option.

If the person then makes a new claim for Newstart Allowance or Youth Allowance (other) following cancellation, the payment will not be payable for a 4-week period from the date of cancellation. Recipients who subsequently return to payment after their waiting period will still be subject to the trial and required to undergo random drug testing as a condition of their ongoing receipt of payment. The 4-week period only applies to recipients whose payment was cancelled because of their refusal to take the drug test despite acknowledging and accepting that they may be subject to drug testing as part of their initial claim for payment.

If a recipient tests positive to a second or any subsequent test, they will be required to repay the cost of these tests through a small percentage reduction of their fortnightly social security payment. Hardship provisions will be operable to ensure no one is adversely affected.
The cost of the test (that is, the amount to be repaid) will be an amount determined by the Secretary in an instrument and will be no more than the lowest cost at which the test is available to the Department of Human Services under their contract with the drug testing provider. The cost will be deducted from future social security payments at a rate percentage set by the Secretary, capped at a maximum of 10 per cent. The Secretary will also be able to vary the person’s repayment rate if they are experiencing financial hardship, or increase that rate at their request.

If a recipient disputes the result of their initial drug test and requests another test, the retest will be at the recipient’s own expense if the result of the retest is positive.

If the recipient’s payment, for reasons other than refusing to take a drug test, is suspended or cancelled prior to the second drug test and the recipient subsequently becomes qualified and the payment is payable, the second test will be conducted within 25 working days of the person becoming qualified and the payment being payable (irrespective of any gap in payment) during the trial period.

**Compliance with notices**

Recipients who are part of the drug testing trial and fail to attend scheduled appointments with the Department of Human Services will have their payment suspended until they attend a rescheduled appointment. When the recipient attends a rescheduled appointment their payment will be resumed but will not be backdated to the date of suspension, unless the recipient has a reasonable excuse for not attending, such as unforeseen caring responsibilities. If no reasonable excuse exists, their payment will be payable from the date of their attendance at the rescheduled appointment. After 13 weeks, if the recipient has not attended an appointment, their payment will be cancelled. If the recipient provides prior notice to the Department of Human Services of a reasonable excuse for not being able to attend the appointment, such as work commitments, their appointment will be rescheduled.

The amendments made by this Schedule commence on 1 January 2018 if the *Social Services Legislation Amendment (Welfare Reform) Act 2017* receives Royal Assent before 1 January 2018. If the Act receives Royal Assent on or after 1 January 2018 this Schedule will commence on the first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives Royal Assent.

**Explanation of the changes**

**Part 1 – Main amendments**

*Social Security Act*

Item 1 amends subsection 23(1) and inserts a number of definitions for the purposes of the drug testing trial.
**Drug test** means, in relation to a person, a test that is carried out in accordance with applicable drug test rules (if any) directly or indirectly under a contract with the Commonwealth that was entered into for the purposes of carrying out the test and is for the presence of a testable drug in a sample taken in the drug test trial period from the person’s saliva, urine or hair.

**Drug test rules** means rules made under new section 38FA.

**Drug test trial area** means an area prescribed by the drug test rules for the purposes of this definition. The drug test rules are made under new section 38FA. New section 38FA provides for the Minister to make an instrument prescribing up to three discrete areas for the purposes of the definition of drug test trial area.

**Drug test trial period** means the 24 months starting on the commencement of this definition. That is, if the amendments establishing the two year drug testing trial commence on 1 January 2018, then the 24 month period starts on 1 January 2018 and ends on 31 December 2019. However, if the amendments commence on, say, 1 April 2018, then the 24 month period starts on 1 April 2018 and ends on 31 March 2019, and so on.

**Drug test trial pool member** provides that a person is a drug test trial pool member at a time if:

(a) that time is in the drug test trial period (as defined in section 23(1)); and

(b) at that time the person’s usual place of residence is in a drug test trial area; and

(c) at that time the person is:

(i) receiving Newstart Allowance; or

(ii) receiving Youth Allowance (other) (that is, a Youth Allowance recipient who is not a full-time student or a Youth Allowance Australian apprentice);

as a result of a claim made during the drug test trial period; and

(e) if the claim was for Youth Allowance—the claim was for Youth Allowance (other).

**Positive drug test** means, in relation to a person, an indication by a drug test that a testable drug was present in a sample of the person’s saliva, urine or hair given by the person in compliance with a requirement notified to the person under new paragraph 63(4)(c) of the Social Security Administration Act.

**Testable drug** means methamphetamine, methylenedioxy-methamphetamine, tetrahydrocannabinol, opioids or another substance prescribed by the drug test rules for the purposes of this definition.
Item 2 inserts new paragraph (cb) into the definition of waiting period so that a Newstart Allowance drug test refusal waiting period applies for the purposes of new sections 623C and 623D.

Item 3 adds new section 38FA at the end of Part 1.3. New section 38FA provides a discretion for the Minister to make drug test rules, by legislative instrument, providing for and in relation to the following:

(a) prescribing up to three discrete areas for the purposes of the definition of drug test trial area in subsection 23(1);

(b) prescribing substances for the purposes of the definition of testable drug in subsection 23(1);

(c) giving and taking of samples of persons’ saliva, urine or hair for use in drug tests;

(d) dealing with such samples;

(e) carrying out drug tests;

(f) giving of results of drug tests in certificates or other documents and the evidentiary effect of those certificates or documents;

(g) confidentiality and disclosure of results of drug tests;

(h) requirements relating to contracts entered into for the carrying out of drug tests;

(i) keeping and destroying records relating to samples for use in drug tests or drug tests.

The intention is that the drug test rules will set out high level protocols that will apply for conducting the drug tests, including in relation to the use and disclosure of test results. This provides additional safeguards to ensure the operation of the drug testing is consistent with the requirements under the Privacy Act 1988 and the confidentiality provisions in the Social Security Administration Act.

Item 4 inserts new subsection 544B(1AA) into section 544B. New section 544B(1AA) provides that one of the requirements of a Youth Allowance Employment Pathway Plan that is in force in relation to a person must relate to the person undertaking treatment for the use of drugs. This requirement applies if a drug test trial pool member who has had two or more positive drug tests and has undergone a medical, psychiatric or psychological examination in accordance with a notice given under subsection 63(4) of the Social Security Administration Act after the second (or further) positive drug tests and the report of the examination given to the Secretary recommends that the person undertake treatment for the use of drugs.
The intention is that the Secretary could formulate the requirement as one to undertake treatment (if treatment is available) or as one to commit to undertaking treatment if it is not available when the requirement is included in the plan but becomes available later.

Item 5 adds new paragraph 549(2)(c) so that Youth Allowance is not payable to a person while the person is subject to a drug test refusal waiting period for the purposes of new sections 549EA and 549EB.

Item 6 inserts new section 549EA. New section 549EA sets out the circumstances in which a person is subject to a drug test refusal waiting period. A person is subject to this waiting period if the person fails to comply with a notice given under paragraph 63(4)(c) of the Social Security Administration Act, that results in the person’s Youth Allowance not being payable under section 64 of the Social Security Administration Act and being cancelled under section 80 of that Act. If, after the non-compliance with the notice, the person qualifies for Youth Allowance (other), the person will be subject to the waiting period.

The intention is that a person’s payment will be cancelled with immediate effect, if the person refuses a drug test, noting that they previously acknowledged and accepted potential drug testing as a condition of payment when they claimed the payment. Consequently, cancellation will trigger the waiting period to prevent Youth Allowance being payable for that period if the person makes a new claim for Youth Allowance.

The note under section 549EA clarifies that paragraph 63(4)(c) of the Social Security Administration Act is about giving a sample for a drug test.

New section 549EB provides for the length of the drug test refusal waiting period. The period is 28 days starting on the day of the cancellation of the person’s Youth Allowance.

Item 7 inserts new subsection 606(1AA) into section 606. New subsection 606(1AA) provides that one of the requirements of a Newstart Employment Pathway Plan that is in force in relation to a person must relate to the person undertaking treatment for the use of drugs. This requirement applies if a drug test trial pool member who has had two or more positive drug tests and has undergone a medical, psychiatric or psychological examination in accordance with a notice given under subsection 63(4) of the Social Security Administration Act after the second (or further) positive drug tests and the report of the examination given to the Secretary recommends that the person undertake treatment for the use of drugs.

The intention is that the Secretary could formulate the requirement as one to undertake treatment (if treatment is available) or as one to commit to undertaking treatment if it is not available when the requirement is included in the plan but becomes available later.
Item 8 adds new sections 623C and 623D at the end of Subdivision E of Division 1 of Part 2.12. New section 623C sets out when a drug test refusal waiting period applies due to a person’s non-compliance with a notice requiring the person to do an act described in paragraph 63(4)(c) of the Social Security Administration Act. A person is subject to this waiting period if the person fails to comply with a notice given under paragraph 63(4)(c) of the Social Security Administration Act, that results in the person’s Newstart Allowance not being payable under section 64 of the Social Security Administration Act and being cancelled under section 80 of that Act.

The note under section 623C clarifies that paragraph 63(4)(c) of the Social Security Administration Act is about giving a sample for a drug test.

New section 623D provides that the duration of the drug test refusal waiting period is 28 days starting on the day of the cancellation of the person’s Newstart Allowance.

Item 9 inserts into the Youth Allowance Rate Calculator new paragraph (ba) in step 14 of the method statement under point 1067G-A1. Under new paragraph (ba), the amount of the drug test repayment deduction (worked out in accordance with Part 3.16C) should be subtracted from the provisional fortnightly payment rate if there is any amount remaining after subtracting any special employment advance deduction or any advance payment deduction.

Item 10 inserts into Benefit Rate Calculator B new paragraph (ba) in step 7 of the method statement under point 1068A1. Under new paragraph (ba), the amount of the drug test repayment deduction (worked out in accordance with Part 3.16C) should be subtracted from the provisional fortnightly payment rate if there is any amount remaining after subtracting any special employment advance deduction or any advance payment deduction.

Item 11 inserts new Part 3.16C (Drug test repayment deductions) after existing Part 3.16B (Advance payment deductions). This new Part inserts new sections 1206XA, 1206XB, 1206XC, 1206XD, 1206XE and 1206XF.

New section 1206XA provides for drug test repayment deductions to be made from a person’s Newstart Allowance or Youth Allowance (other). New subsection 1206XA(1) provides that a drug test repayment deduction is to be made from the rate of Newstart Allowance or Youth Allowance (other) that is payable to a person.

New subsection 1206XA(2) provides that a person has a drug test repayment deficit, at a time, if the sum of all the drug test repayment amounts that arose for the person before that time exceeds the sum of the amounts by which instalments of social security benefit paid to the person before that time have been properly reduced by the making of drug test repayment deductions. The intention is that all a person’s drug test repayment amounts (for life) and all reductions of instalments (for life) are taken into account in working out whether a person has a deficit.
For example, if a person has returned a positive drug test, not including the initial drug test, they will be required to repay the amount determined by the Secretary (not greater than the lowest test cost available to the Department of Human Services under contract), an amount of $80 has been used for the purposes of this example. Repayment will commence from the next social security payment once the Department of Human Services become aware of a drug test repayment requirement for a person. If the repayment rate is set by the Secretary at 5 per cent, and the person’s rate of Newstart Allowance is calculated to be $535.60 – the maximum basic rate – this person will have an amount of $26.80 deducted from their payment rate and credited to their drug test repayment balance. This will reduce their outstanding balance to $53.20. If they subsequently return a further positive drug test, the amount to be repaid for that test will be added to their balance. If a person leaves payment with an outstanding drug testing repayment balance and subsequently returns to payment, they will continue to pay off that balance by rate reduction.

For clarity, the reference to social security benefit by virtue of subsection 1206XA(1) is Newstart Allowance or Youth Allowance (other).

The reference to ‘proper’ reduction is intended to cover the possibility that deductions may be made because of a positive drug test that a contractor later says should not be taken into account. New subsection 1206XA(5) will then apply so that the amount of the deficit can be recalculated to exclude the drug test repayment amount that arose from that test.

New subsection 1206XA(3) provides that the amount of the drug test repayment deficit is the amount outstanding (the excess) that is owed by a person for any positive drug test at a point in time after a person’s instalment of Newstart Allowance or Youth Allowance (other) has been reduced by the making of a drug test repayment.

New subsection 1206XA(4) provides that a drug test repayment amount arises for each positive drug test for the person if the drug test was carried out at the request of the person and use a sample given by the person in compliance with the first notice given under paragraph 63(4)(c) of the Social Security Administration Act.

New subsection 1206XA(5) provides that a drug test repayment amount is taken not to have arisen for a person from a positive drug test if the contractor who carried out the test gives a written notice to the Secretary that the test should not be taken into account for the purposes of this Part. For example, if the contractor becomes aware that of a false positive test result such as when they are provided with evidence that the person is taking legal medication which may cause this, the contractor will be required under the drug testing rules to notify the Secretary that the test should not be taken into account for the purposes of a drug test repayment deduction. The criteria for guiding when the contractor would give a written notice will be provided in the drug test rules.

New subsection 1206XA(6) provides that the amount of the drug test payment amount is the amount prescribed by legislative instrument under subsection 1206XA(7).
New subsection 1206XA(7) provides a discretion for the Secretary to make a legislative instrument for the purposes of subsection 1206XA(6). In doing so, the Secretary must have regard to the lowest cost to the Commonwealth of any drug test that could be carried out at the time the legislative instrument is to commence.

New section 1206XB sets out the basic calculation for working out the amount of the drug test repayment deduction.

New subsection 1206XB(1) provides that the amount of a drug test repayment deduction is the percentage, worked out in accordance with subsection 1206XB(3), and section 1206XC or 1206SD (if relevant).

To work out the amount of Newstart Allowance that is payable to a person where a drug test repayment deduction applies, the amount of the person’s rate of Newstart Allowance is worked out under step 7 of the method statement in point 1068-A1, disregarding paragraph (ba) and (c) of that step.

To work out the amount of Youth Allowance that is payable to a person where a drug test repayment deduction applies, the amount of the person’s rate of Youth Allowance is worked out under step 14 of the method statement in point 1067G-A1, disregarding paragraphs (ba) and (c) of that step.

New subsection 1206XB(2) provides that subsection (1) has effect subject to section 1206XE.

New subsection 1206XB(3) provides that for the purposes of subsection (1), the percentage is the percentage prescribed by legislative instrument under subsection (4). Subsection (3) has effect subject to sections 1206XC and 1206XD.

New subsection 1206XB(4) provides a discretion for the Secretary to make a legislative instrument for the for the purposes of subsection (3). The instrument must not prescribe a percentage greater than 10 per cent.

New section 1206XC enables a person to request a greater percentage for their drug test repayment deduction.

New subsection 1206XC(1) provides that the percentage for working out a person’s drug test repayment deduction is increased to a greater percentage if the person asks the Secretary in writing for it to be increased.

New subsection 1206XC(2) provides that subsection (1) does not apply if the Secretary is satisfied that the person would suffer severe financial hardship if the percentage is increased.

New section 1206XD provides for the Secretary to reduce the amount of the percentage for a person’s drug test repayment deduction if the person is in severe financial hardship.
New subsection 1206XD(1) provides a discretion for the Secretary to determine that, for a specified period, the percentage for working out a person’s drug test repayment deduction may be a percentage (which may be nil) that is less than the percentage that would otherwise apply, if the Secretary is satisfied that:

(a) the person’s circumstances are exceptional; and

(b) the person would suffer severe financial hardship if the percentage that would otherwise apply were to continue to apply.

New subsection 1206DX(2) provides a discretion for the Secretary, at any time while the determination is in force, to:

(a) vary the determination so that a percentage that is greater than that previously determined under subsection (1) will apply but will be less than the percentage that applied immediately prior to the determination under subsection (1) have been made; or

(b) revoke the determination;

but only if the Secretary is satisfied that the person would not suffer severe financial hardship because of the variation or revocation.

New section 1206XE provides for the final drug test repayment deduction where the person’s drug test repayment deduction is greater than the amount of the person’s drug test repayment deficit. In these circumstances, if an instalment of a person’s Newstart Allowance or Youth Allowance is reduced by a drug test repayment deduction that is greater than the amount of the person’s drug test repayment deficit, then the deduction is reduced so that the person’s instalment is reduced by the amount of the deficit. For example, where a person has a drug test repayment balance of $20 and they are entitled to the maximum basic rate of Newstart Allowance that fortnight – $535.60 – their repayment amount will only be $20 and not the $26.80 that would otherwise be calculated according to the rate calculator formula.

New section 1206XF provides for the rounding up to the nearest cent (rounding 0.5 cents upwards) for amounts worked out under this Part.

Social Security Administration Act

Item 12 inserts new subsection 37(7A) into section 37. New subsection 37(7A) modifies the obligation for the Secretary to grant a claim for Newstart Allowance or Youth Allowance under subsection 37(1) so that the requirements under subsection 37(1) are subject to subsection 37(7A). Subsection 37(7A) provides that despite subsections (2), (3), (6) and (7), the Secretary must not, in a drug test trial period, determine that a claim for Newstart Allowance or Youth Allowance by a potential drug test trial pool member is to be granted unless the Secretary is satisfied that the claimant acknowledged in the claim that the claimant could be required to give samples for drug tests to be carried out in that period.
**Item 13** is consequential to item 15, which inserts a new paragraph into subsection 63(4).

**Item 14** inserts **new subsection 63(2A)**, which provides a discretion for the Secretary to notify a person under subsection (2) that he or she is required, at or within a specified time, to do an act described in paragraph (2)(a) if:

(a) the person was earlier, while the person was a drug test trial pool member, required under that subsection to do that act or thing but did not comply with that earlier requirement; and

(b) because of that non-compliance and subsection 64(1), the Newstart Allowance or Youth Allowance that the person received as a drug test trial pool member is not payable to the person (whether or not the payment is suspended).

To avoid doubt, the notification is taken for all purposes to be under subsection (2).

**Item 15** inserts **new paragraph 63(4)(c)**, which provides that if the Secretary is of the opinion that a person who is a drug trial pool member should give a sample of a particular kind at a particular place for a drug test to be carried out (at that place or elsewhere) on the sample, the Secretary may notify the person that he or she is required within a specified time to give a sample.

**Item 16** inserts **new subsections 63(4A) and (4B)**. New subsection 63(4A) provides that the Secretary must not notify a person of a requirement to give a sample for a drug test as described in paragraph 63(4)(c) if 5,000 other persons have given samples in compliance with the such requirements. This is whether or not any of those 5,000 persons had given two or more samples under one or more such requirements.

The note under subsection 63(4A) clarifies that this does not prevent the Secretary from notifying a particular person multiple times of such requirements, as long as fewer than 5,000 other persons have given samples under such requirements.

New subsection 63(4B) provides that the Secretary may also notify a person under subsection 63(4) that he or she is required, at or within a specified time, to do an act or thing described in paragraph (4)(b) or (c) if:

(a) while the person was a drug test trial pool member, the person was earlier required under that subsection to do that act or thing or under subsection (2) to attend an office of the Department but did not comply with that earlier requirement; and

(b) because of that non-compliance and subsection 64(1), the Newstart Allowance or Youth Allowance the person received as such a member is not payable to the person (whether or not the payment is suspended).

To avoid doubt, the notification is taken for all purposes to be under subsection (4).
**Item 17** inserts **new subsection 64(1AA)** into section 64. New subsection 64(1AA) provides that a notice of a requirement to do an act described in paragraph 63(4)(c) is not unreasonable for the purposes of paragraph 64(1)(c) merely because of the nature of the act (even if it is not the first notice requiring the person to do such an act). For example, if a person attends an office of the Department in accordance with a section 63(2) notice and, at that time, is given a section 63(4)(c) notice to give a sample immediately (or shortly after attending the office), the requirement to give a sample is not unreasonable merely because of its nature, for the purposes of paragraph 64(1)(c).

**Item 18** inserts **new section 64A** after section 64, which provides for the contractual arrangements that relate to drug tests. New subsection 64A(1) provides that, for the purposes of paragraph 63(4)(c), the Secretary may, on behalf of the Commonwealth, enter into contracts for the carrying out of drug tests as mentioned in that paragraph. New subsection 64A(2) provides that a contract mentioned in subsection (1) must meet any requirements prescribed by the drug test rules. New subsection 64A(3) sets out that without limiting subsection (2), the drug test rules may require a contract mentioned in subsection (1) to include provisions requiring the following:

(a) give the Secretary written notice of the results of the drug test. In this situation, the contractor must be satisfied that there is a positive drug test result for the person; and

(b) give notice as mentioned in paragraph 123UFAA(1A)(c) (written notice that the person should be subject to the income management regime, see item 24) in circumstances prescribed by the drug test rules. In this case, if a person's drug test result is positive, the contractor will give a notice to the Secretary that the person should be subject to income management; and

(c) withdraw or revoke a notice as mentioned in paragraph 123UFAA(1A)(d) in circumstances prescribed by the drug test rules. For example, if a person requests a second drug test which results in a negative result or if the contractor receives evidence that the person is taking legal medication which could cause a false positive result, the contractor can withdraw or revoke a notice that was previously given a notice under paragraph 123UFAA(1A)(c); and

(d) give notice as mentioned in subsection 1206XA(5) of the Social Security Act (written notice that a positive drug test should not be taken into account, see item 11) in circumstances prescribed by the drug test rules. For example, if the contractor becomes aware that of a false positive test result such as if the contractor received evidence that the person is taking legal medication which could cause a false positive result, the contractor will be required under the drug testing rules to notify the Secretary that the test should not be taken into account for the purposes of a drug test repayment deduction; and

(e) any subcontracts to include provisions requiring matters mentioned in paragraphs (a) to (d).
Item 19 is consequential to item 20, which is a technical amendment for the purposes of adding new subsections into section 110A.

Item 20 adds new subsection 110A(2) and (3), which sets out the consequence if a drug test pool member fails to comply with a notice given under paragraph 63(2)(a), 63(4)(b) or 63(4)(c).

In accordance with new subsection 110A(2), subsection 110A(3) applies if:

(a) a drug test pool member’s Newstart Allowance or Youth Allowance was suspended under subsection 64(1) because the person did not comply with a requirement (the earlier requirement) to do an act or thing in accordance with a notice that was given under paragraph 63(2)(a), 63(4)(b) or 63(4)(c) while he or she was a drug test pool member; and

(b) if the earlier requirement was to do an act described in paragraph 63(2)(a), it is reasonable to expect that, had the person complied with the earlier requirement, the person would have been required to do an act (give a sample) described in paragraph 63(4)(c); and

(c) the person complies with:

(i) a later requirement under subsection 63(2) or (4) to do the act or thing required by the earlier requirement; and

(ii) if the earlier requirement was to do an act described in paragraph 63(2)(a), a later requirement to do an act (give a sample) described in paragraph 63(4)(c); and

(d) a favourable determination is made under section 85 to resume payment of social security payment to the person.

New subsection 110A(3) provides that a favourable determination takes effect, or is taken to have taken effect:

(a) when the person met the condition in paragraph 110A(2)(c); or

(b) if the Secretary is satisfied that the person had a reasonable excuse for not complying with the earlier requirement, on the day on which the person was required by the earlier requirement to do the act or thing concerned.

The intention is that a person’s Newstart Allowance or Youth Allowance will not be backdated to the date of suspension but will only be payable from the date the person attended an appointment in accordance with the later notice, unless the Secretary is satisfied that the person had a reasonable excuse (for example, was required to attend a job interview at short notice) for not attending the appointment in accordance with the earlier notice and can provide evidence of this.
Item 21 inserts new paragraph (gb) in the simplified outline of Part 3B which appears in section 123TA. New paragraph (gb) sets out a new circumstance in which a person may become subject to the income management regime in Part 3B. The new paragraph provides that a person may become subject to the income management regime if there is a positive drug test for the person and the tester tells the Secretary that the person should be subject to the income management regime.

Item 22 repeals the current heading for section 123UFAA and substitutes a new heading. The new heading reflects the inclusion in section 123UFAA of new subsection 123FUAA(1A), which provides for the referral of a person to income management if the person has a positive drug test.

Item 23 amends paragraph 123UFAA(1)(g) to insert the words ‘or subsection (1A) of this section’ at the end of the paragraph. This amendment is intended to ensure that if a person is subject to the income management regime under new subsection 123UFAA(1A) (see item 24), the person cannot become subject to the income management regime under subsection 123UFAA(1). Therefore, if a person has already been referred onto income management by way of a written notice from a contractor under new subsection 123UFAA(1A) a person cannot be subject to income management under subsection 123UFAA(1) on the basis of a referral from a recognised State/Territory authority.

Item 24 inserts new subsections 123UFAA(1A), (1B) and (1C) after subsection 123UFAA(1).

New subsection 123UFAA(1A) provides for a new circumstance in which a person can be made subject to the income management regime in Part 3B.

Under new subsection 123UFAA(1A) a person is subject to the income management regime at a particular time (the test time) if:

(a) at the test time, the person is an eligible recipient of a category H welfare payment (as defined in section 123TC); and

(b) before the test time, there was a positive drug test for the person; and

(c) in the 24 months, or longer period (if any) determined under new subsection 123UFAA(1B), before the test time, the contractor who carried out the test gave the Secretary a written notice saying that the person should be subject to the income management regime under this subsection. The circumstances under which such a notice may be given will be provided in the drug test rules, for instance, if the drug test result is positive; and

(d) at the test time, the notice has not been withdrawn or revoked; and

(e) at the test time, the person is not covered by a determination under new subsection 123UFAA(1C); and
(f) if, at the test time, the person has a Part 3B payment nominee—the Part 3B payment nominee is not an excluded Part 3B payment nominee; and

(g) at the test time, the person is not subject to the income management regime under section 123UC (the child protection measure of income management), 123UD (the school enrolment measure of income management), 123UE (the school attendance measure of income management) or 123UF (referral onto income management by the Queensland Commission) or subsection (1) of this section (referral onto income management by a recognised State/Territory authority).

New subsection 123UFAA(1B) provides that the Secretary may by legislative instrument, determine a period longer than 24 months for the purposes of paragraph (1A)(c). The intention is to give the Secretary the discretion to extend the period of income management for longer than the 24 month trial period. For example, if a person continues to return a positive drug test during the 24 month trial period, the person will continue to be subject to income management after the drug testing trial ends. It is intended that this provision would be used where it is considered to be beneficial to a person’s drug rehabilitation outcome to remain on income management for a longer period of time.

New subsection 123UFAA(1C) provides that the Secretary must determine that a person is not subject to the income management regime under new subsection 123UFAA(1A) if the Secretary is satisfied that being subject to the regime under that subsection poses a serious risk to the person’s mental, physical or emotional wellbeing. The intent of this provision is to protect those persons who, based on documentary evidence, may seriously be at risk of adverse impacts on their mental, physical or emotional wellbeing as a result of being subject to the income management regime.

New subsection 123UFAA(1D) provides that the Secretary is not required to inquire into whether a person being subject to the income management regime under new subsection 123UFAA(1A) poses a serious risk to the person’s mental, physical or emotional wellbeing. Although the Secretary is not required to inquire into a person’s wellbeing when the person becomes subject to income management, if the Secretary becomes aware that the person’s mental, physical or emotional wellbeing may be affected by being income managed, the Secretary must determine that the person is not subject to the regime if satisfied that being subject to the regime poses a serious risk, while that risk remains.

**Item 25** amends paragraph 123UFAA(2)(c) to add the words ‘or (1A)’ at the end of the paragraph. Subsection 123UFAA(2) currently provides that, for the purposes of Part 3B, a person is subject to the income management regime at a particular time (the test time) if:

(a) at the test time, the person is not subject to the income management regime under any other provision of Subdivision A of Division 2 of Part 3B; and

(b) at the test time, the person has a Part 3B payment nominee; and
(c) at the test time, the Part 3B payment nominee is subject to the income management regime under subsection (1).

This item amends paragraph 123UFAA(2)(c) to provide that a person’s Part 3B payment nominee is also subject to the income management regime provided for in subsection 123UFAA(1A).

**Item 26** repeals the heading of Subdivision DAA of Division 5 of Part 3B and inserts a new heading. This amendment is a consequential amendment resulting from the insertion of new subsections 123UFAA(1A), (1B) and (1C) by item 24.

**Item 27** amends subsections 123XPAA(4) and 123XPAB(4) to add a new paragraph (d) to both subsections. The inclusion of a new paragraph (d) in subsections 123XPAA(4) and 123XPAB(4) extends the range of circumstances in which the Minister can make an instrument to specify a different percentage for the purposes of determining the person’s deductible portion for income management purposes. A person’s deductible portion is the amount of a person’s welfare payment that is subject to income management. New paragraph (d) in subsections 123XPAA(4) and 123XPAB(4) will ensure that where a person is subject to income management as a result of the person having a positive drug test, the Minister can make an instrument specifying a different percentage to the percentages contained in paragraphs 123XPAA(3)(a) and 123XPAB(3)(a).

**Item 28** inserts the definition of potential drug test trial pool member into subclause 1(1) of Schedule 1.

**Potential drug test trial pool member** provides that a person is a potential drug test trial pool member at a time if:

(a) that time is in the drug test trial period (as defined in section 23(1) of the Social Security Act); and

(b) the person has, before that time and in the drug test trial period, made:

(i) a claim for Newstart Allowance; or

(ii) a claim for Youth Allowance (other); and

(c) at that time the claim has not been determined; and

(d) when the claim was made, the person’s usual place of residence was in a drug test trial area.

**Item 29** amends subparagraph 15(b)(i) of Schedule 2. This amendment ensures that if:

- a person claims Newstart Allowance or Youth Allowance (other);
- the person’s payment is not payable because of new paragraph 63(4)(c); and
- the person’s Newstart Allowance or Youth Allowance (other) has been cancelled, with cancellation taking effect in the previous 14 days,
a person’s start date in relation to the payment claimed is not the date of cancellation.

If a recipient of Newstart Allowance or Youth Allowance (other) does not comply with a notice under new paragraph 63(4)(c) (see item 15), the person’s payment can be cancelled under section 80 as the payment is not payable to the person under section 64. The person is then subject to a 28 day waiting period commencing on the date of cancellation (see items 6 and 8), making it necessary to amend the start date provision in subparagraph 15(b)(i) of Schedule 2.

**Part 2 – Consequential amendments**

*Farm Household Support Act*

**Item 30** inserts new paragraph 94(na) after paragraph 94(n). Section 94 provides that various provisions of the Social Security Act do not apply in relation to the operation of the Farm Household Support Act. The insertion of new paragraph 94(na) by this item will ensure that the new drug test repayment deduction provisions in Part 3.16C of the Social Security Act (inserted by item 11) will not apply to payments made under the Farm Household Support Act.

**Item 31** amends the table in section 95 to insert new item 1A. The table in section 95 modifies the way that particular provisions of the Social Security Act can apply in relation to payments made under the Farm Household Support Act. New item 1A will operate to ensure that paragraph (c) of the definition of drug test trial pool member in subsection 23(1) of the Social Security Act (inserted by item 1) applies to the Farm Household Support Act as if the words ‘(other than farm household allowance)’ were inserted after ‘Newstart Allowance’ and after ‘Youth Allowance’. The purpose of this amendment is to ensure that a person who receives farm household allowance is not to be treated as a drug test trial pool member for the purposes of the drug test trial established under this Schedule.

**Item 32** amends the table in section 99 to insert new item 13A after item 13 of the table. The table in section 99 modifies the way that particular provisions of the Social Security Administration Act can apply in relation to payments made under the Farm Household Support Act.

New item 13A will operate to ensure that paragraph (b) of the definition of potential drug test trial pool member in subclause 1(1) of Schedule 1 to the Social Security Administration Act (inserted by item 28) applies to the Farm Household Support Act as if the words ‘(other than farm household allowance)’ were inserted after ‘Newstart Allowance’ and after ‘Youth Allowance’. The purpose of this amendment is to ensure that a person who receives farm household allowance is not to be treated as a potential drug test trial pool member for the purposes of the drug test trial established under this Schedule.
Schedule 13 – Removal of exemptions for drug or alcohol dependence

Summary

This Schedule provides that exemptions from the activity test and participation requirements will no longer be available in relation to circumstances directly attributable to drug or alcohol misuse (including abuse of drugs or alcohol) for certain social security recipients.

Background

This Schedule applies to recipients of:

- Newstart Allowance,
- Youth Allowance (other) (that is, a Youth Allowance recipient who is a job seeker and not a Youth Allowance full-time student or a Youth Allowance Australian apprentice), disability support pension (under 35 with participation requirements),
- special benefit (with activity test requirements), and
- parenting payment single (with participation requirements).

Under current arrangements, these social security recipients may be granted an exemption from their activity test or participation requirements in some circumstances that may be directly attributable to drug or alcohol misuse or abuse. For example, exemptions may be granted in circumstances of temporary incapacity or special circumstances where these circumstances were potentially caused by drug use. It is not in line with community expectations that someone on welfare payments is exempt from their mutual obligation requirements primarily due to alcohol or drug usage.

From 1 January 2018, recipients of these activity tested payments will no longer have access to exemptions from their mutual obligation or participation requirements where the reason for the exemption is wholly or predominantly attributable to drug or alcohol dependency or misuse. For example, an exemption would not be granted where a person applies for an incapacity exemption relating to a drug or alcohol dependency condition or for a special circumstances exemption due to a major personal crisis because they have been evicted from their home due to drug or alcohol misuse.

Recipients who are not eligible for an exemption will remain connected to their employment services provider and will have to satisfy their mutual obligation or participation requirements as per existing arrangements, although their requirements will be tailored to take into account their particular barriers (for example, engaging in appropriate drug or alcohol treatment).

Recipients who fail to meet their requirements without a reasonable excuse may be subject to the job seeker compliance framework, including the new targeted compliance framework from 1 July 2018.
A person who is a ‘declared program participant’ (as determined in an instrument made by the Secretary under new section 28C of the Social Security Act) will not be subject to the amendments made by this Schedule. It is intended that a declared program participant will include remote job seekers participating in the Community Development Program.

The amendments made by this Schedule commence on 1 January 2018 if the Act receives Royal Assent before 1 January 2018. If the Act receives Royal Assent on or after 1 January 2018 this Schedule will commence on the first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives Royal Assent.

**Explanation of the changes**

*Social Security Act*

**Item 1** inserts a definition of *declared program participant* into subsection 23(1). This new definition provides that ‘declared program participant’ means a person who is a participant, in accordance with the applicable provisions (if any) of a determination made under section 28C, in an employment services program specified in that determination.

**Item 2** inserts new section 28C after section 28B. New section 28C provides that the Secretary may, by legislative instrument, make a determination for the purposes of the new definition of declared program participant in subsection 23(1). The purpose of this instrument is to prevent participants in certain employment services programs from being subject to the amendments made in items 3 to 12 of this Schedule.

**Item 3** inserts new subsection 94C(1A) after subsection 94C(1). Subsection 94C(1) provides that a person who claims or receives disability support pension is covered by a participation exemption if the Secretary is satisfied that the person is temporarily unable to meet the participation requirements because of illness or an accident. New subsection 94C(1A) provides that subsection 94C(1) does not apply to illness, or an accident, wholly or predominantly attributable to the person’s dependence on alcohol or another drug, unless the person is a declared program participant.

**Item 4** inserts new subsection 94F(1A) after subsection 94F(1). Subsection 94F(1) provides that a person who claims or receives disability support pension is covered by a participation exemption for a period determined by the Secretary if:

(a) the Secretary is satisfied that special circumstances, beyond the person’s control, exist; and

(b) the Secretary is satisfied that in those circumstances it would be unreasonable to expect the person to meet the participation requirements for that period.

New subsection 94F(1A) provides that the exemption in subsection 94F(1) does not apply to circumstances wholly or predominantly attributable to the person’s misuse of alcohol or another drug, unless the person is a declared program participant.
Item 5 inserts new subsection 502F(1A) after subsection 502F(1). Subsection 502F(1) provides that a person who claims or receives parenting payment is covered by a participation exemption in respect of a period if:

(a) the Secretary is satisfied that special circumstances, beyond the person's control, exist; and

(b) the Secretary is satisfied that in those circumstances it would be unreasonable to expect the person to meet the participation requirements for that period.

New subsection 502F(1A) provides that the exemption in subsection 502F(1) does not apply to circumstances wholly or predominantly attributable to the person's misuse of alcohol or another drug, unless the person is a declared program participant.

Item 6 inserts new subsection 502H(1AA) after subsection 502H(1). Subsection 502H(1) provides that a person who claims or receives parenting payment is covered by a participation exemption in respect of a period if throughout the period the person is incapacitated for work because of sickness or an accident, the person's incapacity meets the other criteria in subsection 502H(1) and the Secretary is satisfied that the incapacity has not been brought about with a view to obtaining an exemption from meeting the participation requirements. New subsection 502H(1AA) provides that subsection 502H(1) does not apply to sickness, or an accident, wholly or predominantly attributable to the person's dependence on alcohol or another drug, unless the person is a declared program participant.

Item 7 inserts new subsection 542A(1AA) after subsection 542A(1). Subsection 542A(1) provides that a person who claims or receives Youth Allowance has a temporary incapacity exemption for a period if, throughout the period, the person:

- if the person is undertaking full-time study--does not have the capacity to undertake the course of education in respect of which he or she is undertaking full-time study; or

- if the person is an early school leaver and a Youth Allowance Employment Pathway Plan is in force in relation to the person--does not have the capacity to undertake the required activities; or

- in any other case--is incapacitated for work;

because of sickness or an accident.

The person's incapacity must also meet the other criteria in subsection 542A(1) and the Secretary must be satisfied that the incapacity has not been brought about with a view to obtaining an exemption from the activity test for Youth Allowance.
New subsection 542A(1AA) provides that subsection 542A(1) does not apply to sickness, or an accident, wholly or predominantly attributable to the person’s dependence on alcohol or another drug, unless the person is a declared program participant, a new apprentice or undertaking full-time study.

**Item 8** inserts **new subsection 542H(1AA)** after subsection 542H(1). Subsection 542H(1) provides that a person who claims or receives Youth Allowance has a specific circumstances exemption in respect of a period if:

(a) the Secretary is satisfied that special circumstances beyond the person’s control exist; and

(b) the Secretary is satisfied that in those circumstances it would be unreasonable to expect the person to satisfy the activity test for that period.

New subsection 542H(1AA) provides that the exemption in subsection 542H(1) does not apply to circumstances wholly or predominantly attributable to the person’s misuse of alcohol or another drug, unless the person is a declared program participant, a new apprentice or undertaking full-time study.

**Item 9** inserts **new subsection 603A(1A)** after subsection 603A(1). Subsection 603A(1) provides that a person who claims or receives Newstart Allowance is not required to satisfy the activity test for a period if:

(a) the Secretary is satisfied that special circumstances, beyond the person’s control, exist; and

(b) the Secretary is satisfied that in those circumstances it would be unreasonable to expect the person to comply with the activity test for that period.

New subsection 603A(1A) provides that the exemption in subsection 603A(1) does not apply to circumstances wholly or predominantly attributable to the person’s misuse of alcohol or another drug, unless the person is a declared program participant.

**Item 10** inserts **new subsection 603C(1AA)** after subsection 603C(1). Subsection 603C(1) provides that a person who claims or receives Newstart Allowance is not required to satisfy the activity test in respect of a period if throughout the period the person is incapacitated for work because of sickness or an accident, the person’s incapacity meets the other criteria in subsection 603C(1) and the Secretary is satisfied that the incapacity has not been brought about with a view to obtaining an exemption from the activity test. New subsection 603C(1AA) provides that subsection 603C(1) does not apply to sickness, or an accident, wholly or predominantly attributable to the person’s dependence on alcohol or another drug, unless the person is a declared program participant.
Item 11 inserts new subsection 731E(1A) after subsection 731E(1). Subsection 731E(1) provides that a person who claims or receives a special benefit is not required to satisfy the activity test for a period if:

(a) the Secretary is satisfied that special circumstances, beyond the person's control, exist; and

(b) the Secretary is satisfied that in those circumstances it would be unreasonable to expect the person to comply with the activity test for that period.

New subsection 731E(1A) provides that the exemption in subsection 731E(1) does not apply to circumstances wholly or predominantly attributable to the person's misuse of alcohol or another drug, unless the person is a declared program participant.

Item 12 inserts new subsection 731K(1AA) after subsection 731K(1). Subsection 731K(1) provides that a person who claims or receives a special benefit is not required to satisfy the activity test in respect of a period if throughout the period the person is incapacitated for work because of sickness or an accident, the person's incapacity meets the other criteria in subsection 731K(1) and the Secretary is satisfied that the incapacity has not been brought about with a view to avoiding any requirement to satisfy the activity test. New subsection 731K(1AA) provides that subsection 731K(1) does not apply to sickness, or an accident, wholly or predominantly attributable to the person's dependence on alcohol or another drug, unless the person is a declared program participant.

Item 13 is an application provision that provides that the amendments made by this Schedule apply in relation to circumstances, illness or sickness existing, and accidents occurring, on or after the commencement of this Schedule.
Schedule 14 – Changes to reasonable excuses

**Summary**

This Schedule amends the Social Security Administration Act to provide the Secretary with a new power to make a legislative instrument setting out matters that must not be taken into account when deciding whether a person has a reasonable excuse for committing a no show no pay failure, a connection failure, a reconnection failure, a serious failure, or a non-attendance failure.

It is envisaged that the Secretary would exercise this new power to close a loophole in the current provisions surrounding reasonable excuse, so that income support recipients will be unable to repeatedly use drug or alcohol abuse or dependency as a reasonable excuse for relevant participation failures, without seeking treatment if it is available and appropriate as part of their Employment Pathway Plan.

**Background**

Under social security law, job seekers can be penalised for committing relevant participation failures, unless they have a reasonable excuse. Currently, there is no restriction on the number of times that an individual can use a reasonable excuse, which means that individuals can repeatedly avoid their mutual obligation requirements due to drug and alcohol abuse or dependency. This provides no incentive for them to address their drug and alcohol issues.

From the commencement of this Schedule, job seekers will be given the option of voluntarily undertaking treatment for their drug or alcohol use or dependency (if appropriate and available), following a relevant participation failure due to such abuse or dependency. Alternatively, they may continue with their normal mutual obligation requirements as managed by their employment services provider. For job seekers who choose treatment, participating in this treatment will reduce, or in some circumstances fully meet, their mutual obligation requirements. Once a job seeker has commenced treatment, failure to participate would not be treated as a participation failure but, if the job seeker is exited from or discontinues the treatment without good reason, they would again need to meet their usual mutual obligation requirements and would be subject to compliance action if they failed to do so.

Where job seekers refuse to participate in available treatment, the employment services provider will pass this information to the Department of Human Services. However, if a job seeker commits another relevant participation failure, drug or alcohol abuse or dependency will not be a consideration when Human Services determines if the job seeker has a reasonable excuse for doing so, and they may be subject to financial penalties consistent with the compliance framework. This is because it is envisaged that the Secretary will exercise the new power provided for in this Schedule to make a legislative instrument determining that where a person’s abuse of, or dependency on, drugs or alcohol is used once as a reasonable excuse for a relevant participation failure, such abuse or dependency must not be used in relation to determining whether the person has a reasonable excuse for committing a second or subsequent participation failure if they have previously refused available and appropriate treatment.
However, if the job seeker has other valid reasons for the relevant participation failure, these will be considered in assessing a reasonable excuse.

It is intended that existing reasonable excuse provisions will continue to apply following the initial relevant participation failure due to drug or alcohol misuse or dependency where treatment is unavailable/inappropriate, including where the job seeker:

- is ineligible or unable to participate;
- has already participated in all available treatment;
- has agreed but not yet commenced in treatment; or
- has relapsed since completing treatment and is seeking further treatment.

The amendments made by this Schedule commence on the later of 1 January 2018, and the day after the Act receives the Royal Assent.

**Explanation of the changes**

Social Security Administration Act

**Items 1 – 5** amend the notes in subsections 42C(4), 42E(4), 42H(3), 42N(2) and 42SC(2).

Currently, among other things, the notes in subsections 42C(4), 42E(4), 42H(3), 42N(2) and 42SC(2) inform the reader that the Secretary must take certain matters into account for the purposes of determining whether a person has a reasonable excuse for committing a no show no pay failure, a connection failure, a reconnection failure, a serious failure, or a non-attendance failure (respectively). These notes direct the reader to section 42U, which currently contains the requirement for the Secretary to make a legislative instrument determining the matters that must be taken into account.

Items 1 – 5 amend the notes in subsections 42C(4), 42E(4), 42H(3), 42N(2) and 42SC(2) to inform the reader that the Secretary may also be prohibited from taking certain matters into account for the purposes of determining whether a person has a reasonable excuse for committing a no show no pay failure, a connection failure, a reconnection failure, a serious failure, or a non-attendance failure (respectively). These amendments are consequential to the amendment that item 7 in this Schedule makes to section 42U. Item 7 amends section 42U to insert new subsection 42U(3), to provide that the Secretary may make a legislative instrument setting out the matters that must not be taken into account in deciding whether a person has a reasonable excuse for committing the relevant participation failures.

**Item 6** inserts the heading ‘Matters to be taken into account’ before subsection 42U(1).
Subsection 42U(1) provides that the Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether an individual has a reasonable excuse for committing the participation failures listed in subsection 42U(1). Item 6 inserts a heading above this subsection, to inform the reader of the content of the provision.

**Item 7** amends section 42U to insert new subsection 42U(3).

Subsection 42U(3) enables the Secretary to make a legislative instrument determining the matters that the Secretary must not take into account when deciding whether a person has a reasonable excuse for committing certain participation failures. These failures are: a no show no pay failure (see paragraph 42C(4)(a)); a connection failure (see paragraph 42E(4)(a)); a reconnect failure (see paragraph 42H(3)(a)); a serious failure (see paragraph 42N(2)(a)); and a non-attendance failure (see subsection 42SC(2)).

The power to make the legislative instrument under subsection 42U(3) is discretionary. That is, it would be for the Secretary to decide whether to exercise the power make an instrument under subsection 42U(3) or not.

It is envisaged that one exercise of the power in proposed subsection 42U(3) would be for the Secretary to determine that where a person’s misuse of, or dependency on, drugs or alcohol is used once as a reasonable excuse for a relevant participation failure, such misuse or dependency must not be considered in relation to determining whether the person has a reasonable excuse for committing a second or subsequent participation failure.
Schedule 15 – Targeted compliance framework

Summary

This Schedule will amend the Social Security Administration Act to introduce a new compliance framework for mutual obligation requirements in relation to participation payments. From the date of commencement, a two phase compliance framework will be introduced, which will use payment suspension to ensure re-engagement by the majority of job seekers who generally meet their requirements and apply strong penalties to persistently non-compliant job seekers. Job seekers who repeatedly fail to comply with their employment pathway plan (EPP) requirements, with no underlying cause, will face stronger penalties, with graduated loss of income support payments culminating in payment cancellation for 4 weeks for the most non-compliant job seekers.

The new compliance framework will also provide more support for vulnerable job seekers, some of whom find the current compliance system too complex and challenging to navigate. Job seekers’ capability and requirements will be assessed at least twice before they face any financial penalty - once by the employment services provider and once by the Department of Human Services.

This Schedule will apply to income support recipients who are currently subject to participation requirements (i.e. in receipt of participation payments), except for participants in certain employment services programmes specified in a legislative instrument. The new compliance framework in this Schedule is to apply to participants in jobactive, ParentsNext and Disability Employment Services. It is intended that income support recipients with participation requirements who are in the Community Development Programme should continue to be subject to existing compliance arrangements under Division 3A of Part 3 of the Social Security Administration Act.

Background

Payment suspension for non-compliance

Under the new compliance framework, for every failure to meet a requirement, job seekers will have their income support payment suspended. Payment suspension has proved to be effective in ensuring re-engagement in most cases without the need to actually deduct payments.

Income support payment suspensions will apply for failures to attend appointments, activities or job interviews, failing to enter into or comply with an EPP, failing to follow up on a job referral or for refusing or failing to commence in a suitable job. Misconduct, such that the job seeker’s behaviour is unreasonable and prevents the purpose of the appointment, activity or interview from being achieved, will also result in payment suspension.

The requirement a job seeker must meet to end a payment suspension will depend on the nature of the failure they committed. Job seekers who have failed to attend or committed misconduct at an appointment, activity or job interview will be able to end
their payment suspensions, and be fully back paid, once they re-engage with their employment service provider by attending an appointment. Job seekers who have had their payment suspended due to their failure to enter into an EPP or failure to undertake adequate job search will need to enter the plan or complete the job search in order to end their suspension and receive back payment.

**Financial penalties for refusing work and voluntary unemployment**

Job seekers who have failed to accept or commence suitable work will have their payment suspended until they re-engage with their employment services provider to discuss their reason for non-compliance. To reinforce the seriousness of refusing or failing to accept or commence work that they have been found to be capable of doing, job seekers may be subject to payment cancellation and a 4 week non-payment period if they are found to have refused or failed to commence the work without a reasonable excuse.

Job seekers who leave suitable work voluntarily (without a valid reason) or are dismissed from suitable work due to misconduct will (in addition to having their payment cancelled if they are receiving payment) be subject to a 4 week non-payment period (or 6 weeks where the person received relocation assistance to move to take up the work), replacing the previous eight (or twelve) week unemployment non-payment period. This will apply whether the person is currently qualified for payment or is claiming payment. As is currently the case, no penalty will be applied if the job seeker leaves the job in circumstances where it was reasonable to do so, or the loss of their job was not due to misconduct.

These changes reinforce the principle that income support payments for the unemployed should only be available to those who are genuine in their efforts to move into paid work.

**Financial penalties for persistent non-compliance**

The new framework will introduce stronger penalties for the minority of recalcitrant job seekers who are not genuine in their efforts to find work and persistently fail to meet their requirements or who refuse suitable work without a valid reason or any underlying reasons for their non-compliance.

Job seekers who have demonstrated persistent non-compliance (that is, have committed persistent mutual obligation failures), by repeatedly incurring payment suspensions for the failures outlined above, will be subject to escalating reductions in their income support payments for further non-compliance with their requirements. It is intended that this will send a strong message that consistently failing to meet requirements is not acceptable. In practice, administrative arrangements will ensure that job seekers will need to have committed multiple failures without a reasonable excuse before they can be determined to be persistently non-compliant, and their provider and the Department of Human Services (DHS) will conduct checks to ensure the job seeker does not have any undisclosed issues that are affecting their ability to comply, and that their employment pathway plan is suitable for their
circumstances. The factors that the Secretary must consider as constituting persistent non-compliance will be included in a legislative instrument.

To provide sufficient deterrence for wilfully non-compliant job seekers, the amount of the financial penalties will escalate with each additional failure and ultimately result in cancellation of payment. For the job seeker’s first failure after demonstrating persistent non-compliance, the rate of participation payment and any add-on payments or supplements for the instalment period in which the failure is committed or determined will be halved. For a second failure, the job seeker will lose their entire participation payment and any add-on payments or supplements for that instalment period. For a third failure, the job seeker’s payment will be cancelled from the start of the instalment period and a 4 week non-payment period, starting from the date of cancellation, will apply if the job seeker reapply for payment.

As is currently the case, before any penalty is applied the job seeker will be notified and be given the opportunity to contact DHS to explain their circumstances. If the job seeker has a reasonable excuse for the failure, they will not have their payment reduced or cancelled.

Job seekers will also continue to be able to seek a review of any decision to apply a financial penalty or to cancel their payment. However they will not receive payment pending the outcome of the review, but will have their payment reinstated and back paid if the review is decided in their favour.

To provide a strong incentive to change their behaviour and start to fully comply, administrative arrangements will ensure that job seekers who do not incur any failures for a specified period will no longer be considered to be persistently non-compliant. These arrangements will also be included in a disallowable instrument.

There will be no waivers for non-payment or preclusion periods under the new compliance framework. The current widespread availability of waivers, where over 88 per cent of penalties for serious failures are waived, has undermined the effectiveness of these penalties to the extent that they no longer provide a deterrent to job seekers who persistently fail to meet their requirements.

The amendments made by this Schedule commence on the later of 1 July 2018 and the day after Royal Assent.

**Explanation of the changes**

**Part 1 – Main amendments**

*Social Security Administration Act*

**Item 1** inserts new Division 3AA into Part 3 of the Social Security Administration Act, ‘Division 3AA – Compliance with participation payment obligations: persons other than declared program participants’.
Currently, all persons in receipt of participation payments are subject to the compliance framework set out in Division 3A of Part 3 of the Social Security Administration Act. New Division 3AA will provide for a new compliance framework to apply to persons receiving participation payments who are not declared program participants.

Participation payments are newstart allowance, parenting payment (for those subject to participation requirements), youth allowance (for those who are not full-time students or new apprentices) and special benefit (for nominated visa holders).

Declared program participants receiving participation payments will continue to be subject to the compliance framework set out in Division 3A.

In summary, the new targeted compliance framework will:

- Consolidate failures into mutual obligation failures (including: failure to enter into an EPP, attend or behave appropriately at an appointment or an activity); work refusal failures (refusal or failure to accept a suitable job offer); and unemployment failures (unemployment resulting from a voluntary act that was not reasonable, or misconduct).
- Suspend participation payments (that is, determine that they are not payable) if a person commits a mutual obligation failure or a work refusal failure. Payment suspension will ensure quick re-engagement by the majority of job seekers (i.e. those who generally meet their requirements) because they will be back-paid their participation payment once they re-engage.
- If a person is persistently non-compliant and has no reasonable excuse for having committed a mutual obligation failure, the person will also be subject to stronger penalties, with graduated loss of their participation payments culminating in payment cancellation and a 4 week non-payment period.
- If a person commits a work refusal failure, as well as being suspended, their payment will be cancelled if the person does not have a reasonable excuse for the work refusal failure. If their participation payment is cancelled, a 4 week non-payment period will apply (which could impact the start day of their payments if they make a new claim for a participation payment).
- If a person commits an unemployment failure, their participation payment will be cancelled and, if they reclaim income support, it will not be payable for a period of 4 weeks (6 weeks if the person is receiving relocation assistance in specified circumstances). If they are receiving a payment at the time of the unemployment failure, their payment will also be cancelled and income support will not be payable for 4 weeks.

Section 42AA – Simplified outline

The new section 42AA sets out a simplified outline of the operation of new Division 3AA.

Section 42AB – Division not to apply to declared program participants

The new section 42AB provides that new Division 3AA only applies to a person who is not a declared program participant.
Declared program participants receiving participation payments will continue to be subject to the compliance framework set out in Division 3A. A ‘declared program participant’ will be defined in subsection 23(1) of the Social Security Act. New section 28C will provide that the Secretary may, by legislative instrument, make a determination for the purposes of the definition of declared program participant in subsection 23(1) of the Social Security Act (see items 1 and 2 in Schedule 13) regarding the definition of ‘declared program participant’ and new section 28C). It is intended that the Secretary will initially determine Community Development Programme participants to be ‘declared program participants’.

Section 42AC - Mutual Obligation Failures

New section 42AC is in ‘Subdivision B – Failures for which compliance action must be taken’. It sets out the circumstances when a person in receipt of a participation payment commits a mutual obligation failure. These are:

- The person fails to comply with a requirement that was notified to the person under subsection 63(2) or (4). Section 63 of the Social Security Administration Act provides the Secretary with the power to require certain persons to do certain things, such as attend appointments or provide information (paragraph 42AC(1)(a)). (Subparagraphs 42AC(1)(a)(i) and (ii) created exceptions to this failure where the requirement relates to new paragraph 63(4)(c), in relation to new testing requirements for drug test trial pool members - see Schedule 12 of this Bill)).
- The person fails to comply with a requirement, under section 501 (parenting payment), 544A (youth allowance), 605 (newstart allowance) or 731L (special benefit) of the Social Security Act, to enter into an EPP (paragraph 42AC(1)(b)). (An EPP sets out a participation payment recipient’s mutual obligation requirements. A person must enter into and comply with an EPP in order to continue to qualify for a participation payment).
- The person fails to attend, or be punctual for, an appointment that the person was required to attend by a notice under subsection 63(2) (except where the notice is of a kind described in subparagraph 42AC(1)(a)(i)), or by an EPP that is in force in relation to the person (paragraph 42AC(1)(c)). (Subsection 42AC(4) ensures that this paragraph does not limit paragraph 42AC(1)(a)).
- The person fails to attend, to be punctual for, or to participate in, an activity that the person is required to undertake by an employment pathway plan that is in force for the person (paragraph 42AC(1)(d)).
- An EPP is in force for the person and the person fails to satisfy the Secretary that the person has undertaken adequate job search efforts in relation to a period worked out in accordance with the plan (paragraph 42AC(1)(e)). The question whether a person has undertaken adequate job search efforts is to be worked out in accordance with a determination that the Secretary must, by legislative instrument, make (see new subsections 42AC(2) and (3)).
- An EPP is in force for the person and the person fails to comply with any other requirement of the plan that applies for the person (paragraph 42AC(1)(f)).
- The Secretary is satisfied that the person acted in an inappropriate manner during an appointment mentioned in 42AC(1)(c) that the person attended; or while participating in an activity referred to in paragraph 42AC(1)(d) (paragraph 42AC(1)(g)).
- The person intentionally acts in a manner and it is reasonably foreseeable that acting in that manner could result in an offer of employment not being made to the person (paragraph 42AC(1)(h)).
- The person fails to attend a job interview or act on a job opportunity when requested to do so by an employment service provider (paragraph 42AC(1)(i)). Subsection 42AC(4) ensures that this paragraph does not limit paragraph 42AC(1)(h).

A note after subsection 42AC(1) provides that in certain circumstances a person is taken to be receiving a participation payment even if it is not payable to the person (in this regard, see new section 42AQ).

An additional note notes that paragraph 63(4)(c) (mentioned in paragraph 42AC(1)(a)) relates to requirements for drug test trial pool members.

Section 42AD – Work refusal failures

New section 42AD is in ‘Subdivision B – Failures for which compliance action must be taken’. It sets out the circumstances when a person commits a work refusal failure. Relevantly, it provides that a person commits a work refusal failure if they are receiving a participation payment and they refuse or fail to accept an offer of suitable employment.

This section maintains the existing ground in subsection 42N(1) of Division 3A. It ensures that decision makers assess the suitability of the employment being offered (not the suitability of the offer itself).

Currently, decision makers are guided in this assessment by the kind of factors the Social Security Act recognises as being relevant to what is not suitable employment for the purposes of the activity test, which requires that someone actively seek and be willing to undertake paid work, other than paid work that is unsuitable (see for example subsection 601(2A) of the Social Security Act). Again by way of example, subsection 601(2A) sets out nine factors relevant to deciding whether particular paid work is unsuitable. These include the terms and conditions of work and the skills, experience, and family and other personal circumstances of a person. Whilst this criterion is not directly incorporated into new section 42AG (rather, that provision refers to refusing an offer of suitable work), the unsuitability of the employment the person refused is relevant to the question of whether the person had a reasonable excuse for refusing or failing to accept the offer (see new section 42AG).

A note after section 42AD provides that in certain circumstances a person is taken to be receiving a participation payment even if it is not payable to the person (in this regard, see new section 42AQ).

Section 42AE – Unemployment Failures

New section 42AE is in ‘Subdivision B – Failures for which compliance action must be taken’. It sets out the circumstances when a person commits an unemployment failure. Subsection 42AE(1) provides that a person commits an unemployment failure if the person is receiving a participation payment and either the person becomes
unemployed as a result (whether direct or indirect) of a voluntary act of the person, or the person becomes unemployed as a result of the person's misconduct as an employee.

Subsection 42AE(2) provides that a person commits an unemployment failure if a person is not receiving, but has made a claim for, a participation payment and, whether before or after making the claim, becomes unemployed as a result (whether direct or indirect) of a voluntary act of the person or as a result of the person's misconduct as an employee.

However, a person does not commit an unemployment failure because of subparagraph 42AE(1)(b)(i) or subparagraph 42AE(2)(b)(i) if the person satisfies the Secretary that the voluntary act was reasonable (subsection 42AE(3)).

This section maintains the existing ground in subsection 42S(1) of Division 3A. However, instead of an eight week non-payment period applying (or a 12 week period applying if relocation assistance is relevant), a 4 week non-payment period (or a 6 week period if relocation assistance is relevant) applies (see new section 42AO and new subsection 42AP(5)). In addition, if the person is receiving a payment at the time, the payment must be cancelled (see new subsection 42AH(1)).

Subsection 42AE(3) retains the exception that a 4 week non-payment period will not apply to a voluntary act that is reasonable.

**Section 42AF – Compliance action for mutual obligation failures**

New section 42AF is in 'Subdivision C – Compliance action that must be taken for particular failures'. It sets out the relevant compliance action that must be taken if a person has committed a mutual obligation failure.

Subsection 42AF(1) sets out the default position. That is, if a person commits a mutual obligation failure, the Secretary must determine that the person's participation payment is not payable for a period (the effect of the determination is set out in new section 42AL), and take action under subsection 42AF(2) if it applies.

Subsections 42AF(2) and (3) apply if the person has persistently committed mutual obligation failures and does not have a reasonable excuse for the mutual obligation failure. In such circumstances, the Secretary must also, in accordance with the determination made by the Minister under new section 42AR, determine whether an instalment of a person’s payment should be reduced by a certain amount, or whether the person’s payment should be cancelled. Subsection 42AF(3) makes it clear that the Secretary may cancel the payment even if it has already been suspended under subsection 42AF(1).

Under new subsection 42AR, the Minister’s determination will set out, among other things, the circumstances in which the Secretary must, or must not, be satisfied the person has persistently committed mutual obligation failures.

(Reasonable excuse is generally dealt with in new section 42AI).
Section 42AF ensures that every time a person commits a mutual obligation failure their payment will, as a minimum, be suspended (that is, determined to not be payable) until the person meets a reconnection requirement – see new section 42AL, at which time they will be back paid. If a person is found to have been persistently non-compliant (that is, to have persistently committed mutual obligation failures) and the person does not have a reasonable excuse for the failure, stronger penalties must apply. In those cases, the relevant instalment of the person’s participation payment will be reduced by a certain amount (see section 42AN), or the person’s payment will be cancelled. Whether a reduction should be applied, and if so by what proportion, or whether the participation payment should be cancelled, must be worked out in accordance with a determination made by the Minister for this purpose (see new section 42AR).

Subsection 42AF(4) ensures that if a person has already been penalised and the instalment of their payment reduced by the whole amount of the instalment, and the person commits an additional mutual obligation failure during that instalment period, no compliance action will be taken in relation to that failure.

Section 42AG – Compliance action for work refusal failures

New section 42AG is in ‘Subdivision C – Compliance action that must be taken for particular failures’. It sets out the relevant compliance action that must be taken if a person commits a work refusal failure.

Subsection 42AG(1) sets out the default position. That is, the Secretary must determine that the person’s participation payment is not payable for a period (the effect of this determination is set out in new section 42AL), unless subsection 42AG(4) applies.

Subsection 42AG(2) applies if the person does not have a reasonable excuse for the work refusal failure. In such circumstances, the Secretary must cancel the person’s participation payment. (The effect of the cancellation is set out in new section 42AP).

(Reasonable excuse is generally dealt with in new section 42AI).

Subsection 42AG(3) provides that a determination to cancel a person’s payment under subsection 42AG(2) has effect despite any determination made under subsection 42AG(1) for the failure. This makes it clear that regardless of whether the Secretary has determined that the payment is not payable, the Secretary must cancel the payment once it is clear that the person has no reasonable excuse for the work refusal failure.

Subsection 42AG(4) deals with the circumstance where a person has already been penalised for committing a mutual obligation failure and, as a result, the instalment of their income support is reduced by the whole amount for an instalment period. In those circumstances, if the person commits a work refusal failure during that instalment period, no compliance action will be taken in relation to the work refusal failure.
This section ensures that every time a person commits a work refusal failure their payment will, as a minimum, be suspended. If a person is found to not have a reasonable excuse for the failure a stronger penalty will apply - the person’s payment will be cancelled.

Section 42AH – Compliance action for unemployment failures

New section 42AH is in ‘Subdivision C – Compliance action that must be taken for particular failures’. It sets out the relevant compliance action that must be taken if a person commits an unemployment failure.

Under subsection 42AH(1), if a person receiving a participation payment commits an unemployment failure, the Secretary must cancel the payment. (A note under subsection 42AH(1) notes that participation payments will not be payable to the person for the person’s post-cancellation non-payment period).

Under subsection 42AH(2), if a person who has made a claim for (but is not receiving) a participation payment commits an unemployment failure, the Secretary must determine that participation payments are not payable to the person for a period (that period, the unemployment preclusion period, is specified in section 42AO). These provisions ensure that the person will not begin to receive their payments until after the unemployment preclusion period has expired.

Section 42AI – Reasonable excuses – matters that must or must not be taken into account

Subsection 42AI(1) provides that the Secretary must, by legislative instrument, determine the matters a decision maker must take into account in deciding whether a person has a reasonable excuse for committing a mutual obligation failure or a work refusal failure.

Subsection 42AI(2) clarifies that subsection (1) does not limit the matters the Secretary may take into account in deciding whether the person has a reasonable excuse.

Subsection 42AI(3) provides that the Secretary may, by legislative instrument, determine matters a decision maker must not take into account in deciding whether a person has a reasonable excuse for committing a mutual obligation failure or a work refusal failure.

The stronger penalties (that is, payment reduction or payment cancellation) will be imposed on a person who has persistently committed mutual obligation failures, or has committed a work refusal failure, where the person does not satisfy the decision maker that they have a reasonable excuse (see new subsections 42AF(2) and 42AG(2)).

This section ensures that decision makers are obliged to consider the Secretary’s determination outlining the matters that must and (if relevant) must not be taken into account in determining whether the person had a reasonable excuse for committing the mutual obligation or work refusal failure.
Section 42AJ – Reasonable excuses for mutual obligation failures – prior notification required for certain failures

Subsection 42AJ(1) provides that for certain mutual obligation failures an excuse will not be reasonable unless:
- (a) the person notifies the excuse in the particular way specified in subsection 42AJ(3) for the particular mutual obligation failure; or
- (b) the Secretary is satisfied that there were circumstances in which it was not reasonable to expect the person to give such a notification.

Subsection 42AJ(2) lists 4 mutual obligation failures that will generally require prior notification of a reasonable excuse. In general, they are failures relating to attendance or participation at appointments or activities, or to make contact with DHS.

Subsection 42AJ(3) sets out the way the person must notify the excuse and to whom the person must notify the excuse for the particular mutual obligation failure that applies.

The purpose of this section is to motivate persons to give prior notice of any excuse they may have for not being able to comply with certain mutual obligation requirements.

Section 42AK – Relationship between provisions of this Subdivision

New section 42AK ensures that sections 42AF (compliance action to be taken in relation to mutual obligation failures), 42AG (compliance action to be taken in relation to work refusal failures) and 42AH (compliance action to be taken in relation to unemployment failures) do not limit each other.

Section 42AL – Payment suspension periods for mutual obligation failures and work refusal failures

New section 42AL in ‘Subdivision D – Effect of taking particular compliance action’ sets out how to work out the payment suspension period for mutual obligation failures and work refusal failures.

Subsection 42AL(1) provides that if the Secretary determines under section 42AF or section 42AG that a participation payment is not payable to a person for the period, the participation payment is not payable for the period (the payment suspension period) worked out under this section.

Subsections 42AL(2) and 42AL(3) set out the rules for working out the payment suspension period for mutual obligation failures and work refusal failures.

The payment suspension period will begin at the start of the instalment period in which the person commits the mutual obligation failure or the work refusal failure (paragraph 42AL(2)(a)) or, if the Secretary determines that a later instalment period is more appropriate, that later instalment period (paragraph 42AL(2)(b)). This ensures that, as a general rule, payment will be suspended from the start of the
installment period in which the person commits the mutual obligation failure. However, in circumstances where a person has already been paid for that installment period, the Secretary is able to impose the payment suspension in relation to a later installment period. It avoids having to recover the payment for the installment period in which the mutual obligation failure was committed from the person, whilst still ensuring the person suffers the consequences of having committed the failure.

The payment suspension period will typically end immediately before the day the person complies with the reconnection requirement imposed under new subsection 42AM(1) (which deals with reconnection requirements for mutual obligation failures and work refusal failures) (paragraph 42AL(3)(a)). However, if the Secretary determines that an earlier day is more appropriate, the payment suspension period ends immediately before that earlier day (paragraph 42AL(3)(b)).

Subsection 42AL(4) ensures that once the suspension period ends in accordance with subsection 42AL(3), the person will become entitled to be back-paid for the period during which their payment was suspended (subject to meeting the usual requirements under the social security law to be entitled to payment for that period). (However, the back pay may be reduced, including to nil, if the installment period for which an installment is to be reduced under section 42AN overlaps with the payment suspension period).

Section 42AM – Reconnection requirements for mutual obligation failures and work refusal failures

Subsection 42AM(1) provides that the Secretary must impose a reconnection requirement on a person if a determination has been made under section 42AF or section 42AG that their payment is not payable because of a mutual obligation failure or a work refusal failure.

Subsection 42AM(2) obliges the Secretary to notify the person, in any way the Secretary considers appropriate, of the reconnection requirement and the effect not complying with the reconnection requirement will have. This subsection allows a person to be put on notice about the possibility of their payment being cancelled if they fail to reconnect.

It is important that decision makers impose the reconnection requirement and notify the person of that requirement (and the consequences of failing to reconnect), because complying with their reconnection requirement serves to end a person’s suspension period (see paragraph 42AL(3)(a)).

Subsection 42AM(3) requires the Secretary to cancel a person’s participation payment if the person does not comply with their reconnection requirement within 4 weeks after they are notified under subsection 42AM(2). This subsection will not apply if the Secretary has ended the suspension period on an earlier day in accordance with paragraph 42AL(3)(b). This subsection provides a way of cancelling a person’s payment to avoid the unlikely situation of a person’s participation payment remaining suspended indefinitely simply because they fail to re-engage with the employment services provider or the Department of Human Services.
Subsection 42AM(4) provides that if the Secretary determines that a person’s participation payment is cancelled under subsection 42AM(3), the cancellation takes effect 4 weeks after the person was notified of the reconnection requirement.

Section 42AN – Reducing instalments of participation payments for mutual obligation failures

New section 42AN in ‘Subdivision D – Effect of taking particular compliance action’ sets out how to work out the amount by which an instalment of a participation payment is to be reduced, and the period for which it is to be reduced (the reduction period), for a person who has committed a mutual obligation failure and in respect of whom the Secretary has determined under paragraph 42AF(2)(c) that their instalment should be reduced (that is, has made a reduction determination).

Subsection 42AN(2) provides that the reduction period must be the instalment period in which the person commits the mutual obligation failure. However, if the Secretary determines that a later instalment period is more appropriate, the payment reduction period will be that later instalment period. This ensures that, as a general rule, payment will be reduced from the instalment period in which the person commits the mutual obligation failure (paragraph 42AN(2)(a)). However, in circumstances where a person has already been paid for that instalment period, the Secretary is able to reduce the person’s participation payment for a later instalment period (paragraph 42AN(2)(b)). This ensures that if a person has already been paid for the instalment period in which the mutual obligation failure occurred, the person still suffers the consequences of having committed the failure, without the need to recover payments for the instalment period in which the failure occurred.

Subsection 42AN(3) ensures that the amount of an instalment of a payment must be reduced by an amount equal to half or the whole of the person’s participation payment for the reduction period. Subsection 42AN(4) requires the Secretary to make this determination in accordance with a determination made under section 42AR (which provides that the Minister must, by legislative instrument, determine the circumstances in which the amount of the reduction of a payment should be half or the whole of the amount).

The intention is for the legislative instrument to provide that, for the first mutual obligation failure committed once a person has demonstrated persistent non-compliance, the person’s payment will be reduced by half, and for the second mutual obligation failure, the person’s payment will be reduced by the whole amount.

Subsection 42AN(5) clarifies that it is open to the Secretary to reduce the amount of a person’s participation payment by the whole amount even in circumstances where a person’s participation payment has already been reduced by half for the same period. This is intended to cover the situation where a persistently non-compliant person commits two different mutual obligation failures in the same instalment period.

Subsection 42AN(6) is a deeming provision enabling a person’s participation payment to remain payable even if they are not actually receiving any payment (i.e. it is reduced to nil) because of the reduction of an instalment of their payment for a
Section 42AO – Unemployment preclusion periods for unemployment failures by persons claiming participation payments

For persons who are not receiving a participation payment when they become unemployed, and if the Secretary has made a determination under subsection 42AH(2) that participation payments are not payable to them, subsection 42AO(1) provides for an unemployment preclusion period – that is, a period during which no participation payment is payable.

Subsection 42AO(1) provides that that period is for 4 weeks beginning on the day the person becomes unemployed, or 6 weeks if the person has been paid relocation assistance for the employment the person left within the preceding 6 months.

A note under subsection 42AO(1) notes that the unemployment preclusion period may affect the person’s start day for a claim in accordance with clauses 5 and 5A of Schedule 2 to the Social Security Administration Act. A further note notes that it is irrelevant for the purposes of subsection 42AO(1) which participation payment the person claimed.

This rule has a beneficial intention of allowing new claimants for a participation payment to ‘self-serve’ part or all of their unemployment preclusion period prior to making a new claim.

Subsection 42AO(2) defines relocation assistance.

Section 42AP – Cancelling participation payments

New section 42AP in ‘Subdivision D – Effect of taking particular compliance action’ sets out what the consequences are of the Secretary having determined under Subdivision C (Compliance action that must be taken for particular failures) to cancel a participation payment because a person committed a mutual obligation failure, a work refusal failure, or an unemployment failure.

Subsection 42AP(2) sets out the rules around when the cancellation occurs (the cancellation day) for mutual obligation failures and work refusal failures. The cancellation day is the first day of the instalment period in which the person commits the failure. However, if the Secretary determines that a later instalment period is more appropriate, the cancellation day is the first day of that later instalment period. This ensures that, as a general rule, payment will be cancelled on the first day of the instalment period in which the person commits the mutual obligation failure (paragraph 42AP(2)(a)).

However, in circumstances where a person has already been paid for that instalment period, paragraph 42AP(2)(b) enables the Secretary to cancel the person’s
participation payment on the first day of a later instalment period. This ensures that if a person has already been paid for the instalment period in which the failure occurred, the person still suffers the consequences of having committed the failure, without the need to recover payments for the instalment period in which the failure occurred.

Subsection 42AP(3) provides for the cancellation day for an unemployment failure committed by a person who was receiving the participation payment when he or she became unemployed. The cancellation day is generally the day that the person becomes unemployed as a result of their voluntary act or misconduct (paragraph 42AP(3)(a)). However, the cancellation day could be the first day of the instalment period following the day on which the Secretary cancels the payment, where appropriate (paragraph 42AP(3)(b)). This alternative may be more appropriate where the person might be disadvantaged if the cancellation day was the day they became unemployed.

Subsection 42AP(4) provides that for the purposes of paragraph 42AP(3)(b), the day the Secretary makes the determination is the day the Secretary originally makes the determination, even if another decision in relation to the determination is later made on review. This provision mirrors current section 42Y. Its purpose is beneficial in that it will ensure that if an original decision to cancel the payment is affirmed on review, the review decision will take effect on the date of the original decision rather than on the date of the review decision.

Subsection 42AP(5) provides that a participation payment is not payable to the person during the period (the post-cancellation non-payment period) of 4 weeks beginning on the cancellation day, or 6 weeks if the cancellation is for an unemployment failure and the person was paid relocation assistance for the relevant employment within the last 6 months. As the first note under subsection 42AP(5) provides, this post-cancellation non-payment period has the effect of being an exclusion period for new claimants of a participation payment, because of clauses 5 and 5A of Schedule 2 to the Social Security Administration Act.

Subsection 42AP(6) provides that despite subsections (2) and (3), the participation payment is taken not to be cancelled, for the purposes of certain legislative provisions, until the end of the post-cancellation non-payment period.

The provisions for which the payment is taken not to be cancelled are:
(a) a provision of the social security law or the Family Assistance Act that refers to a post-cancellation non-payment period or a compliance penalty period (other than a provision that is determined by the Minister under subsection 42AR(2) for the purposes of paragraph 42AP(6)(a));
(b) section 106B of the Social Security Administration Act, which provides for automatic cancellation of certain concession cards; and
(c) a provision of the social security law that is determined by the Minister under subsection 42AR(2) for the purposes of paragraph 42AP(6)(c).

The purpose of subsection 42AP(6) is to ensure that people who are in a post-cancellation non-payment period do not lose certain ancillary benefits such as concession cards and access to any benefit to which a person may be entitled under
the Family Assistance Act as a result of receiving social security payments, due to being in a post-cancellation non-payment period. If subsection 42AP(6) was not included, then the provisions in the social security law and Family Assistance Act which require the person’s payment to be payable (or require them to be receiving payment) in order to qualify for the ancillary benefit, would mean they may lose that benefit, or not be qualified for it, because the payment is not payable.

If section 106B was not included in this provision, then subsection 106B(1) would automatically cancel the card, due to the underlying payment having been cancelled.

Subsection 42AR(2) (referred to in paragraph 42AP(6)(a)) permits the Minister to determine further provisions of the social security law for the purposes of paragraph 42AP(6)(c). This is to enable additional ancillary benefits to be prescribed if it emerges that there are any that are not covered by paragraphs 42AP(6)(a) and (b).

Section 42AQ – Persons for whom participation payments not payable taken to still be receiving payment for certain purposes

New section 42AQ, in Subdivision E – Miscellaneous, provides that if, under new Division 3AA, a participation payment is not payable for a period, then for the purposes of the following provisions, the person is taken to be receiving that participation payment for that period:

(a) Subdivision B (except if the participation payment is not payable because of subsections 42AH(2) and 42AO(1) – unemployment preclusion periods);
(b) sections 63 and 64; and
(c) any other provision of the social security law, or the Family Assistance Act, that is determined by the Minister under subsection 42AR(2).

This section ensures that even though a person’s participation payment may be not be payable for a period under Division 3AA (that is, not payable because they have committed a mutual obligation failure or a work refusal failure), the person is taken to be receiving that participation payment for the above purposes. This means that they can still be found to have committed a relevant mutual obligation failure under Subdivision B (for example, failing to comply with a requirement issued to them under subsection 63(2)). The exception is where a person is in an unemployment preclusion period. It would not be appropriate or necessary to deem these people to have been receiving payment at the relevant time, because any requirements the Secretary may wish to impose on them with regard to providing information (for example) would be prerequisites for claiming payment.

This section would also ensure that sections 63 and 64, which allow the Secretary to send certain notices requiring persons receiving payments to do certain things, remain effective during this period. This is to ensure that a job seeker continues to meet any relevant requirements that might apply under sections 63 or 64 during a period of non-payability.

The Minister may determine that a person is taken to be receiving payment during this period for the purposes of other provisions of the social security law, so that any appropriate additional provisions can be specified for these purposes over time.
Section 42AR – Minister to make determinations for the purposes of this Division

New subsection 42AR(1) obliges the Minister to make a legislative instrument determining the following:

- for the purposes of paragraph 42AF(2)(a), circumstances in which the Secretary must, or must not, be satisfied that a person has persistently committed mutual obligation failures;
- for the purposes of subsection 42AF(2), circumstances in which the Secretary must make a determination under paragraphs 42AF(2)(c) or (d) (whether to determine that an instalment of a participation payment is to be reduced, or the payment is cancelled);
- for the purposes of subsection 42AN(4), the circumstances in which the amount of the reduction of a participation payment for an instalment period is to be equal to half, or the whole, of the amount of the payment for the period, in accordance with paragraphs 42AN(3)(a) and (b) respectively.

This section ensures that the Secretary is bound by the determination made by the Minister when making determinations that result in stronger compliance action (such as instalment reductions or cancellation of a participation payment) applying to a person for having persistently committed mutual obligation failures.

The intention is for the legislative instrument to provide, among other things, safeguards (such as the person having committed a number of failures without a reasonable excuse, the existence of checks having been undertaken by the employment service provider and the Department of Human Services ensuring that the person did not have any undisclosed issues that are affecting their ability to comply with their mutual obligations and/or the suitability of the person’s employment pathway plan) to be taken into account by the Secretary before a determination that a person has persistently committed mutual obligation failures can be made.

The legislative instrument will also provide guidance in relation to when the Secretary should impose a financial penalty and when the Secretary is to cancel a participation payment. That is, the legislative instrument will provide guidance such as, for the first and second mutual obligation failure committed once a jobseeker has demonstrated they have persistently committed mutual obligation failures, the Secretary is to impose payment reduction; and for the third mutual obligation failure in this phase, the Secretary is to cancel the participation payment.

In relation to the circumstances in which the amount of the reduction of a participation payment will be equal to half, or the whole, of the amount of the payment, the legislative instrument will provide that for the first mutual obligation failure committed once a jobseeker has persistently committed mutual obligation failures, the person’s payment will be reduced by half, and for the second mutual obligation failure committed in this phase, the person’s payment will be reduced by the whole amount.

Subsection 42AR(2) enables the Minister to, by legislative instrument, determine provisions of the social security law or the Family Assistance Act for the purposes of paragraphs 42AP(6)(a) or (c) or 42AQ(c).
Section 42AS – Relationship with section 80

New section 42AS is required to ensure the Secretary can still cancel or suspend a participation payment in certain circumstances.

Section 80 of the Social Security Administration Act provides a general power for the Secretary to cancel or suspend a person’s social security payment (including participation payments) if the person is not qualified for the payment or the payment is not payable. There are circumstances in which a failure to comply with the terms of an employment pathway plan or the activity test may result in a person losing qualification for a participation payment. The consequence of a loss of qualification is suspension or cancellation under section 80. This section therefore, preserves the operation of section 80 to deal with those circumstances.

However, the note makes it clear that the Secretary cannot cancel or suspend a participation payment under section 80 on the basis that the participation payment is not, or was not, payable because of the operation of Division 3AA (see amendments to be made to paragraph 80(1)(b)).

Part 2 – Consequential amendments

Farm Household Support Act

Item 2 adds a reference to new Division 3AA in paragraph 98(c) of the Farm Household Support Act.

Section 98 provides that certain provisions in the Social Security Administration Act do not apply to the Farm Household Support Act. Paragraph 98(c) lists Division 3A of Part 3 of the Social Security Administration Act as one of those provisions that do not apply. Division 3A is not required for the administration of the Farm Household Support Act because the compliance provisions set out in the Farm Household Support Act already apply to failures by recipients of the farm household allowance to meet their obligations.

The addition of Division 3AA in paragraph 98(c) ensures that Division 3AA does not have unintended consequences for the operation of the Farm Household Support Act. Excluding Division 3AA ensures the new targeted compliance framework also does not apply to failures by recipients of the farm household allowance to meet their obligations.

Social Security Act

Item 3 inserts into the definition of ‘compliance penalty period’ in subsection 23(1) references to various periods during which a participation payment is not payable to a person (other than a declared program participant). These are: a suspension period (see new subsection 42AL(1)); an unemployment preclusion period (see new subsection 42AO(1)); and a post-cancellation non-payment period (see new subsection 42AP(5)).
Compliance penalty periods are referred to at various points in the social security law and other legislation. Amongst other things, if a person’s participation payment is not payable only because of a compliance penalty period, the person:

- retains qualification for a pensioner concession card (section 1061ZEC of the Social Security Act); and
- retains qualification for a health care card (section 1061ZNA of the Social Security Act).

A consequential amendment to the definition of a compliance penalty period that inserts periods of non-payability that arise under new Division 3AA into the definition ensures that a person remains qualified for, amongst other things, concession cards.

The definition will not encompass penalty amounts for mutual obligation failures because new subsection 42AN(6) deems participation payments to be payable even if a payment is reduced to nil due to the deduction of a penalty amount.

Items 4 and 5 make minor consequential amendments to the definition of a compliance penalty period in subsection 23(1) to make clear that paragraph (a) of the definition applies to declared program participants and paragraphs (b) and (c) of the definition may apply ‘in any case’. Paragraph (b) applies to persons in receipt of youth allowance who are undertaking full-time study and paragraph (c) applies to persons in receipt of a study payment.

Item 6 inserts into the note in section 549G a reference to Division 3AA. Section 549G provides that, in relation to youth allowance, Subdivision D of Division 2 (situations where allowance is not payable because of youth allowance participation failures) applies to a person only if the person is undertaking full-time study. The note provides that if a person is not undertaking full-time study, Division 3A of Part 3 of the Social Security Administration Act might apply. A reference to Division 3AA in the note is necessary to also clarify that if a person is not undertaking full-time study and is not a declared program participant, Division 3AA might apply.

Item 7 inserts into the note in section 550E a reference to Division 3AA. Section 550E provides that, in relation to youth allowance, Subdivision E Division 2 (situations where allowance not payable because of repeated failure), applies to a person only if the person is undertaking full-time study. The note provides that if a person is not undertaking full-time study, Division 3A of Part 3 of the Social Security Administration Act might apply. A reference to Division 3AA in the note is necessary to also clarify that if a person is not undertaking full-time study and is not a declared program participant, Division 3AA might apply.

Items 8 – 10 amend the special benefit qualification provisions (section 729 of the Social Security Act), to ensure that a special benefit is not granted to a person (who is not declared program participant) whose participation payment is not payable because of the new payment suspension period, the new unemployment preclusion period or the new post-cancellation non-payment period applying to the person.

Items 11 and 12 insert into subparagraphs 1046(2)(b)(i), 1046(2)(b)(ii), 1046(2B)(b)(i), 1046(2B)(b)(ii) and 1046(2B)(b)(ii) references to the new
subsections 42AL(1) (payment suspension period), 42AO(1) (unemployment preclusion period), and 42AP(5) (post-cancellation non-payment period). These amendments ensure a person continues to qualify for mobility allowance despite the application of the new payment suspension period, unemployment preclusion period or post-cancellation non-payment period.

**Social Security Administration Act**

**Items 13 and 14** amend the heading of Division 3A of Part 3 of the Social Security Administration Act and Subdivision A in Division 3A. These amendments clarify that the compliance framework set out in Division 3A applies only to declared program participants.

**Item 15** repeals subsection 42S(3B). Subsection 42S(3B) sets out the definition of ‘relocation assistance’ for the purposes of that section. However, the term ‘relocation assistance’ is now defined in new subsection 42AO(2), which provides that the definition of relocation assistance applies for the purposes of the Social Security Administration Act (not just a particular section). As the definition of relocation assistance set out in subsection 42AO(2) will also apply for the purposes of section 42S, subsection 42S(3B) is redundant. The definition of ‘relocation assistance’ by reference to new subsection 42AO(2) has been included in the dictionary in Schedule 1 to the Social Security Administration Act (see the consequential amendment at item 31 in this regard).

**Item 16** inserts a reference to section 42AF (compliance action for mutual obligation failures) in paragraph 64(1A)(c). Currently, subsection 64(1A) prevents a payment from becoming not payable under both subsection 64(1) and subsection 42SA(1). Subsection 64(1A) provides that subsection 64(1) does not apply if: the person is receiving a participation payment; and the person fails to attend an appointment that the person is required to attend by a notice under subsection 63(2); and the Secretary makes a determination under subsection 42SA(1) in relation to the person and the failure. This consequential amendment also prevents a participation payment from becoming not payable under subsection 64(1) if the Secretary makes a determination under new section 42AF in relation to the person and the failure.

**Items 17 and 18** amend subsection 80(1) to ensure that the Secretary cannot determine that a participation payment is to be cancelled or suspended under section 80 if the payment is not, or was not payable because of the operation of new Division 3AA. A note is added at the end of subsection 80(1) to explain that Division 3AA is about compliance with participation payment obligations for persons who are not declared program participants. These amendments ensure that if the reason a person’s participation payment is not payable, or was not payable, is because of compliance action having been taken under Division 3AA, then section 80 is not to apply to enable suspension or cancellation of the payment.

**Item 19** amends subsection 80(3A) to ensure that the operation of subsection 80(3A) is preserved for declared program participants (that is, for those who are subject to the compliance framework set out in Division 3A of Part 3 of the Social Security Administration Act) and to clarify that it does not apply to those subject to the new targeted compliance framework set out in Division 3AA.
**Items 20 and 21** amend section 110A (date of effect of favourable determinations resuming payment after suspensions relating to non-compliance) and section 118 (general rules for date of effect of adverse determinations) to clarify that these provisions apply only to declared program participants (that is, those to whom Division 3A applies) and not to persons to whom new Division 3AA applies.

**Item 22** inserts references to subsection 42AM(4) (cancellation if a person fails to reconnect within 4 weeks) or section 42AP (cancellation of participation payments) into paragraph 123(1)(ba). This consequential amendment ensures that a determination that a claim for payment is granted or payable to a person continues in effect until that payment is cancelled under new subsection 42AM(4) or under new section 42AP.

**Item 23** inserts new paragraph 123(1)(bb) into subsection 123(1). This consequential amendment ensures that a determination that a claim for payment is granted or payable to a person continues in effect until immediately before the start of a payment suspension period for the person under new section 42AL (which deals with payment suspension periods for mutual obligation failures and work refusal failures).

**Item 24** makes a minor technical amendment to subsection 131(1) by omitting the reference to subsection 131(2) because there is no subsection 131(2) in section 131.

**Items 25 and 27** amend the payment pending review provisions (sections 131 and 145) to ensure that if an adverse decision in relation to a participation payment is made and that adverse decision is made under new Division 3AA, the Secretary will be unable to declare that the payment is to continue pending the outcome of the review as if the adverse decision had not been made.

**Item 26** inserts a new paragraph 144(faa) so that decisions under subsection 42AM(1) are not reviewable by the Administrative Appeals Tribunal. Subsection 42AM(1) relates to the imposition of a reconnection requirement on the person if the Secretary determines under sections 42AF (which applies to mutual obligation failures) and 42AG (which applies to work refusal failures) that a participation payment is not payable to the person. If a person fails to reconnect, the determination to cancel the participation payment because of the person’s failure to reconnect (see new subsection 42AM(3)) would be reviewable and the Tribunal could overturn the decision if it found that the job seeker could not reasonably be expected to meet the reconnection requirement.

The rationale for excluding the decision under subsection 42AM(1) to impose a reconnection requirement from merits review is that it is a preliminary or procedural decision and, therefore, unsuitable for merits review. It would not be appropriate for the Tribunal to make decisions about the particular reconnection requirements a person should undertake, given that such decisions depend almost entirely on practical concerns only apparent to the decision maker at the time the decision is actually made (eg. the availability of particular appointments and activities that may constitute a reconnection requirement for the particular person). Further, the imposition of a reconnection requirement on a person leads to the making of a substantive decision (that is, it results in the lifting of the suspension if they comply
with the reconnection requirement or, alternatively, the cancellation of their payment if they fail to comply with the requirement). Both the decision to impose the suspension (the decision which leads to a decision maker having to impose the reconnection requirement) and the decision to cancel because of the person’s failure to reconnect within 4 weeks, will both be reviewable decisions.

Item 28 amends section 192 to ensure the Secretary has the power to require the production of any information or document relevant to the operation of the new Division 3AA. This amendment is intended to ensure decision makers can make decisions under Division 3AA with powers available to them to obtain relevant material.

Items 29, 30 and 31 add new definitions in Schedule 1 (the dictionary to the Social Security Administration Act) for particular terms that will be introduced to the Social Security Administration Act by new Division 3AA. Relevantly, the new terms are mutual obligation failure, payment suspension period, post-cancellation non-payment period, relocation assistance, unemployment failure, unemployment preclusion period, and work refusal failure. In addition, an amendment is made to the definition of the term reconnection requirement.

Item 32 amends the start day rule in clause 5 of Schedule 2. The intention of subclause 5(1B) is to ensure that if a person is subject to certain non-payment periods (currently a serious failure period and an unemployment non-payment period), the person’s start day for any social security payment that is not a participation payment is not affected by those specified non-payment periods. This amendment would ensure that the new payment suspension period, unemployment preclusion period and the post-cancellation non-payment period are also included in subclause 5(1B). In other words, if a person claims a social security payment that is not a participation payment and one of the listed non-payment periods (that is, the new payment suspension period, unemployment preclusion period and the new post-cancellation non-payment period) applies to them, their start day for that payment could be before those non-payment periods end.

Items 33 - 37 effectively amend the start day rules for parenting payment in clause 5A of Schedule 2. The intention is to preclude members of a couple from transferring from a participation payment to a parenting payment (without participation requirements) in order to avoid the compliance action taken against them under new Subdivision C of Division 3AA (whether that compliance action is that the participation payment is not payable or that the participation payment is cancelled).

Item 38 amends the backdated start day rules in clause 15 of Schedule 2 to ensure that clause 15 does not apply to payments cancelled in accordance with Division 3AA. The rationale is that for persons who lodge a claim for an austudy payment, newstart allowance or special benefit within 14 days of their participation payment having been cancelled under Division 3AA, their start day should not be the day after the cancellation day. The intention is that if a person’s participation payment is cancelled under Division 3AA, the person’s start day should be the day after their post-cancellation non-payment period ends (in accordance with the start day rules set out in clause 5 of Schedule 2 due to a post-cancellation non-payment period being included in the definition of compliance penalty period).
Part 3 – Application and transitional provisions

Item 39 sets out the rules relating to the application of Division 3AA of Part 3 of the Social Security Administration Act.

Item 39 provides that new Division 3AA will apply in relation to mutual obligation failures, work refusal failures or unemployment failures that are committed on or after the commencement of this item (that is, on or after 1 July 2018 unless the day the Act receives Royal Assent is later, in which case it will be on or after that later day) by a person who is not a declared program participant.

Item 40 sets out the rules relating to the application of Division 3A of Part 3 of the Social Security Administration Act.

Subitem 40(1) provides that the amendments made by this Schedule do not limit the continued effect, on or after the commencement of this item, of anything done before that commencement under the old compliance rules in relation to a person who is a declared program participant.

The effect of subitem 40(1) is to preserve the operation of Division 3A (and its continued effect) on or after 1 July 2018 (unless the day the Act receives Royal Assent is later, in which case it will be on or after that later day) for persons who are declared program participants.

Subitem 40(2) provides that subject to subitem 40(4), the old compliance rules will cease to apply, at the commencement of this item, in relation to a person who is not a declared program participant, even if a determination has been made under those rules for the person before that commencement.

Subitem 40(3) provides that without limiting subitem 40(2), if the Secretary made a determination under the old compliance rules, before the commencement of item 40, that results in a participation payment not being payable for period for a person who is not a declared program participant and the period has not ended as at that commencement, then the period ends, by force of subitem 40(3), immediately before that commencement, despite anything else in the compliance rules.

The effect of subitems 40(2) and (3) is to ensure that persons who are not declared program participants are not subject to both Division 3AA and Division 3A on 1 July 2018 (or on the later day if the Act receives Royal Assent on a day later than 1 July 2018). This means that if a determination that results in a person who is not a declared program participant not being payable under Division 3A and this is still in effect on the relevant day (1 July 2018 or the later day), that non-payability period will end by force of subitem 40(3) immediately before that relevant day.

Subitem 40(4) provides that despite subitem 40(2), if the Secretary made a determination under the old compliance rules, before the commencement of item 40 and the determination would, apart from subitem 40(2) and the amendments made by Schedule 15, have resulted in a penalty amount being deducted from a person’s instalment of a participation payment for one of more instalment periods ending after
that commencement, then the penalty amount must continue to be deducted after that commencement in accordance with the old compliance rules.

Subitem 40(5) provides that if a penalty amount is deducted from an instalment in accordance with subitem 40(4), and the effect of the deduction is that the instalment is reduced to nil for an instalment period, the Secretary must not take action under new section 42AF (compliance action for mutual obligation failures) or 42AG (compliance action for work refusal failures)

The effect of subitems 40(4) and 40(5) is to preserve the operation of Division 3A in relation to penalty amounts being deducted from the payment of a person who is not a declared program participant, where the instalment period in respect of which it is deducted commenced before, but extends past, the commencement date of item 40. Also, if after commencement their payment is reduced to nil, a person cannot be penalised under new sections 42AF and 42AG until a later instalment period (this ensures the new subsections 42AF(4) and 42AG(4) apply to a person whose payment has been reduced to nil by operation of Division 3A).

Subitem 40(6) clarifies that a reference to ‘old compliance rules’ in item 40 means Division 3A of Part 3 of the Social Security Administration Act as in force immediately before the commencement of item 40 (that is, immediately before 1 July 2018 unless the day the Act receives Royal Assent is later, in which case it will be immediately before that later day).

Item 41 sets out the transitional rules applying to instruments specifying payments for the definition of relocation assistance.

Item 41 provides that an instrument made under paragraph 42S(3B)(b) of the Social Security Administration Act that was in force immediately before the commencement of item 36 continues in force (and may be dealt with) as if it had been made under subsection 42AO(3) of that Act (as amended by Schedule 15).

The effect of item 41 is to preserve the instrument made under paragraph 42S(3B)(b) for the purposes of the definition of relocation assistance.
Schedule 16 – Streamlining tax file number collection

Summary

This Schedule amends the Social Security Administration Act to allow a request to provide a tax file number and/or a relevant third party’s tax file number as part of a claim for a social security payment, seniors health card or income-tested health care card, and to prevent payment or provision of the card until the request is satisfied.

Background

Under section 75 of the Social Security Administration Act, the Secretary has the power to request tax file numbers from persons who have made a claim for a social security payment or seniors health card, who are currently receiving a social security payment, or who are the holder of a seniors health card.

Under sections 76 and 77 of the Social Security Administration Act, these persons have 28 days from the date the Secretary makes the request to satisfy the request by:

a) providing their tax file number and/or a relevant third party’s tax file number;

b) giving the Secretary a declaration that they do not know what their tax file number is, and authorising the Commissioner of Taxation to inform the Secretary of the person’s tax file number; or

c) giving the Secretary a declaration that their application for a tax file number is pending, and authorising the Commissioner of Taxation to inform the Secretary of the person’s tax file number; or

If the person does not satisfy the request within 28 days, unless the person is exempted from the requirement, their social security payment is not payable, the person’s seniors health card claim is not determined, or their seniors health card is cancelled.

The purpose of amending these provisions is to allow the Secretary to request a claimant’s tax file number and/or a relevant third party’s tax file number as part of the claim for a social security payment, seniors health card or income-tested health care card, and to prevent payment or provision of the card until the request is satisfied. No 28 day period is allowed for claimants. Instead, a claimant must provide their tax file number or make a TFN declaration as part of the claim. As a result, a person cannot have their claim assessed until they can provide their tax file number or make a TFN declaration. Making a TFN declaration will satisfy these requirements even where the Australian Taxation Office has not yet provided the tax file number to the Department of Human Services.

These amendments would encourage social security claimants to provide the information required for their claim in a timely manner, in line with government and community expectations that individuals take personal responsibility for their affairs.
For the existing categories of persons of whom a request for a tax file number may be made, including persons who are in receipt of payment, or who hold a concession card, the existing timeframe of 28 days to satisfy the request will continue to apply.

If this Act receives the Royal Assent before 1 November 2017, the amendments made by this Schedule commence on 1 January 2018.

If the Act receives the Royal Assent on or after 1 November 2017, the amendments made by this Schedule will commence on the first 1 January, 1 April, 1 July or 1 October that occurs after the end of the period of 2 months beginning on the day this Act receives the Royal Assent.

**Explanation of the changes**

**Part 1 – Main Amendments**

**Social Security Administration Act**

**Item 1** repeals existing sections 75 to 77 of the Act and substitutes new sections 75 to 77.

New sections 75 to 77 are a substantial redraft of the previous provisions to improve their readability and simplicity. However, all powers located in previous sections 75 to 77 have been retained in the new provisions.

In addition to retaining all previous powers, new sections 75 to 77 will allow a request to provide a tax file number and/or a relevant third party’s tax file number as part of a claim for a social security payment, seniors health card or income-tested health care card, and will prevent payment or provision of the card until the request is satisfied.

Section 75 as redrafted gives the Secretary the power to request a person who is claiming, has claimed, or is receiving, a social security payment, or who is claiming, has claimed, or is the holder of, a seniors health card or income-tested health care card, to provide the Secretary with a written statement of the person’s tax file number. If the person does not have a tax file number, the Secretary will have the power to request that the person apply to the Commissioner of Taxation for a tax file number and then give the Secretary a written statement of the person’s tax file number once it has been issued. Making a TFN declaration will satisfy these requirements even where the Australian Taxation Office has not yet provided the tax file number to the Department of Human Services.

The section also gives the Secretary the power to request that a person who is claiming, has claimed, or is the holder of a relevant payment or card, provide the Secretary with a written statement of another person’s tax file number:

- if the person is a member of a couple and the person’s partner is in Australia - the partner’s tax file number;
• if the rate of the social security payment that the person is receiving takes
account of someone else’s income, and that other person is in Australia – the tax
file number of that other person. This request may relate to several persons, and
need not identify a particular person in the request.

Although the Secretary may make a request under this section, a person to whom
the request is made cannot be required to comply with it.

Section 76, as redrafted, sets out a number of ways in which a person may satisfy a
request for a tax file number under section 75, duplicating the effect of current
section 76.

Section 77 as redrafted outlines the consequences of not satisfying a request for a
tax file number under section 75, and the consequences for not having a tax file
number after giving a declaration under section 76.

In addition, section 77 gives the Secretary the power to exempt a person from the
operation of these consequences. A specific instance where this may occur is if the
Secretary requests a person to give a written statement of another person’s tax file
number, and the Secretary is satisfied that the person does not know the other
person’s tax file number, and the person cannot otherwise satisfy the request.

Item 1A inserts new paragraph 204A(2)(ba), expanding the scope of section 204A,
which provides the uses to which the Secretary may put information provided to the
Secretary by the Commissioner of Taxation, including tax file numbers. New
paragraph 204A(2)(ba) allows the use of this information to verify, in respect of
persons who have made claims under the social security law for seniors health
cards, or health care cards that are income-tested for those persons, the qualification
of those persons for those cards.

Item 1B makes consequential amendments to insert a definition of income-tested
into the Social Security Act, to support the use of this term in the tax file number
provisions. The definition inserted into subsection 6A(1) provides that a health care
card is income-tested for a person if the person is required by
paragraph 1061ZO(2)(d), (3)(e) or (4)(d) to satisfy the health care card income test in
order to qualify for the health care card.

New item 1C, consequential to item 1B, inserts a cross-reference to the new
definition in section 6A into subsection 23(1), which sets out general definitions.

Part 2 – Consequential Amendments

Items 2, 3, 4, 5 and 6 are consequential to the amendments made by item 1, and
adjust references to the amended sections.

Part 3 – Application provision

Item 7 provides that amendments made by this Schedule will only apply in relation to
requests made under section 75 on or after the commencement of this Schedule.
Schedule 17 – Information management

Summary

Schedule 17 implements part of the 2017-18 Budget measure Department of Human Services – improving service delivery and reducing red tape.

The amendments made by this Schedule amend the information gathering and protection provisions in the family assistance law, Paid Parental Leave Act 2010, social security law and Student Assistance Act 1973. The purposes of the amendments are to:

- allow information or documents obtained about a person under the coercive information gathering provisions in the course of an administrative action by the Department of Human Services, to be used in subsequent investigation and prosecution of criminal offences.
- insert limited abrogation of the privilege against self-incrimination provisions that clarify that information so gathered can be used for investigating and prosecuting criminal offences by other people, therefore streamlining the process for referrals of welfare fraud prosecution.

Background

The purpose of the amendments in Schedule 17 to the Bill is to align the coercive information gathering provisions in the Family Assistance Administration Act, Paid Parental Leave Act 2010 (referred to as the Paid Parental Leave Act), Social Security Administration Act and Student Assistance Act 1973 (referred to as the Student Assistance Act) with current Commonwealth policy and drafting standards for such provisions, and by so doing:

- clarify that information or documents obtained under the coercive information gathering provisions can be used for investigation and prosecution of criminal offences; and
- insert limited abrogation of the privilege against self-incrimination provisions that will inform a person of the consequences of the obligation to respond to a statutory demand for information or documents.

The family assistance law, Paid Parental Leave Act, social security law and Student Assistance Act empower the Secretary of the Department administering those laws to seek information about persons who are subject to those laws. In practice, these powers are used by the Department of Human Services and other delegates of the Secretary. The information is obtained for administrative purposes relating to payments under those laws. Therefore, under the social security law, the Department of Human Services may seek information relevant to a person’s entitlement to a social security payment, or information to assess a person’s qualification, payability or rate of payment, or to detect instances of overpayment or social security fraud.
The information gathering provisions in the family assistance law, Paid Parental Leave Act, social security law and Student Assistance Act are very similar, although amendments to the provisions in each body of legislation have resulted in minor differences over time. In addition, the administrative focus of these provisions currently hampers the process of gathering admissible evidence. The provisions do not align with current Commonwealth policy and drafting standards for coercive information-gathering provisions. In particular, it is not clear on the face of the provisions what impact the privilege against self-incrimination has on a person’s obligation to provide information, and it is not clear whether information provided in response to a statutory demand can be used for investigation and prosecution of criminal offences.

This Schedule will streamline the process for referrals of welfare fraud prosecution by allowing information about a person obtained by the Department of Human Services for possible the Department of Human Services administrative action to be used in criminal proceedings.

These changes will reduce the red tape and administrative burden on the Department of Human Services, the Australian Federal Police (AFP), the Commonwealth Director of Public Prosecutions (CDPP) and third parties when working on a the Department of Human Services administrative investigation or criminal prosecution. The Department of Human Services will only need to obtain information once in the majority of circumstances and the need for the Department of Human Services to obtain admissible material by search warrants pursuant to section 3E of the Crimes Act 1914, will be significantly reduced. In addition, this will mean that potential criminal prosecution cases can be referred in a more timely manner to the CDPP to determine whether the matter is pursued through the courts for prosecution of offenders. This also provides natural justice for recipients, as they will not have to wait for lengthy periods to know whether prosecution of their matter will be pursued by the CDPP.

The amendments made by Schedule 17 to the Paid Parental Leave Act, social security law, and Student Assistance Act commence on 1 January 2018 if the Act receives the Royal Assent before 1 January 2018. If this Act receives the Royal Assent on or after 1 January 2018, Schedule 17 will commence on the first 1 January or 1 July to occur after the day this Act receives the Royal Assent.

The amendments made by Schedule 17 to the family assistance law commence the later of either immediately after the commencement of Schedule 1 to the Family Assistance Legislation Amendment (Jobs to Families Child Care Package) Act 2017, or immediately after the commencement of the provisions to other Acts in Schedule 17. This delayed commencement is because the Family Assistance Legislation Amendment (Jobs to Families Child Care Package) Act 2017 has already been passed, and will amend some of the same provisions this Schedule amends. Commencement immediately after that Act will avoid conflicting amendments.
Explanation of the Changes

Family Assistance Administration Act

**Item 1** substitutes references to specific provisions in Division 1 of Part 6 of the Family Assistance Administration Act with a general reference to that Division, to maintain the current rules which prevent an application for review by the AAT of an exercise of information gathering powers by a delegate.

**Items 2 and 3** amend section 120. Section 120 empowers the Administrative Appeals Tribunal (AAT) to ask the Secretary to exercise the Secretary’s powers under section 154 of the Family Assistance Administration Act to request information or documents from a person relevant to a matter being reviewed by the AAT.

The powers of the Secretary to gather information are being amended to provide that, as a pre-condition to their exercise, the Secretary must reasonably believe that the person asked to provide information or documents is able to give the information or documents (see item 5). As a consequence, subsection 120(1) of the Family Assistance Administration Act is also being amended to provide that the AAT must hold the requisite belief before asking the Secretary to exercise the Secretary’s power under section 154.

If the AAT reasonably believes that a person is able to give information or documents requested, the Secretary does not also have to have this belief before exercising the power under section 154. In essence, the AAT is standing in the shoes of the Secretary for this purpose, and the Secretary is merely acting on the AAT’s request. This is the effect of new subsection 120(3) inserted by item 3.

**Items 4, 17, 18 and 19** relate to amending the provisions regarding the relationship between information gathering powers and Commonwealth, State and Territory information protection laws. Item 4 repeals subsection 153(2). Item 19 re-enacts subsection 153(2) as a new subsection 160(2). Item 18 changes the numbering of the existing section 160 to subsection 160(1).

The effect of these amendments is simply to move subsection 153(2) to a new position in the Family Assistance Administration Act (subsection 160(2)). That subsection deals with the relationship between a statutory demand under Division 1 of Part 6 of the Family Assistance Administration Act and Commonwealth information protection laws. The existing section 160 deals with the relationship between a statutory demand under Division 1 of Part 6 of the Act and State and Territory information protection laws. Since both provisions are closely related, moving subsection 153(2) to section 160 is consistent with the legislative intent of section 160.

**Items 5, 6, 7, 8, 10, 11 and 15** introduce the concept of the Secretary reasonably believing that a person is able to give information or documents.
Item 5 inserts new section 153A after section 153. This new section imposes an additional condition the Secretary must fulfil before requiring information, documents or records under a provision of Division 1 of Part 6. Under this new section the Secretary can only require a person to give information or produce a document or record if the Secretary reasonably believes that the person will be able to give the information or produce the document or record. The forming of this belief is not a decision in itself, merely a procedural step in the process of making a decision to issue or not issue a notice requiring information.

Requiring that the Secretary reasonably believe that a person can provide information or documents before requiring that person to provide the information or documents ensures that the Secretary’s information gathering powers in Division 1 of Part 6 of the Family Assistance Administration Act are consistent with current Commonwealth policy on such matters: see section 9.1.1 of the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers under the heading ‘Grounds for issuing a notice.’

A number of other amendments in Schedule 17 to the Bill are consequential to the enactment of this new provision. Items 6, 7, 8, 10 and 15 repeal the now-superfluous phrase ‘that is in the person’s custody or under the person’s control.’ Item 11 repeals and replaces existing section 156. The purpose of this substitution is to accommodate the new section 153A pre-condition for the exercise of the power in section 156, and remove the element of belief from the provision. There is no change to the substantive operation of the provision.

**Items 9 and 16** relate to the production and use of information for investigations.

Item 9 relates to the power to obtain information coercively. This amendment will allow a notice to be issued to gather information to investigate the circumstances where a potential overpayment is being quantified and there is potential for fraud to be identified.

The amendment by item 9 and the new section 159C inserted by item 16 are intended to clarify that information provided by a person in response to request by the Secretary under section 154 of the Family Assistance Administration Act, and Division 1 of Part 6 more broadly, can be used for administrative investigation. This would include where investigation may identify offences against the Act. Any information gathered may subsequently be used in prosecutions of those offences. This has always been the case; nevertheless, in the interests of clarity and transparency in the operation of the Secretary’s powers to request information, it makes this express.

Nevertheless, information provided by an individual in response to a request from the Secretary under Division 1 of Part 6 will generally not be able to be used against that individual in criminal proceedings: see new subsection 159B(2) inserted by item 16.
Items 12, 13, and 14 amend section 158 relating to the content of a notice to give information or to produce a document. Section 158 provides that any requirement issued to a person under Division 1 of Part 6 must be by written notice to that person. Paragraph 158(2)(b) sets out the information to be specified in the written notice.

Item 12 inserts new subparagraph 158(2)(b)(ia) to require that the written notice must include a description of the information, document or records to which the requirement relates.

Item 13 inserts a note at the end of subsection 158(2) which provides that the written notice issued under section 158 may describe the information, documents or records by class in accordance with subsection 33(3AB) of the Acts Interpretation Act 1901.

Item 14 repeals and replaces subsection 158(5). Subsection 158(5) provides that a notice given under section 158 must specify a time and place at which the person is to appear. New subsection 158(5) makes the additional provision that if such a notice requires a person to appear before an officer, the notice must also specify that the person may be accompanied by a lawyer.

These amendments make the notice provision generally consistent with current Commonwealth policy on the content of statutory demands for information: see section 9.3.3 of the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers under the heading ‘Notice must contain relevant details.’

Item 16 inserts new section 159B into the Family Assistance Administration Act. The purpose of this provision is to clarify the effect of the privilege against self-incrimination on a person’s obligation to respond to a statutory demand to produce under Division 1 of Part 6 of the Act.

Where legislation seeks to abrogate a right, it must be clear and unambiguous. The purpose of new section 159B is to clearly and unambiguously abrogate the right against self-incrimination. Subsection 159B(1) provides that a person is not excused from giving information, or producing a document or record under Division 1 of Part 6 if the information or production of the document or record may tend to incriminate the person or expose the person to a penalty. In short, the person cannot refuse to provide the information or document on the ground that it may incriminate them.
Well established law dictates a person cannot be compelled to convict themselves from their own words and subsection 159B(2) applies this principle. Subsection 159B(2) provides for what is called ‘use/derivative use immunity’ for an individual providing information or documents in response to a statutory demand to produce. The subsection sets out that any information given, or document or record produced, by an individual (including any information, document or thing obtained as a direct or indirect consequence of giving the information, or producing the document or record) may not be admitted in evidence against the individual in criminal proceedings, with only limited exceptions. (Legal persons other than individuals, such as bodies corporate, do not generally possess the privilege against self-incrimination, so there is no need to provide them with a use/derivative use immunity).

The rationale for abrogating the privilege against self-incrimination is that the information requested is often essential to maintain the integrity of the family assistance system, for example through fraud prevention and detection, and is rarely if ever used against the person providing it. It is generally limited to information that is relevant to another person’s approval or entitlements under the family assistance law. For example, information may be sought from an employee of an approved child care service in relation to matters relevant to child care benefit entitlement of eligible individuals whose children were provided with care by the service, or matters relevant to the continued approval of that child care service.

Nevertheless, even though subsection 159B(1) abrogates the privilege against self-incrimination, subsection 159B(2) ensures that only limited criminal consequences flow from the person’s inability to refuse to provide the information.

The use/derivative use immunity in subsection 159B(2) is subject to certain exceptions, listed in paragraphs (d), (e), (f) and (g). Essentially, information or documents given by an individual are admissible in criminal proceedings against that individual that relate to the falsity of the information. That is, if an individual provides false information in response to a statutory notice to produce under Division 1 of Part 6 of the Family Assistance Administration Act, that false information can be admitted in criminal proceedings against the individual for provision of false information.

New section 159B ensures that the Secretary is able to obtain information to ensure the integrity of the family assistance scheme without people being fearful of being criminally prosecuted as a result of compliance with a notice.

Section 159B is consistent with current Commonwealth policy on self-incrimination and use/derivative use immunity provisions: see section 9.5 of the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement and current drafting standards for such provisions.
**Item 20** states that the amendments made to section 120 of the Family Assistance Administration Act by Schedule 17 apply in relation to requests from the AAT made on or after the commencement of this item. This item also states that amendments made to Division 1 of Part 6 of the Family Assistance Administration Act apply in relation to requirements made under that Division on or after commencement of this item.

**Paid Parental Leave Act**

**Items 21, 22, 24 and 25** introduce the concept of the Secretary reasonably believing that a person is able to give information or documents.

Item 21 inserts new section 116A before section 117. This new section imposes an additional condition the Secretary must fulfil before requiring information, documents or records under a provision of Subdivision A of Division 2 of Part 4.1. Under this new section the Secretary can only require a person to give information or produce a document or record if the Secretary reasonably believes that the person will be able to give the information or produce the document or record. The forming of this belief is not a decision in itself, merely a procedural step in the process of making a decision to issue or not issue a notice requiring information.

By requiring that the Secretary reasonably believe that a person can provide information or documents before requiring that person to provide the information or documents, this new section ensures that the Secretary’s information gathering powers in Subdivision A of Division 2 of Part 4.1 of the Paid Parental Leave Act are consistent with current Commonwealth policy on such matters: see section 9.1.1 of the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* under the heading ‘Grounds for issuing a notice.’

A number of other amendments in Schedule 17 to the Bill are consequential to the enactment of this new provision. Items 22 and 24 repeal the now-superfluous phrase ‘that is in the person’s custody or under the person’s control.’ Item 25 repeals and replaces the existing section 119. The purpose of this substitution is to accommodate the new section 116A pre-condition for the exercise of the power in section 119. There is no change to the substantive operation of the provision.

**Items 23 and 33** relate to the production and use of information for investigations.

Item 23 relates to the power to obtain information coercively. This amendment will allow a notice to be issued to gather information to investigate the circumstances where a potential overpayment is being quantified and there is potential for fraud to be identified.
The amendment by item 23 and the new section 122B inserted by item 33 are intended to clarify the position that information provided by a person in response to request by the Secretary under section 117 of the Paid Parental Leave Act, and Subdivision A of Division 2 of Part 4.1 more broadly, can be used for administrative investigation. This would include where the investigation may identify offences against the Act. Any information gathered can subsequently be used in prosecutions of those offences. This has always been the case; nevertheless, in the interests of clarity and transparency in the operation of the Secretary’s powers to request information, it makes this express.

Nevertheless, information provided by an individual in response to a request from the Secretary under Subdivision A of Division 2 of Part 4.1 will generally not be able to be used against that individual in criminal proceedings or proceedings for a civil penalty order, with only limited exceptions: see new subsection 122A(2) inserted by item 33.

**Item 26, 27, 28 and 29** amend section 120 relating to the content of a notice to give information or to produce a document. Section 120 provides that any requirement issued to a person under Subdivision A of Division 2 of Part 4.1 must be by written notice to that person. Paragraph 120(2)(b) sets out the information to be specified in the written notice.

Item 26 inserts new subparagraph 120(2)(b)(ia) to require that the written notice must include a description of the information, document or records to which the requirement relates.

Item 27 inserts a note at the end of subsection 118(2) which provides that the written notice issued under section 118 may describe the information, documents or records by class in accordance with subsection 33(3AB) of the Acts Interpretation Act 1901.

Item 28 repeals and replaces subsection 120(3). Subsection 120(3) currently provides that a the period specified in subparagraph 129(2)(b)(ii) for a person to provide information after receiving a notice must not end earlier than 14 days after the day a notice under section 120 was given. New subsection 120(3) makes the additional provision that the minimum period of 14 days may be shortened if the Secretary is satisfied that it is reasonable in the circumstances, for the purposes of effective administration of the Paid Parental Leave Act, to specify a shorter period.

The Secretary may be satisfied that a shorter period is reasonable, for example, where urgent provision of information or documents is required to limit debts, or where a reasonable belief is held that the information or documents may become unavailable due to destruction by deliberate act or routine culling. If a person is unable to produce the requested information within the specified timeframe, this may constitute a reasonable excuse for not complying with the notice, which will avoid any penalty for the failure to respond under existing subsection 122(2).
Item 29 repeals and replaces subsection 120(6) and adds a new subsection 120(7). Subsection 120(6) provides that if a notice given under section 120 requires a person to appear before an officer, then that notice must specify a time and place at which the person is to appear and that the time must be at least 14 days after the notice is given. New subsection 120(6) makes the additional provision that if such a notice requires a person to appear before an officer, the notice must also specify that the person may be accompanied by a lawyer. New subsection 120(7) makes the additional provision that the minimum period of 14 days may be shortened if the Secretary is satisfied that it is reasonable in the circumstances, for the purposes of effective administration of the Paid Parental Leave Act, to specify a shorter period.

The Secretary may be satisfied that a shorter period is reasonable to ensure a person appears before an officer, for example, where reasonable grounds exist to indicate that the person is planning to leave the jurisdiction of the Australian courts prior to the end of that 14 day period.

These amendments make the notice provision generally consistent with current Commonwealth policy on the content of statutory demands for information: see section 9.3.3 of the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers under the heading ‘Notice must contain relevant details’.

Items 30, 31 and 32 amend the provisions regarding the relationship between information gathering powers and Commonwealth, State and Territory information protection laws. This is to align the Paid Parental Leave Act with the Family Assistance Administration Act, Social Security Administration Act and the Student Assistance Act. Item 32 states that a person is not required to give information or produce a document if in doing so a person would contravene a law of the Commonwealth (other than a law of a Territory).

Item 33 inserts new section 122A into the Paid Parental Leave Act. The purpose of this provision is to clarify the effect of the privilege against self-incrimination on a person’s obligation to respond to a statutory demand to produce under Subdivision A of Division 2 of Part 4.1 of the Act.

Where legislation seeks to abrogate a right, it must be clear and unambiguous. The purpose of new section 122A is to clearly and unambiguously abrogate the right against self-incrimination. Subsection 122A(1) provides that a person is not excused from giving information, or producing a document or record under Subdivision A of Division 2 of Part 4.1 of the Act if the information or production of the document or record may tend to incriminate the person or expose the person to a penalty. In short, the person cannot refuse to provide the information or document on the ground that it may incriminate them.
Well established law dictates a person cannot be compelled to convict themselves from their own words and subsection 122A(2) applies this principle. Subsection 122A(2) provides for what is called ‘use/derivative use immunity’ for an individual providing information or documents in response to a statutory demand to produce. The subsection sets out that any information given, or document or record produced, by an individual (including any information, document or thing obtained as a direct or indirect consequence of giving the information, or producing the document or record) may not be admitted in evidence against the individual in criminal proceedings. (Legal persons other than individuals, such as bodies corporate, do not generally possess the privilege against self-incrimination, so there is no need to provide them with a use/derivative use immunity).

The rationale for abrogating the privilege against self-incrimination is that the information requested is often essential to maintain the integrity of the Paid Parental Leave Act, for example through fraud prevention and detection, and is rarely if ever used against the person providing the information. It is generally limited to information that is relevant to another person’s approval or entitlements under the Paid Parental Leave Act. For example, a paid parental leave claimant’s employer may be asked to verify the person’s working history with that employer.

Nevertheless, even though subsection 122A(1) abrogates the privilege against self-incrimination, subsection 122A(2) ensures that only limited criminal consequences flow from the person’s inability to refuse to provide the information.

The use/derivative use immunity in subsection 122A(2) is subject to certain exceptions, listed in paragraphs (d), (e) and (f). Essentially, information or documents given by an individual are admissible in criminal proceedings against that individual that relate to the falsity of the information. That is, if an individual provides false information in response to a statutory notice to produce under Subdivision A of Division 2 of Part 4.1 of the Paid Parental Leave Act, that false information can be admitted in criminal proceedings against the individual for provision of false information.

The new section 122A ensures that the Secretary is able to obtain information to ensure the integrity of the Paid Parental Leave Act without people being fearful of being criminally prosecuted as a result of compliance with a notice.

Section 122A is consistent with current Commonwealth policy on self-incrimination and use/derivative use immunity provisions: see section 9.5 of the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement and current drafting standards for such provisions.

Item 34 substitutes references to specific provisions in Subdivision A of Division 2 of Part 4.1 of the Paid Parental Leave Act with a general reference to that Subdivision, to maintain the current rules which prevent an application for review by the AAT of an exercise of information gathering powers by a delegate.
Items 35 and 36 amend section 231. Section 231 empowers the AAT to ask the Secretary to exercise the Secretary's powers under section 117 of the Paid Parental Leave Act to request information or documents from a person relevant to a matter being reviewed by the AAT.

The powers of the Secretary to gather information are being amended to provide that, as a pre-condition to their exercise, the Secretary reasonably believes that the person asked to provide information or documents is able to give the information or documents (see item 21). As a consequence, subsection 231(1) of the Paid Parental Leave Act is also being amended to provide that the AAT must hold the requisite belief before asking the Secretary to exercise the Secretary’s power under section 117.

If the AAT reasonably believes that a person is able to give information or documents requested, the Secretary does not also have to have this belief before exercising the power under section 117. In essence, the AAT is standing in the shoes of the Secretary for this purpose, and the Secretary is merely acting on the AAT’s request. This is the effect of the new subsection 231(3) inserted by item 36.

Item 37 states that the amendments made to Subdivision A of Division 2 of Part 4.1 of the Paid Parental Leave Act by Schedule 17 apply in relation to requirements made under that subdivision on or after commencement of this item. This item also states that amendments made to section 231 of the Paid Parental Leave Act apply in relation to requests from the AAT made on or after the commencement of this item.

Social Security Administration Act

Item 38 substitutes references to specific provisions in Division 1 of Part 5 of the Social Security Administration Act with a general reference to that Division, to maintain the current rules which prevent an application for review by the AAT of an exercise of information gathering powers by a delegate.

Items 39 and 40 amend section 166. Section 166 of the Social Security Administration Act empowers the AAT to ask the Secretary to exercise the Secretary's powers under section 192 to request information or documents from a person relevant to a matter being reviewed by the AAT.

The powers of the Secretary to gather information are being amended to provide that, as a pre-condition to their exercise, the Secretary reasonably believes that the person asked to provide information or documents is able to give the information or documents (see item 43). As a consequence, subsection 166(1) of the Social Security Administration Act is also being amended to provide that the AAT must hold the requisite belief before asking the Secretary to exercise the Secretary’s power under section 192.

If the AAT reasonably believes that a person is able to give information or documents requested, the Secretary does not also have to have this belief before exercising the power under section 192. In essence, the AAT is standing in the shoes of the Secretary for this purpose, and the Secretary is merely acting on the AAT’s request. This is the effect of the new subsection 166(3) inserted by item 40.
Items 41, 42, 55, 56 and 57 relate to amending the provisions regarding the relationship between information gathering powers and Commonwealth, State and Territory information protection laws. Item 42 repeals subsection 191(2) of the Social Security Administration Act, as a result of which item 41 removes the subsection number from the current subsection 191(1). Item 57 re-enacts subsection 191(2) as a new subsection 198(2). Item 56 changes the numbering of the existing section 198 to subsection 198(1).

The effect of these amendments is simply to move subsection 191(2) to a new position in the Social Security Administration Act. That subsection deals with the relationship between a statutory demand under Division 1 of Part 5 of the Social Security Administration Act and Commonwealth information protection laws, and the existing section 198 deals with the relationship between a statutory demand under Division 1 of Part 5 of the Act and State and Territory information protection laws. Since both provisions are closely related, the moving of subsection 191(2) to section 198 is consistent with the legislative intent of section 198.

Items 43, 44, 48 and 49 introduce the concept of the Secretary reasonably believing that a person is able to give information or documents.

Item 43 inserts new section 191A after section 191 of the Social Security Administration Act. This new section imposes an additional condition the Secretary must fulfil before requiring information, documents or records under a provision of Division 1 of Part 5. Under this new section the Secretary can only require a person to give information or produce a document if the Secretary reasonably believes that the person will be able to give the information or produce the document. The forming of this belief is not a decision in itself, merely a procedural step in the process of making a decision to issue or not issue a notice requiring information.

By requiring that the Secretary reasonably believe that a person can provide information or documents before requiring that person to provide the information or documents, this new section ensures that the Secretary’s information gathering powers in Division 1 of Part 5 of the Social Security Administration Act are consistent with current Commonwealth policy on such matters: see section 9.1.1 of the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers under the heading ‘Grounds for issuing a notice.’

A number of other amendments in Schedule 17 to the Bill are consequential to the enactment of this new provision. Items 44 and 48 repeal the now-superfluous phrase ‘that is in the person’s custody or under the person’s control.’ Item 49 repeals and replaces the existing section 194. The purpose of this substitution is to accommodate the new section 191A pre-condition for the exercise of the power in section 194. There is no change to the substantive operation of the provision.

Items 45 and 46 relate to obtaining information relevant to a person’s qualification for a social security payment. Item 45 amends paragraph 192(a). Currently paragraph 192(a) provides that the Secretary may exercise the power to obtain information under section 192 if the information to be given, or the document to be produced, may be relevant to the question whether a person who has made a claim for a social security payment is or was qualified for the payment.
The amendment made by item 45 will enable the Secretary to request information relevant to whether a person who has claimed a social security payment is qualified for any social security payment. This will assist the Secretary in determining whether a person who has claimed a payment has claimed the correct payment, and whether a person who is already on a social security payment may be eligible for a transfer to another social security payment that is more appropriate to their circumstances.

Item 46 adds a new paragraph (aa) to section 192. The purpose of this amendment is to enable the Secretary to seek information that may be relevant to a person’s qualification for a payment that they are not required to claim (for example, claims are not required for some one-off payments and a number of allowances: see Subdivision B of Division 1 of Part 3 of the Social Security Administration Act). Typically a person has had to make a claim for a payment before Centrelink could make a payment to that person; however, recent one-off payments are payable in the absence of claims, and the Secretary’s power to request information under existing paragraph 192(a) has been limited to circumstances where a person has made a claim for the payment.

**Items 47 and 54** relate to the production and use of information for investigations.

Item 47 relates to the power to obtain information coercively. This amendment will allow a notice to be issued to gather information to investigate the circumstances where a potential overpayment is being quantified and there is potential for fraud to be identified.

The amendment made by item 47 and new section 197B inserted by item 54 are intended to clarify the position that information provided by a person in response to a request by the Secretary under section 192 of the Social Security Administration Act, and Division 1 of Part 5 more broadly, can be used for administrative investigation. This would include where the investigation may identify offences against the Act. Any information gathered can subsequently be used in prosecutions of those offences. This has always been the case; nevertheless, in the interests of clarity and transparency in the operation of the Secretary’s powers to request information, it makes this express.

Nevertheless, information provided by an individual in response to a request from the Secretary under Division 1 of Part 5 will not be able to be used against that individual in criminal proceedings, with only limited exceptions: see new subsection 197A(2) inserted by item 54.

**Items 50, 51, 52 and 53** amend sections relating to the content of a notice to give information or to produce a document. Section 196 provides that any requirement issued to a person under Division 1 of Part 5 must be by written notice to that person. Paragraph 196(2)(b) sets out the information to be specified in the written notice.

Item 50 inserts new subparagraph 196(2)(b)(ia) to require that the written notice must include a description of the information or document to which the requirement relates.
Item 51 inserts a note at the end of subsection 196(2) which provides that the written notice issued under section 196 may describe the information, documents or records by class in accordance subsection 33(3AB) of the *Acts Interpretation Act 1901*.

Item 52 repeals and replaces subsection 196(3). Subsection 196(3) currently provides that a the period specified in subparagraph 196(2)(b)(ii) for a person to provide information after receiving a notice must not end earlier than 14 days after the day a notice under section 196 was given. New subsection 196(3) makes the additional provision that the minimum period of 14 days may be shortened if the Secretary is satisfied that it is reasonable in the circumstances, for the purposes of effective administration of the social security law, to specify a shorter period.

The Secretary may be satisfied that a shorter period may be imposed, for example, where urgent provision of information or documents is required to limit debts, or where a reasonable belief is held that the information or documents may become unavailable due to destruction by deliberate act or routine culling. If a person is unable to produce the requested information within the specified timeframe, this may constitute a reasonable excuse for not complying with the notice, which will avoid any penalty for the failure to respond under existing subsection 197(3).

Item 53 repeals and replaces subsection 196(5) and adds a new subsection 196(6). Subsection 196(5) provides that if a notice given under section 196 requires a person to appear before an officer, then that notice must specify a time and place at which the person is to appear and that the time must be at least 14 days after the notice is given. New subsection 196(5) makes the additional provision that if such a notice requires a person to appear before an officer, the notice must also specify that the person may be accompanied by a lawyer.

New subsection 196(6) moves the requirement in subsection 196(5) for a notice to specify a time and place for a person to appear before an officer at least 14 days after a notice is given to its own subsection. New subsection 196(6) makes the additional provision that the minimum period of 14 days may be shortened if the Secretary is satisfied that it is reasonable in the circumstances, for the purposes of effective administration of the social security law, to specify a shorter period.

The Secretary may be satisfied that a shorter period may be imposed, for example, to ensure a person appears before an officer where reasonable grounds exist to indicate that the person is planning to leave the jurisdiction of the Australian courts prior to that 14 day period.

These amendments make the notice provision generally consistent with current Commonwealth policy on the content of statutory demands for information: see section 9.3.3 of the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* under the heading ‘Notice must contain relevant details’.

**Item 54** inserts new section 197A into the Social Security Administration Act. The purpose of this provision is to clarify the effect of the privilege against self-incrimination on a person’s obligation to respond to a statutory demand to produce under Division 1 of Part 5 of the Act.
Where legislation seeks to abrogate a right, it must be clear and unambiguous. The purpose of new section 197A is to clearly and unambiguously abrogate the right against self-incrimination. Subsection 197A(1) provides that a person is not excused from giving information, or producing a document or record under Division 1 of Part 5 if the information or production of the document or record may tend to incriminate the person or expose the person to a penalty. In short, the person cannot refuse to provide the information or document on the ground that it may incriminate them.

Well established law dictates a person cannot be compelled to convict themselves from their own words and subsection 197A(2) applies this principle. Subsection 197A(2) provides for what is called ‘use/derivative use immunity’ for an individual providing information or documents in response to a statutory demand to produce. The subsection sets out that any information given, or document or record produced, by an individual (including any information, document or thing obtained as a direct or indirect consequence of giving the information, or producing the document or record) may not be admitted in evidence against the individual in criminal proceedings, with only limited exceptions. (Legal persons other than individuals, such as bodies corporate, do not generally possess the privilege against self-incrimination, so there is no need to provide them with a use/derivative use immunity).

The rationale for abrogating the privilege against self-incrimination is that the information requested is often essential to maintain the integrity of the social security system, for example through fraud prevention and detection, and is rarely if ever used against the person providing it. Generally only information that is relevant to another person’s social security payment under the social security law is sought from persons. For example, information may be sought from an employer about cash-in-hand income received by a social security recipient, or from a financial institution about a social security recipient’s financial assets, incomings and outgoings.

Nevertheless, even though subsection 197A(1) abrogates the privilege against self-incrimination, subsection 197A(2) ensures that only limited criminal consequences flow from the person’s inability to refuse to provide the information.

The use/derivative use immunity in subsection 197A(2) is subject to certain exceptions, listed in paragraphs (d), (e) (f) and (g). Essentially, information or documents given by an individual are admissible in criminal proceedings against that individual that relate to the falsity of the information. That is, if an individual provides false information in response to a statutory notice to produce under Division 1 of Part 5 of the Social Security Administration Act, that false information can be admitted in criminal proceedings against the individual for provision of false information.

The new section 197A ensures that the Secretary is able to obtain information to ensure the integrity of the social security scheme without people being fearful of being criminally prosecuted as a result of compliance with a notice.
Section 197A is consistent with current Commonwealth policy on self-incrimination and use/derivative use immunity provisions – see section 9.5 of the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement – and current drafting standards for such provisions.

**Item 58** states that the amendments made to section 166 of the Social Security Administration Act by Schedule 17 apply in relation to requests from the AAT made on or after the commencement of this item. This item also states that amendments made to Division 1 of Part 5 of the Social Security Administration Act apply in relation to requirements made under that division on or after commencement of this item.

**Student Assistance Act**

**Item 59** substitutes reference to specific provisions in Division 2 of Part 10 of the Student Assistance Act with a general reference to that Division, to prevent an application for review by the AAT of an exercise of information gathering powers by a delegate.

**Items 60 and 61** amend section 342 of the Student Assistance Act to delete references to section 349 of that Act. Section 349 was repealed on 1 July 1998 by item 119 of Schedule 11 to the Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998.

**Items 62, 75, 76 and 77** relate to amending the provisions regarding the relationship between information gathering powers and Commonwealth, State and Territory information protection laws. Item 62 repeals subsection 342(3) of the Student Assistance Act. Item 77 re-enacts subsection 342(3) as a new subsection 348(2). Item 76 changes the numbering of the existing section 348 to subsection 348(1).

The effect of these amendments is simply to move subsection 342(3) to a new position in the Student Assistance Act. That subsection deals with the relationship between a statutory demand under Division 2 of Part 10 of the Student Assistance Act and Commonwealth information protection laws, and the existing section 348 deals with the relationship between a statutory demand under Division 2 of Part 10 of the Act and State and Territory information protection laws. Since both provisions are closely related, the moving of subsection 342(3) to section 348 is consistent with the legislative intent of section 348.

**Items 63, 64, 68 and 70** introduce the concept of the Secretary reasonably believing that a person is able to give information or documents.

Item 63 inserts new section 342A after section 342 of the Student Assistance Act. This new section imposes an additional condition the Secretary must fulfil before requiring information, documents or records under a provision of Division 2 of Part 10. Under this new section the Secretary can only require a person to give information or produce a document if the Secretary reasonably believes that the person will be able to give the information or produce the document. The forming of this belief is not a decision in itself, merely a procedural step in the process of making a decision to issue or not issue a notice requiring information.
By requiring that the Secretary reasonably believe that a person can provide information or documents before requiring that person to provide the information or documents, this new section ensures that the Secretary’s information gathering powers in Division 2 of Part 10 of the Student Assistance Act are consistent with current Commonwealth policy on such matters: see section 9.1.1 of the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers under the heading ‘Grounds for issuing a notice.’

A number of other amendments in Schedule 17 to the Bill are consequential to the enactment of this new provision. Items 64 and 68 repeal the now-superfluous phrase ‘that is in the person’s custody or under the person’s control.’ Item 70 repeals and replaces the existing section 345. The purpose of this substitution is to accommodate the new section 342A pre-condition for the exercise of the power in section 345. To do this it was simpler to substitute the provision rather than endeavour to amend it. There is no change to the substantive operation of the provision.

Item 65 amends paragraph 343(1)(a). Currently, paragraph 343(1)(a) provides that the Secretary may exercise the power to obtain information under section 343 if the information to be given, or the document to be produced, may be relevant to the question whether a person who has made a claim for a student assistance benefit is or was qualified for the payment.

The amendment made by item 65 will enable the Secretary to request information relevant to whether a person who has claimed a student assistance benefit is qualified for any student assistance benefit. This will assist the Secretary in determining whether a person who has claimed a benefit has claimed the correct benefit, and whether a person who is already on a benefit may be eligible for a transfer to another benefit that is more appropriate to their circumstances.

Items 66 and 74 relate to the production and use of information for investigations.

Item 66 relates to the power to obtain information coercively. This amendment will allow a notice to be issued to gather information to investigate the circumstances where a potential overpayment is being quantified and there is potential for fraud to be identified.

The amendment made by item 66 and the new section 347B inserted by item 74 are intended to clarify the position that information provided by a person in response to a request by the Secretary under section 343 of the Student Assistance Act, and Division 2 of Part 10 more broadly, can be used for administrative investigation. This would include where the investigation may identify offences against the Act. Any information gathered can subsequently be used in prosecutions of those offences. This has always been the case; nevertheless, in the interests of clarity and transparency in the operation of the Secretary’s powers to request information, it makes this express.

Nevertheless, information provided by an individual in response to a request from the Secretary under Division 2 of Part 10 will not be able to be used against that individual in criminal proceedings, with only limited exceptions: see new subsection 347A(2) inserted by item 74.
**Items 67 and 69** repeal notes to subsection 343(1) and 344(1). These notes identify that the term 'person' as used in those subsections includes bodies corporate. This is well understood and the notes are no longer necessary.

**Items 71, 72 and 73** amend sections relating to the content of a notice to give information or to produce a document. Section 347 provides that any requirement issued to a person under Division 2 of Part 10 must be by written notice to that person. Subsection 347(2) sets out the information to be specified in the written notice.

Item 71 substitutes a new subsection (2) that updates the language of the subsection and adds a new requirement that the notice must specify the information or document that must be given or produced (new paragraph (2)(a)). A note is also added to the end of the subsection which provides that the written notice issued under section 347 may describe the information, documents or records by class in accordance subsection 33(3AB) of the *Acts Interpretation Act 1901*. These amendments are consistent with the amendments to paragraph 158(2)(b) of the Family Assistance Administration Act (see items 12 and 13), paragraph 120(2)(b) of the Paid Parental Leave Act (see items 26 and 27), and paragraph 196(2)(b) of the Social Security Administration Act (see items 50 and 51).

Item 72 repeals subsection 347(4). Subsection 347(4) currently provides that the period specified in paragraph 347(2)(b) for a person to provide information after receiving a notice must not end earlier than 14 days after the day a notice under section 347 was given. New subsection 347(4) makes the additional provision that the minimum period of 14 days may be shortened if the Secretary is satisfied that it is reasonable in the circumstances, for the purposes of effective administration of the Student Assistance Act, to specify a shorter period. The Secretary may be satisfied that a shorter period may be imposed, for example, where urgent provision of information or documents is required to limit debts, or where a reasonable belief is held that the information or documents may become unavailable due to destruction by deliberate act or routine culling. If a person is unable to produce the requested information within the specified timeframe, this may constitute a reasonable excuse for not complying with the notice, which will avoid any penalty for the failure to respond under existing subsection 347(11).

Item 73 repeals and replaces subsection 347(6) and adds a new subsection 347(7). Subsection 347(6) provides that if a notice given under section 347 requires a person to appear before an officer, then that notice must specify a time and place at which the person is to appear and that the time must be at least 14 days after the notice is given. New subsection 347(6) makes the additional provision that if such a notice requires a person to appear before an officer, the notice must also specify that the person may be accompanied by a lawyer.

New subsection 347(7) moves the requirement in subsection 347(6) for a notice to specify a time and place for a person to appear before an officer at least 14 days after a notice is given to its own subsection. New subsection 347(7) makes the additional provision that the minimum period of 14 days may be shortened if the Secretary is satisfied that it is reasonable in the circumstances, for the purposes of effective administration of the Student Assistance Act, to specify a shorter period.
The Secretary may be satisfied that a shorter period may be imposed, for example, to ensure a person appears before an officer where reasonable grounds exist to indicate that the person is planning to leave the jurisdiction of the Australian courts prior to that 14 day period.

These amendments make the notice provision generally consistent with current Commonwealth policy on the content of statutory demands for information: see section 9.3.3 of the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers under the heading ‘Notice must contain relevant details.’

**Item 74** inserts new section 347A into the Student Assistance Act. The purpose of this provision is to clarify the effect of the privilege against self-incrimination on a person’s obligation to respond to a statutory demand to produce under Division 2 of Part 10 of the Act.

Where legislation seeks to abrogate a right, it must be clear and unambiguous. The purpose of new section 159B is to clearly and unambiguously abrogate the right of against self-incrimination. Subsection 347A(1) provides that a person is not excused from giving information, or producing a document or record under Division 2 of Part 10 if the information or production of the document or record may tend to incriminate the person or expose the person to a penalty. In short, the person cannot refuse to provide the information or document on the ground that it may incriminate them.

Well established law dictates a person cannot be compelled to convict themselves from their own words and subsection 347A(2) applies this principle. Subsection 347A(2) provides for what is called ‘use/derivative use immunity’ for an individual providing information or documents in response to a statutory demand to produce. The subsection sets out that any information given, or document or record produced, by an individual (including any information, document or thing obtained as a direct or indirect consequence of giving the information, or producing the document or record) may not be admitted in evidence against the individual in criminal proceedings (with only limited exceptions). (Legal persons other than individuals, such as bodies corporate, do not generally possess the privilege against self-incrimination, so there is no need to provide them with a use/derivative use immunity).

The rationale for abrogating the privilege against self-incrimination is that the information requested is often essential to maintain the integrity of the student assistance system, for example through fraud prevention and detection, and is rarely if ever used against the person providing it. Generally only information that is relevant to another person’s student assistance benefit under the Student Assistance Act is sought from persons. For example, information may be sought from an employer about cash-in-hand income received by a student assistance recipient, or from a financial institution about a student assistance recipient’s financial assets, incomings and outgoings.
Nevertheless, even though subsection 347A(1) abrogates the privilege against self-incrimination, subsection 347A(2) ensures that only limited criminal consequences flow from the person’s inability to refuse to provide the information.

The use/derivative use immunity in subsection 347A(2) is subject to certain exceptions, listed in paragraphs (d), (e) and (f). Essentially, information or documents given by an individual are admissible in criminal proceedings against that individual that relate to the falsity of the information. That is, if an individual provides false information in response to a statutory notice to produce under Division 2 of Part 10 of the Student Assistance Act, that false information can be admitted in criminal proceedings against the individual for provision of false information.

The new section 347A ensures that the Secretary is able to obtain information to ensure the integrity of the student assistance scheme without people being fearful of being criminally prosecuted as a result of compliance with a notice.

These amendments are consistent with the addition of new section 159B of the Family Assistance Administration Act (see item 16), section 122A of the Paid Parental Leave Act (see item 33), and section 197A of the Social Security Administration Act (see item 54), and its inclusion is intended to make the operation of the information gathering provisions in all four pieces of legislation consistent.

Section 347A is consistent with current Commonwealth policy on self-incrimination and use/derivative use immunity provisions – see section 9.5 of the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement – and current drafting standards for such provisions.

**Item 78** states that the amendments made to Division 2 of Part 10 of the Student Assistance Act apply in relation to requirements made under that division on or after commencement of this item.
Schedule 18 – Aligning social security and disability discrimination law

**Summary**

This Schedule aligns the operation of the social security law and disability discrimination law.

**Background**

Currently, the *Disability Discrimination Act 1992* (the *Disability Discrimination Act*) provides, under subsection 51(1), that the Social Security Act does not affect discriminatory provisions relating to pensions, allowances or benefits and that anything done by a person in direct compliance with a provisions under the Social Security Act is not unlawful.

The Explanatory Memorandum to the Disability Discrimination Act provides that clause 51 ‘is designed to ensure that in relation to pensions and allowances a person’s entitlement is as set out in the legislation which provides for those pensions and allowances and that entitlement is not affected by the coming into force of this Bill. The clause sets out Commonwealth laws under which pensions and allowances are paid and makes it clear that where there are discriminatory provisions in those Acts, this legislation does not affect those provisions.’

At the time the Disability Discrimination Act commenced, the Social Security Act encompassed the entire social security law. When the Social Security Act was split in 1999 into three Acts (that is, the Social Security Act, the Social Security Administration Act and the International Agreements Act), the Social Security Administration Act only dealt with the administration of the social security law. However, over the years the scope of the Social Security Administration Act has changed and expanded with the inclusion of provisions, such as those that deal with income management and compliance of participation payments. Accordingly, there are now a number of provisions that could be potentially discriminatory in relation to a person’s entitlement to a pension or allowance.

The International Agreements Act gives effect to any social security agreement between Australia and another country relating to reciprocity in social security or superannuation matters that are set out in a Schedule to that Act. Under that Act the provisions of a Scheduled international social security agreement have effect despite anything in the social security law. The agreements that are set out in the relevant Schedules coordinate the social security systems of Australia and the specified country to give better income support protection for people who move between the two countries. Since 1999, the number of countries covered by the International Agreements Act has grown significantly. Again, provisions in the Schedules to the International Agreements Act could be potentially discriminatory in relation to a person’s entitlement to a pension or allowance.

In view of the intention that the Disability Discrimination Act should not affect a person’s entitlement to pensions and allowances, consequential amendments are required to ensure that any potential discrimination under those Acts does not occur.
For the avoidance of doubt, legislative instruments made under the Social Security Act and the Social Security Administration Act will also be exempt from the operation of the Disability Discrimination Act due to the heavy reliance on legislative instruments in particular policy areas, such as for instruments made for the purposes of disability support pension.

**Explanation of provisions**

*Disability Discrimination Act*

**Item 1** repeals and substitutes paragraph 51(1)(d) with **new paragraphs 51(1)(d), (da) and (db)**. New paragraphs (d) and (da) respectively provide that, where there are discriminatory provisions in the Social Security Act and Social Security Administration Act, or in legislative instruments made under those Acts, the Disability Discrimination Act does not affect those provisions where it relates to pensions, allowance or benefits.

New paragraph (db) provides that, where there are discriminatory provisions in the International Agreements Act, the Disability Discrimination Act does not affect those provisions where it relates to pensions, allowance or benefits.
STATEMENTS OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

SOCIAL SERVICES LEGISLATION AMENDMENT (WELFARE REFORM) BILL 2017

Schedule 1 – Creation of the Jobseeker payment
Schedule 2 – Cessation of Widow B Pension
Schedule 3 – Cessation of Wife Pension
Schedule 4 – Cessation of Bereavement Payment
Schedule 5 – Cessation of Sickness Allowance
Schedule 6 – Cessation of Widow Allowance
Schedule 7 – Cessation of Partner Allowance
Schedule 8 – Ministers rules (safety net for transitional arrangements)

These Schedules are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Schedules

Schedules 1-7 introduces provisions for a new Jobseeker Payment and repeals provisions that provide for the following payments:

- Widow B Pension – a payment for older women who did not qualify for parenting payment, have limited means and have lost the support of a partner through death, separation or divorce. This payment will cease on 20 March 2020.
- Widow Allowance – a non-activity tested income support payment for women who lose the support of their partner due to being widowed, divorced, or separated, and who have no recent workforce experience. This payment will close to new entrants on 1 January 2018 and cease on 1 January 2022.
- Partner Allowance – a non-activity tested income support payment for older partners of income support recipients who face barriers to finding employment because of their previous limited participation in the workforce. This payment will cease on 1 January 2022.
- Sickness Allowance – a short-term income support payment for people who have a temporary incapacity due to illness or injury, and who have a job or study to return to after their recovery.
- Bereavement Allowance – a non-activity tested, short term payment paid at the pension rate to individuals whose partner has died. This payment will cease on 20 March 2020.
- Newstart Allowance – a payment that provides financial assistance to people who are unemployed or treated as unemployed. This payment will cease on 20 March 2020.
• Wife Pension – a payment for female partners of Age Pensioners or Disability Support Pensioners who are not eligible for a pension in their own right.

From 20 March 2020, the new Jobseeker Payment will become the main payment for people of working age, ensuring that people in similar circumstances are treated consistently. Ceasing seven payments and introducing the Jobseeker Payment will drive efficiencies and deliver greater administrative consistency within the welfare system, ensuring its long term sustainability.

Schedule 8 will allow the Minister to make rules by legislative instrument about transitional matters regarding the amendments and repeals made by Schedules 1 to 7. The Minister’s rule making power will be subject to limits and safeguards.

**Human rights implications**

**Right to social security**

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) recognises ‘the right of everyone to social security’.

The amendments in these Schedules introduce a new Jobseeker Payment, remove seven income support payments and allow for the making of legislative instruments to manage transitional arrangements to the new payment.

The United Nations Committee on Economic, Social and Cultural Rights (the Committee) has stated that there is ‘a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under the Covenant.’ The Committee places a burden on the State party that has introduced deliberately retrogressive measures to ‘prove that they have been introduced after the most careful consideration of all alternatives and that they are duly justified...’.

Ceasing the seven income support payments and replacing them with the Jobseeker Payment does not limit or affect most recipients’ access to the right to social security. Over 99.9 per cent of recipients will continue to be eligible for income support.

Widow B Pension and Partner Allowance are closed to new entrants and all existing recipients will transition to other income support payments.

Newstart Allowance, Sickness Allowance and Bereavement Allowance eligibility criteria will be incorporated into the Jobseeker Payment, allowing continued access to social security for all recipients of these payments.

Existing Widow Allowance recipients will transition to the Age Pension upon attaining the minimum qualifying age. People who would otherwise have been eligible for Widow Allowance will have access to other social security payments including Newstart Allowance. While Widow Allowance eligibility and payability criteria are broader than other payments (including Jobseeker Payment), this payment no longer reflects social norms such as women’s labour force participation. It is only available to women of a certain age and therefore discriminates against men who may be of
the same age and experiencing similar hardship. Ceasing this payment is therefore duly justified for the purpose of better aligning the system with the gender equality principle, identified by the Committee as an important principle of the right to social security.

Wife Pension was closed to new entrants on 1 July 1995. Existing recipients will transition to other payments including the Age Pension, Carer Payment and Jobseeker Payment. To ensure that existing recipients do not experience a nominal reduction in their fortnightly rate, Wife Pension recipients who transition to the Jobseeker Payment will be subject to transitional arrangements that would maintain the maximum rate of Wife Pension as at 19 March 2020 and assess recipients under both pension and JobSeeker parameters to determine the higher rate. Nominal rates will not be reduced. This is reasonable and consistent with the objective of transitioning recipients to the Jobseeker Payment.

Some recipients who transition to the Jobseeker Payment will be activity tested as part of their eligibility for payment. While this imposes obligations on recipients who were not previously subject to activity testing, existing exemptions will apply if they are unable to fulfil these obligations. These exemptions will ensure continuing access to the right to social security. Introducing these recipients to activity testing may be seen as a retrogressive measure, but it is for the legitimate objective of ensuring sustainability and consistent treatment in the system and does not restrict the basic right to social security.

Around 200 Wife Pension recipients living overseas will not be eligible for any other social security payment if they choose to remain overseas. While this may be seen as a retrogressive measure, it is reasonably justified by the need to achieve the legitimate objective of ensuring the long-term sustainability of the social security system, by simplifying the structure and ensuring consistent treatment of recipients. The alternative of maintaining Wife Pension for the 200 recipients is not consistent with the Government’s priority to ensure the sustainability of the system through simplification. To ensure that these recipients have time to adjust, the proposal will be implemented in 2020. Importantly, this is not a complete limitation of the recipients’ right to social security. At any time before implementation, they can return to Australia where they will be transitioned to an appropriate payment along with other Wife Pension recipients. They can also return to Australia after implementation where they may be eligible for another income support payment. Ceasing Wife Pension may be seen as limiting the right to social security of these recipients. However, it is a permissible limitation with a legitimate objective of ensuring sustainability and consistent treatment in the system. There is a rational connection between ceasing this payment and achieving the objective. Ceasing Wife Pension along with the other six payments will drive efficiencies and deliver greater administrative consistency within the welfare system. It is reasonable, necessary and proportionate and provides the recipients ample time to return to Australia or adjust to their new circumstances.

Right to privacy and reputation

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) provides that ‘no one shall be subjected to arbitrary or unlawful interference with their
privacy’. The right to privacy can be limited to achieve a legitimate objective where the limitations are lawful and not arbitrary.

As part of administering the Jobseeker Payment, the Department of Human Services will collect and store recipient data. This information collection will be subject to the Privacy Act 1988. The data will be used for the legitimate purpose of improving recipient outcomes and ensuring the sustainability of the income support system. This is a reasonable interference with the right to privacy and is authorised by law.

**Conclusion**

These Schedules are compatible with human rights because they do not restrict the basic right to social security. To the extent that it may limit this right for overseas recipients, it is a reasonable, proportionate and necessary response to achieve the objective of ensuring the long-term sustainability of the social security system by simplifying its structure. The Schedules also enhance the system’s compatibility with the right to social security by ensuring consistent treatment of recipients and removing payments that directly discriminate based on gender.

To the extent that the Schedules limits a person’s right to privacy, the limitation is reasonable and proportionate as described above.
Schedule 9 – Relief from activity test for persons aged 55 to 59

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Schedule

Job seekers on Newstart Allowance and Special Benefit – Nominated Visa Holders are generally required to satisfy the activity test, which is a requirement to actively look for, and be willing to undertake, any suitable paid work. Currently, such job seekers who are aged 55 or over are taken to satisfy the activity test if they are engaged in at least 30 hours per fortnight of approved unpaid voluntary work, paid work (including self-employment), or a combination of these, unless the Secretary considers that they should not be relieved from meeting the activity test due to the opportunities for employment available to them.

This Schedule would amend the Social Security Act 1991 to remove the ability of Newstart Allowance and certain Special Benefit recipients aged 55 – 59 to be taken to satisfy the activity test by engaging in voluntary work for at least 30 hours per fortnight. The amendments would allow those recipients to be taken to satisfy the activity test if they are engaged, for at least 30 hours per fortnight, in a combination of approved unpaid voluntary work and suitable paid work, at least 15 hours of which must be in suitable paid work.

Human rights implications

This Schedule engages the following rights:

- the right to social security in article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the right to an adequate standard of living in article 11 of the ICESCR;
- the right to equality before the law and non-discrimination in article 2 of the ICESCR, and article 26 of the International Covenant on Civil and Political Rights (ICCPR) and;
- the right to work in article 6 of the ICESCR.

The right to social security and the right to an adequate standard of living

Article 9 of the ICESCR recognises the right of everyone to social security. Article 11 recognises the right of everyone to an adequate standard of living and the continuous improvement of living conditions.

The amendments would have a limited impact on the right to social security and the right to an adequate standard of living as the amendments would not, in themselves result in any reduction to, or suspension of, a person’s social security payment. The activity test will not change. Instead, the level of volunteering permitted in order to be taken to satisfy the activity test will be reduced for those in the 55 – 59 age cohort.
The amendments would therefore only impact those job seekers who volunteer for 30 or more hours per fortnight, or who volunteer for more than 15 hours a fortnight while also undertaking paid work. These people will now have to undertake additional paid work in order to continue to be exempt from the activity test under subsections 603AA(1) and 731G(1), or become subject to the activity test (which will require them to actively look for, and be willing to undertake, any suitable paid work). Affected job seekers will need to meet these additional requirements in order to remain qualified for their Special Benefit or Newstart Allowance, which potentially impacts their right to social security and an adequate standard of living.

However, the amendments align the requirements of affected job seekers with other job seekers aged 55 – 59 who do not engage in at least 30 hours per fortnight of voluntary work, or a combination of more than 15 hours per fortnight of voluntary work, and paid work. The amendments will simply mean that affected job seekers are in the same position as job seekers in their age cohort who do not get relief from the activity test due to their levels of volunteering.

Further, current provisions of the Social Security Act 1991, for example subsection 603AA(3) and subsection 731G(3), already enable job seekers to be excluded from the relief from the activity test offered by s 603AA(1) and 731G(1) (respectively) in certain circumstances. This Schedule would therefore not have a wholly new impact, but would change the circumstances in which relief from the activity test is available.

Necessity for, and reasonableness and proportionality of, the amendments

Under sections 603AA and 731G of the Social Security Act 1991, there is potential for job seekers aged 55 or over to remain indefinitely on income support while engaging in large amounts of volunteer work, while not necessarily improving their prospects of finding suitable paid work.

There is therefore a need to amend the relevant sections to strengthen the employment focus of exemptions to activity test requirements and better connect mature age job seekers with the labour market, while still recognising that volunteering can be a valuable stepping stone into paid work.

This will help ensure these recipients experience greater workforce participation and the associated benefits. With an ageing population, it is important to encourage older people to continue to participate in the paid workforce.

It is important to emphasise that any additional work requirements for affected job seekers would not include work which is unsuitable for the person, such as work that poses a risk to their health and safety, or work that would require the person to move to another place. The amendments only relate to work that is suitable for the person, taking into account their individual circumstances.

The Government is also implementing separate measures aimed at addressing the barriers faced by mature age job seekers. For example, the Government is investing over $100 million to increase the skills and experience of mature age job seekers from 1 July 2018.
Accordingly, while the amendments would have, for the reasons outlined above, a limited impact on the right to social security and the right to an adequate standard of living, they are a reasonable and proportionate means of helping to achieve the objectives of this Schedule.

**The right to equality and non-discrimination**

Article 2 of the ICESCR and article 26 of the International Covenant on Civil and Political Rights (ICCPR) recognise the right to equality and non-discrimination on, among other grounds: race, sex, colour, language, national origin or ‘other status’. Relevantly, age has been considered to constitute ‘other status’ for the purposes of articles 2 and 26.

The amendments will have an impact on certain job seekers aged 55 – 59. There are situations where there are good reasons for using age-based distinctions in connection with employment measures. Employment measures are developed to address particular labour market or policy issues which can vary across age groups. Targeting particular age groups allows measures to be designed in the most appropriate way to meet the different needs of different groups in the community.

For many years, Parliament has recognised that there may in certain circumstances be valid reasons for differential treatment on the basis of age in connection with employment. For example, the provisions which these amendments would affect, and other provisions in the social security law concerned with encouraging job seekers into the workforce, contain age-based distinctions.

Also, section 41A of the *Age Discrimination Act 2004* provides that Commonwealth programmes which aim to increase workforce participation and meet the needs of those of a particular age are not unlawful by reason of that Act.

To the extent that the amendments affect job seekers within the 55 – 59 age bracket, this would not involve any illegitimate age discrimination. As the Australian population ages, the community now expects that those in the 55 – 59 age bracket should continue to actively seek and undertake suitable paid work, including where they also perform voluntary work. Those 60 years of age and over will be unaffected by the amendments.

Further, as noted above, the amendments would simply mean that the affected job seekers would generally be subject to the same activity test requirements as those of job seekers aged 55 – 59 who do not engage in at least 30 hours per fortnight of voluntary work, or at least 15 hours of voluntary work in combination with paid work.

In addition, the amendments would not affect other provisions in the social security law which relate to the circumstances in which particular cohorts of job seekers, such as principal carers of a child or those with a partial capacity to work, may be taken to satisfy the activity test, regardless of their age.
The right to work

Article 6 of the ICESCR recognises the right to work. The amendments made by this Schedule encourage job seekers to engage with their right to work by encouraging them to look for more hours of paid work rather than remaining on income support indefinitely, without being required to look for or undertake suitable paid work.

The amendments are compatible with the protection of just and favourable conditions of employment, as work which provides terms and conditions that are less generous than the applicable statutory conditions continues to be taken to be unsuitable work for the purposes of the activity test (see, for example, paragraph 601(2A)(e) of the Act in relation to Newstart Allowance).

Conclusion

This Schedule is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable and proportionate to legitimate objectives.
Schedule 10 – Start day for some participation payments

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Schedule

This Schedule would amend the Social Security (Administration) Act 1999 (Social Security Administration Act) to implement the Work First: Faster Connection to Employment Services 2017 Budget measure, which aims to encourage certain job seekers claiming Newstart Allowance or Youth Allowance (other than new apprentices or full-time students) to connect more quickly with employment service providers.

Under RapidConnect, certain unemployed people claiming income support are assisted to join the workforce by being required to promptly access employment opportunities through an employment services provider. Exemptions to RapidConnect apply (such as where the person is assessed as having multiple barriers to employment).

Currently, a person who claims Newstart Allowance or Youth Allowance (other) and is subject to RapidConnect is required to attend an initial interview with an employment services provider before their income support is payable. The requirement to attend the interview is imposed under section 63 of the Social Security Administration Act. If the person attends the interview as required, the start day for their payment is the day on which the claim is made. In some circumstances, this is the date on which the person first contacted the Department of Human Services in relation to the claim.

If the person fails to attend their initial interview, sections 547AA and 615 of the Social Security Act 1991 (Social Security Act) have the effect that the income support payment is generally not payable until the person meets that requirement. However, if the Secretary determines that section 547AA or section 615 should cease to apply (for example because the person had a reasonable excuse for the failure or because of circumstances beyond the person’s control), the income support payment is typically backdated to the date on which the claim for the payment was made.

This Schedule would amend the Social Security Administration Act so that a job seeker’s Newstart Allowance or Youth Allowance (other) payment would generally be payable from the date on which the job seeker attends their initial interview with an employment services provider, instead of the date on which the claim for the payment was made.

This Schedule would also amend the Social Security Act so that the ordinary waiting period for job seekers subject to RapidConnect continues to commence on the same day as for people not subject to RapidConnect, as is currently the case under the social security law.
An ordinary waiting period is a 7 day waiting period which certain income support claimants are subject to, and which generally commences on a person’s start day. Due to the amendments made by this Schedule, a RapidConnect participant’s start day will usually be later than the start day of a Newstart Allowance or Youth Allowance (other) claimant who is not a RapidConnect participant which would result in their ordinary waiting period commencing (and expiring) later than is currently the case.

Therefore the Schedule will also preserve the way a start day is worked out for the purposes of determining:
- when an ordinary waiting period commences for a RapidConnect participant; and
- whether a RapidConnect participant is subject to an ordinary waiting period in circumstances where they:
  o received an income support payment in the 13 weeks immediately prior to the person’s start day; or
  o are experiencing a personal financial crisis (which may include being subject to domestic violence or severe financial hardship in the 4 weeks immediately prior to the person’s start day).

**Job seekers affected by the amendments**

This Schedule would not affect job seekers who are exempt from RapidConnect (for example), highly disadvantaged job seekers including those with a partial work capacity or who are principal carers of a child or those referred to the Community Development Program or Disability Employment Services. This Schedule would not affect individuals who make a claim for Youth Allowance who are new apprentices or undertaking full-time study.

**Human rights implications**

This Schedule engages the following human rights:

- the right to social security in article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR);
- the right to an adequate standard of living in article 11 of the ICESCR; and
- the right to work in article 6 of the ICESCR.

**Right to social security and the right to an adequate standard of living**

Article 9 of the ICESCR recognises the right of everyone to social security. The right to social security requires States to establish a social security system and, to the maximum of their available resources (as required by Article 2 of the ICESCR), ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.
Article 11 of the ICESCR recognises the right of everyone to an adequate standard of living including adequate food, water and housing, and to the continuous improvement of living conditions.

Article 4 of the ICESCR provides that countries may only subject economic, social and cultural rights to such limitations ‘as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society’. The Committee on Economic, Social and Cultural Rights has stated that such limitations must be proportionate and the least restrictive alternative where several types of limitations are available, and even where such limitations are permitted, they should be of limited duration and subject to review.

It is intended that this Schedule would only apply to job seekers subject to RapidConnect. Job seekers may be exempt from RapidConnect, including if they are assessed by the Department of Human Services as having multiple significant barriers to finding employment (whether those barriers are vocational or non-vocational). Job seekers who are exempt from RapidConnect would not be affected by this Schedule.

The intention of the amendments made to the Social Security Administration Act is to encourage job seekers to connect more quickly with employment services providers. The longer a job seeker takes to attend their initial appointment with their provider the longer their income support might be delayed. It is appropriate that job seekers who are not highly disadvantaged and who have claimed income support should connect quickly with the employment services that are available to help them find a job.

Around 80 per cent of job seekers subject to RapidConnect are connected with an employment services provider within a short period of time. However, 20 per cent are not connected with their provider more than 14 days after the lodgement of their claim for income support. Linking the start day for income support payments to attendance at the first provider appointment reinforces the original policy intent of RapidConnect (introduced in 2005).

The right to social security is not impermissibly limited by requiring job seekers to attend an initial appointment with their employment services provider before their income support becomes payable. The Schedule encourages a job seeker who has no significant barriers to obtaining employment to connect with their employment services provider and begin to undertake activities that will assist them to obtain employment as soon as they can.
The amendments made by this Schedule to the Social Security Administration Act do not limit a job seeker’s right to social security if they connect with their employment services provider as required, because income support would be payable to them once they attend. Importantly, if a job seeker complies with the requirement to attend an interview on a specified day, there would be a maximum of two business days between the imposition of the requirement and the income support payment being payable. If there is no appointment available with a provider within two business days after the Secretary imposes the requirement, and the job seeker attends the next available appointment, the job seeker’s income support payment is payable from the date on which the requirement is imposed. As such, job seekers who comply with the requirement would not be disadvantaged as a result of an appointment being unavailable within two business days.

If a job seeker fails to comply with a requirement to attend an interview with their employment services provider on a specified day, or elects to attend an appointment more than two business days after the Secretary imposes the requirement, their income support payment would be delayed until they connect with an employment services provider.

However, if a person fails to attend their initial interview, the amendments made by this Schedule would interact with existing sections 547AA and 615 of the Social Security Act, to allow the Secretary to take account of their individual circumstances and the reasons why they failed to attend an interview to determine the relevant start day for their income support payments.

That is, if the Secretary is satisfied that it is appropriate to do so (for example, because the person had a reasonable excuse for failing to attend the appointment or because of circumstances beyond the person’s control), the Secretary may determine that sections 547AA or 615 should cease to apply at an earlier time such that their income support would be payable from the date of the appointment they missed, rather than that of the subsequent appointment.

To the extent that the amendments made by this Schedule to the Social Security Administration Act may limit the right to social security, the impact is reasonable and proportionate to the policy objective of having job seekers who have no significant barriers to employment connect quickly with employment service providers that will increase their employment prospects.

Encouraging job seekers who have no significant barriers to employment to connect more quickly with employment services providers, who are there to assist them to obtain work, can have a positive effect on a job seeker’s standard of living. Connecting more quickly with employment services improves the job seeker’s employability and their chances of finding and obtaining employment. Assisting a job seeker out of the social security system and into the workforce improves the job seeker’s standard of living, and helps maintain both the integrity and sustainability of the social security system by ensuring that finite resources are allocated to those in most need.

To the extent that the amendments to the Social Security Administration Act would have an impact on the right to an adequate standard of living, that impact is limited.
As noted above, if a job seeker complies with the requirement to attend an interview on a specified day — or there is no appointment available within two business days — there would be a maximum of two business days between the imposition of the requirement and the income support payment being payable. The Schedule would also interact with existing sections 547AA and 615 of the Social Security Act to allow the Secretary to take account of a job seeker’s individual circumstances and the reasons why they failed to attend an interview to determine the relevant start day for their income support payments.

The impact on job seekers who choose not to connect quickly with their employment services provider is reasonable and proportionate because, although these job seekers have no significant barriers to obtaining employment, they have chosen not to engage with the specialist employment services that are available to them as quickly as they could have.

For the reasons set out above, to the extent that the amendments made by this Schedule to the Social Security Administration Act may limit the right to social security or the right to an adequate standard of living, the impact is necessary and proportionate to the legitimate policy objective of encouraging greater workforce participation and self-support for job seekers who have no significant barriers to employment.

The intention of the amendments made by this Schedule to the Social Security Act is to ensure that the ordinary waiting period for job seekers subject to RapidConnect continues to commence on the same day as for people not subject to RapidConnect, as is currently the case under the social security law.

The effect is that RapidConnect participants subject to an ordinary waiting period will not be unduly disadvantaged by their later start day in calculating when their ordinary waiting period commences or in determining whether they are subject to an ordinary waiting period.

The amendments made by this Schedule to the Social Security Act will ensure that the ordinary waiting period continues to operate in accordance with existing rules and commences on the same day irrespective of whether the job seeker is subject to RapidConnect. This promotes a RapidConnect participant’s right to social security and an adequate standard of living by ensuring that the ordinary waiting period is consistently applied.

**Right to work**

Article 6 of the ICESCR recognises the right to work. This includes the right to the opportunity to gain a living by work which the job seeker freely chooses or accepts and is considered an inherent part of human dignity.\(^1\)

The Schedule promotes the right to work by encouraging unemployed Australians subject to RapidConnect to engage with their right to work by connecting quickly with employment services providers that are there to help them obtain gainful employment. Compliance by a job seeker with their RapidConnect requirements

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\(^1\) Committee on Economic, Social and Cultural Rights, General Comment 18, paragraphs 1 and 2.
Statements of compatibility with human rights

places them in an optimum position to seek and obtain gainful employment more quickly. As such, this Schedule seeks to ensure that more job seekers engage with their right to work and experience the benefits of employment sooner than might otherwise be the case.

**Conclusion**

This Schedule is compatible with human rights. To the extent that it limits rights, the limitation is reasonable, proportionate to the policy objective and for legitimate reasons.
Schedule 11 - Removal of intent to claim provisions

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Schedule

This Schedule will amend the Social Security Administration Act by removing the current deemed claim provisions that allow a claimant to receive payments from the date on which they initially contacted the Department of Human Services.

Human rights implications

This Bill engages human rights related to the right of everyone to social security in Article 9, and the right of everyone to an adequate standard of living for an individual and their family, including adequate food, clothing and housing, and the continuous improvement of living conditions in Article 11 of the International Covenant on Economic Social and Cultural Rights.

Abolishing the current deemed claim provisions does not remove access to the range of social security payments that attracted these provisions. Access to these payments will remain, regulated by the same qualification rules in place prior to the removal of deemed claim provisions. Payments will now be made from the date on which a person submits all material necessary to be assessed that is within their control with the aim of maintaining the general integrity of the social security system.

Provisions also exist to support people during the claim process who, as a result of exceptional circumstances, require financial assistance. This is to ensure access to income support for those most in need.

Conclusion

This Bill is compatible with human rights because to the extent that it may tighten the claim process, the stricter requirements are reasonable, necessary and proportionate and people are otherwise provided for.
Schedule 12 – Establishment of a drug testing trial

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Schedule

This Schedule will, from 1 January 2018 (or date of commencement), establish a two year trial of drug testing for 5,000 recipients of Newstart Allowance (NSA) and Youth Allowance (other) (YA(o)) in three locations.

The trial sites will be set out in a legislative instrument and will be selected based on the best available evidence and data around drug use in Australia, as well as the availability of alcohol and other drug treatment options.

People who claim NSA or YA(o) on or after commencement of the trial (intended to be 1 January 2018) and reside in a trial location will be eligible for the trial. Those claiming on or after this date will need to acknowledge in their claim that they may be required to participate in the drug testing trial. Claims will be unable to be determined unless this has been acknowledged by claimants who live in the trial locations.

Recipients who are selected for testing will be notified of a requirement to attend an appointment with the Department of Human Services. At this appointment they will be notified of a requirement to provide a sample of saliva, urine or hair for the purposes of a drug test. Testing will be undertaken by a contracted third party provider in accordance with a set of drug testing rules which will be set out in a legislative instrument. The rules will cover issues relating to the conduct of the test to ensure that testing is conducted appropriately and in accordance with relevant standards. The contracted testing provider will be required to provide notice of the test results to the Department of Human Services.

Recipients who fail to attend this appointment will have their payment suspended until they attend a rescheduled appointment as is currently the case for other types of appointments. Those who have a reasonable excuse for missing their appointment will have their payment restoration backdated. Should a job seeker refuse to undertake the drug test, their payment will be cancelled and they will be subject to a four week waiting period, if they subsequently re-claim.

Recipients who test positive to the initial drug test will become subject to Income Management for a period of 24 months. The contracted testing provider will be required to provide a notice to the Department of Human Services for the purpose of referring the job seeker to Income Management.

Job seekers will have the option to dispute the result of a positive test by requesting a re-test. If the re-test result is also positive, the job seeker will also have to repay the cost of the test.
Job seekers who return a positive test result will also be subject to a second drug test within 25 working days. If the job seeker tests positive to the second test, they will need to repay the costs of the test.

When required, repayment of positive test results will be by temporary reduction of the job seeker’s rate of payment at a rate determined by the Secretary through legislative instrument. The rate of repayment will not be set at more than 10 per cent of a person’s instalment and financial hardship provisions will apply. The amount of the test to be repaid will be set out in a legislative instrument, and will not be more than the price of the lowest test available to the Department of Human Services.

Recipients who test positive to a second drug test during the trial period will be referred to a suitably qualified health professional for assessment of their drug use issues and the recommendation of any treatment appropriate to the individual’s circumstances. Based on the report from the medical professional, where appropriate, recipients will be required to complete one or more activities designed to address their substance abuse as part of their Job Plan, such as rehabilitation, counselling or ongoing drug testing.

Recipients with a drug treatment activity in their Job Plan may still be required to undertake other activities, including job search, depending on their circumstances. Job search or other activities may be reduced depending on treatment requirements. Intensive treatment which precludes participation in other activities would fully meet mutual obligation requirements. Job seekers who fail to comply with their Job Plan will be subject to normal compliance actions.

Reasonable excuse provisions continue to apply, with the exception of drug or alcohol use reasons under the related proposal Tightening Reasonable Excuse for Non-compliance Due to Drug or Alcohol-Related Reasons (see Schedule 14).

Human rights implications

Rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR)

This Schedule engages a numbers of rights under the ICESCR as outlined below. Limitations on these rights are permissible where they are: determined by law; compatible with the nature of the rights in the treaty in question; seek to achieve a legitimate objective; and are a reasonable and proportionate means of achieving that objective. Measures that limit rights in a way that meets these requirements will be consistent with those rights.

The drug testing trial will be provided for by law under the amendments in this Schedule. The trial has two key objectives – it seeks to:

- maintain the integrity of, and public confidence in, the social security system by ensuring that tax-payer funded welfare payments are not being used to purchase drugs or support substance abuse;
- provide new pathways for identifying recipients with drug abuse issues and facilitating their referral to appropriate treatment where required.
Substance abuse can be a major barrier to social and economic participation. Administrative data from the Department of Human Services shows that, for some job seekers, substance abuse is directly impacting their ability to undertake job search and other activities to help them gain employment. The number of job seekers using drug or alcohol abuse as an excuse for not meeting their requirements increased by 131 per cent between 2015 and 2016 while the number exempt from all requirements due to drug or alcohol dependency increased by 80 per cent between 2011 and 2016.

While there are a number of existing mechanisms for identifying job seekers with drug abuse issues, including through reasonable excuse and exemption arrangements, these mechanisms generally rely on self-disclosure by the job seeker and the disclosure is often only once the job seeker’s drug misuse has directly impacted their ability to meet their mutual obligation requirements,

The amendments in this Schedule will trial drug testing as a new means of identifying job seekers for whom drug abuse is (or may become) a barrier to work, providing a disincentive for further drug use and supporting those with ongoing drug misuse issues to seek treatment.

This Schedule meets the requirements for permissible limitations on rights under the ICESCR as outlined below and is therefore consistent with these rights

Right to social security (Article 9), the right to an adequate standard of living (Article 11) and the rights of the family and child to special protection and assistance

Article 9 of the ICESCR recognises the right of everyone to social security. The right to social security requires parties to establish a social security system and, within their maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

Article 11(1) recognises the right of everyone to an adequate standard of living for themselves and family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The right to an adequate standard of living is closely connected to the right to social security.

Article 10 provides for the rights of family and child to special protection and assistance. These rights also overlap substantially with other rights in the ICESCR, particularly the right to social security and an adequate standard of living. In light of the close relationship between these rights, it is considered that the arguments set out below apply to a person’s rights under articles 9, 10 and 11(1) of the ICESCR.

Australia’s social security system is underpinned by a key principle that people of working age who have the capacity to work and become self-sufficient should do all they can to achieve this. In line with this principle, recipients of Newstart Allowance and Youth Allowance (other) are subject to range of obligations in return for taxpayer-funded income support which reflect the purpose of these payments – to support people while they look or prepare for work.
The amendments in this Schedule will trial random drug testing as a new condition for the receipt of Newstart Allowance or Youth Allowance (other). People claiming these payments in the trial locations will be required to acknowledge this new condition in order for their claim to be granted. This is designed to ensure that these claimants are aware of and willing to meet the new conditions that apply under the trial. Job seekers who later refuse to undertake a drug test where required will have their payments cancelled and a four week waiting period will apply when re-claiming. These consequences reflect that job seekers are expected to meet all their obligations, including random drug testing for those in the trial, in return for their payments.

Recipients who are subject to this measure and who test positive to a drug test will not lose access to income support. Those who return a positive drug test will be placed on Income Management, which limits the amount of money a job seeker can receive as cash and therefore their capacity to expend their payments on drugs.

Income management does not reduce the total amount of income support available to a person, just the way in which they receive it. Under Income Management, majority portion of a job seeker’s normal payment is quarantined and the remaining amount is paid into their regular bank account and is accessible as cash. Job seekers placed on Income Management under this trial will still be able to purchase items at approved merchants and pay rent and bills with their quarantined funds. However, the recipient will not be able to use their quarantined funds to withdraw cash, gamble, buy alcohol or cash-equivalent products (such as gift cards).

Income Management is already used as a welfare quarantining mechanism in a number of locations across Australia as a means of assisting recipients to manage their finances to meet their essential living costs, including food and housing. Evidence collected on Income Management in Western Australia indicates that the program is improving the lives of many Australians. It has given many participants a greater sense of control of money, improved housing stability and purchase restraint for socially harmful products, while reducing a range of negative behaviours in their communities including drinking and violence.

Job seekers who return a positive test result will also be subject to a second drug test within 25 working days. If the job seeker tests positive to the second test, they will need to repay the costs of the test.

Job seekers who test positive to a second or subsequent drug test costs will need to be repay the cost of the test through a temporary reduction of their social security instalment. Consistent with the objective of trial, this repayment requirement is designed to discourage future drug use and potential positive test results. It is intended that the trial will utilise up to three different testing methods which may have varying costs. To ensure that all job seekers are treated consistently, irrespective of the testing method used in their case, and the amount of the test to be repaid will be set at the lowest cost option used. In addition, the rate of repayment will not be set at more than 10 per cent of a person’s instalment, with the option to reduce this percentage, including to zero, in cases of financial hardship. The repayment reduction will only apply to the recipient’s income support payment. Any payments made to parents for the maintenance of their children, such as Family Tax Benefit, or to meet childcare costs, would not be affected. These arrangements are designed to
ensure that job seekers will not be put in the position of being unable to meet their basic needs or those of their family as a result of the requirement to repay the cost of a positive test.

Job seekers who test positive to more than one drug test will be referred to a medical professional for assessment of any appropriate treatment options. If the assessment recommends treatments, the job seeker will be required to have a treatment activity included in their Job Plan. As per existing arrangements, job seekers who fail to meet their activity requirements under their Job Plan (including any drug treatment activity requirements under this trial) may be subject to a financial penalty. Compliance action such as this is a standard feature under the social security law, and the placing of qualifying conditions on social security benefits (and the enforcement of those conditions) is permissible under article 9 where they are reasonable and proportionate to the objective of the policy. As noted above, a key objective of this trial is to assist job seekers with drug misuse issues to address their barriers to employment. Where a job seeker has been assessed by a medical professional as needing treatment, it is reasonable to expect the job seeker to pursue treatment as part of their Job Plan and to be subject to proportionate consequences if they fail to do so.

It is, however, important to note that the vulnerability of people and the impact of their circumstances on their ability to comply with their mutual obligation requirements is considered under social security law through reasonable excuse and exemption provisions, and delegates have significant discretionary powers regarding the application of compliance actions to consider the circumstances of each individual case.

In addition, the availability of appropriate treatment will be taken into consideration in determining the requirements that should be included in a person’s Job Plan. Job seekers will not be penalised if treatment is not available or there is a delay in being able to access treatment. In this case, job seekers will be able to meet their treatment requirement by demonstrating a commitment to pursuing treatment when it is available (for example, being on a waiting list) and participating in other approved activities, tailored to their circumstances in the meantime.

To the extent that this trial may limit a job seeker’s rights under article 9 and article 11, this limitation is reasonable and proportionate to the objective of the trial as outlined above. There are appropriate safeguards in place to ensure that job seeker’s participating in the trial are still provided with the means to meet their basic needs and those of their families.

Right to equality and non-discrimination

Article 2(2) of the ICESCR recognises the right of persons to equality and not to be discriminated against in the enjoyment of their rights under the ICESCR.

This Schedule engages the right to equality and non-discrimination in that it will result in differential treatment on the basis of a job seeker’s location. The use of drug testing as a condition of payment is being implemented as a trial in three areas only in order to assess the effectiveness of this type of intervention in achieving the objectives outlined above, namely ensuring taxpayer-funded income support
payments are used appropriately and identifying job seekers with drug misuse issues and facilitating their referral to treatment where appropriate. There are a number of existing place-based arrangements provided for in the social security law, including Income Management and the Cashless Debit Card trial.

To the extent that this Schedule limits the right to equality and non-discrimination for those in a drug testing trial location, this is reasonable and proportionate to the objective of a trial. The trial will be subject to a comprehensive evaluation which will inform any decisions about extending the trial or rolling out drug testing more broadly.

The drug testing trial also engages the right to equality and non-discrimination insofar as it may involve a direct or indirect distinction on the basis of disability or illnesses associated with drug or alcohol dependency. While the drug testing trial is not specifically aimed at Indigenous Australians, statistics suggest that Aboriginal and Torres Strait Islander people experience disproportionately high levels of substance misuse compared to the Australian population generally. On this basis, there may be indirect differential treatment on the basis of race.

This measure seeks to trial new ways of identifying people with drug use issues and assisting them to enter treatment where this is required to address their barriers to work. It is intended that individuals will be selected for drug testing at random, from a pool of new recipients who have been profiled as being at higher risk of drug misuse issues. A risk profile will be developed for this purpose, drawing on a range of available data. To the extent that certain cohorts may be more likely to test positive and that this may represent a limitation on the right to equality and non-discrimination (whether direct or indirect), this is reasonable and proportionate to the objectives of the trial.

**Obligations under the Convention on the Elimination of all forms of Racial Discrimination (CERD) and the Convention on the Rights of Persons with Disability (CPRD)**

To the extent that the drug testing trial engages the right to non-discrimination, including on the basis of race or disability, the trial also engages Australia’s obligations under the CERD to eliminate all forms of racial discrimination and under the CPRD. The rights of persons with a disability expressed in the CRPD largely mirror those economic and social rights set out in the ICESCR, and include rights to habitation and rehabilitation, the highest attainable standard of health and reasonable accommodation.

As noted above, it is intended that recipients will be selected for testing on the basis of their risk factors for having drug misuse issues. To the extent that certain cohorts may be more likely to test positive, this constitutes legitimate differential treatment and does not discriminate on the basis of race or disability.

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Obligations under the Convention on the Rights of the Child (CRC)

The drug testing trial engages with the rights under the CRC as it is applied to people with children. Article 3 provides that in all actions concerning a child, the best interests of the child will be a primary consideration. This measure is intended to achieve the objectives of ensuring appropriate use of welfare payments (including to meet essential living costs for recipients and their families) and identifying drug use and helping people who require it to seek treatment. These objectives are in line with article 3 of CRC. Supporting and encouraging recipients to address their drug misuse issues will improve their capacity to find work and support themselves and their children. As noted above in relation to the rights under the ICESCR, including the rights of family and child to special protection and assistance, there are appropriate safeguards in place to ensure that job seekers participating in the trial are still provided with the means to meet their basic needs and those of their families.

Obligations under the International Covenant on Civil and Political Rights (ICCPR)

Right to equality before the law

Article 26 of the ICCPR provides that ‘all persons are equal before the law and are entitled without any discrimination to the equal protection of the law’. It also provides that the law must ‘prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’. The Human Rights Commission has also interpreted ‘other status’ to include disability.3

The drug testing trial engages with this right, however article 26 is subject to the principle of legitimate differential treatment, similar to Australia’s obligations under the CERD to eliminate all forms of racial discrimination and under the CPRD which are discussed above. For the same reasons, the drug testing trial is considered to be consistent with article 26.

Right to privacy

The drug testing trial engages article 17 of the ICCPR which affords the right to protection against arbitrary or unlawful interference with their privacy, family, home or correspondence. Lawful interferences with the right to privacy are permitted provided they are not arbitrary. The right to privacy extends to protecting a person’s bodily integrity against compulsory procedures, such as drug testing.

Mandatory drug testing is not prohibited under international human rights law; however it must be necessary and proportionate to achieving a legitimate objective.

The drug testing trial is a reasonable and proportionate limitation on the right to privacy under the ICCPR in order to achieve the objective of ensuring appropriate use of welfare payments and identifying people with drug misuse issues and

assisting them to address those issues.

People who return a positive test will be placed on Income Management for a two year period to help them to manage their finances and limit their access to cash which could be spent on further harmful drug use. Other elements of the measure, including the compulsory referral to health professionals for assessment if more than one positive test is returned during the trial period and subsequent inclusion of appropriate treatment in a person’s Job Plan, are also reasonable and proportionate to achieving these objectives.

This trial will be subject to the existing safeguards in the Privacy Act 1988 and the confidentiality provisions in the Social Security (Administration) Act 1999 which protect the collection, use and disclosure of protected information. A joint Privacy Impact Assessment by the Department of Human Services and the Department of Social Services is being conducted for this measure and will be submitted to the Office of the Australian Information Commissioner to ensure implementation of the measure minimises privacy law risks.

*Rights of the child to special protection and assistance*

This right is substantially similar right to that in article 10(3) of the ICESCR which is considered above. For the same reasons, the drug testing trial is considered to be consistent with the rights of the child to special protection and assistance.

**Conclusion**

This Schedule is compatible with human rights because, to the extent that it may impact human rights, the impact is for a legitimate objective, and is reasonable, necessary and proportionate as outlined above.
Schedule 13 – Removal of exemptions for drug or alcohol dependence

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Schedule

Currently, recipients with activity test or participation requirements (mutual obligation requirements) may be granted an exemption from these requirements in circumstances that may be directly attributable to drug or alcohol misuse.

Under the amendments in this Schedule, from 1 January 2018, exemptions from mutual obligation requirements will no longer be available where the reason for the exemption is wholly or predominantly attributable to drug or alcohol dependency or misuse. This includes an incapacity exemption relating to a drug or alcohol dependency condition or a special circumstances exemption relating to circumstances caused (wholly or substantially) by the person’s drug or alcohol misuse.

Recipients who are no longer eligible for an exemption will remain subject to mutual obligation requirements tailored to their circumstances, for example, undertaking appropriate drug or alcohol treatment.

Remote job seekers participating in the Community Development Program will not be subject to this measure.

Human rights implications

The measure contained in this Schedule engages the following human rights:

- Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognises the right of everyone to social security;
- Article 11 of the ICESCR, which recognises the right of everyone to an adequate standard of living including adequate food, water and housing, and to the continuous improvement of living conditions;
- Article 10 of the ICESCR, which recognises the rights of the family and the child to protection and assistance;
- Article 4 of the Convention on the Rights of Persons with Disabilities (CRPD), which recognises the rights of those with a disability not to be discriminated against of the basis of their disability. Article 2(2) of the ICESCR recognises the rights of persons to equality and not to be discriminated against in the enjoyment of their rights under the ICESCR; and
- Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which recognises the right of everyone to equality before the law, without distinction as to race, colour, or national or ethnic origin.
The right to social security and the right to an adequate standard of living

Article 9 of the ICESCR recognises the right of everyone to social security. The right to social security requires parties to establish a social security system and, within their maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

Article 11(1) of the ICESCR recognises the right of everyone to an adequate standard of living including adequate food, water and housing, and to the continuous improvement of living conditions. The right to social security is important in realising many of the other rights in the ICESCR, including the right to an adequate standard of living.

Australia’s social security system is underpinned by a key principle that people of working age who have the capacity to work and become self-sufficient, whether currently or in the future, should do all they can to achieve this. In line with this principle, certain recipients of working age payments, including Newstart Allowance, Youth Allowance, parenting payment, special benefit and disability support pension, are subject to mutual obligation requirements, which may include looking for work or undertaking activities to address any barriers that may prevent them from finding and maintaining work.

Exemptions from mutual obligation requirements are provided in recognition that, in some circumstances, a recipient may be temporarily unable to meet these requirements. Currently, this may include circumstances caused by drug or alcohol dependency or misuse. However, granting an exemption in these circumstances means that there is no requirement or expectation on the recipient to address the underlying drug or alcohol issues that are prevent them from looking for or preparing for work. This is not consistent with the principle of mutual obligation requirements.

The number of recipients granted an exemption from mutual obligation requirements for drug or alcohol related reasons has increased significantly over the past five years. Between September 2011 and September 2016, the number of recipients with an incapacity exemption related to a drug or alcohol dependency condition nearly doubled from 2,920 to 5,256. This shows that there are an increasing number of recipients being exempt from all requirements rather than actively encouraged to address their substance-related barriers to work.

For this reason, under the amendments in this Schedule, recipients will no longer be able to receive an exemption from their mutual obligation requirements for reasons primarily attributable to drug or alcohol misuse. This will have the effect that they will need to meet mutual obligation requirements, tailored to meet their needs and circumstances. This seeks to ensure people with drug and alcohol dependency or misuse issues remain engaged with their employment services provider and work to address their barriers to employment, including through drug or alcohol treatment, if necessary, or through participation in suitable employment or training related activities.
Recipients will still be eligible for an exemption as per existing rules for circumstances, including temporary incapacity, that are not wholly or substantially attributable to drug or alcohol misuse.

The removal of exemptions wholly or substantially attributable to drug or alcohol misuse does not affect a person’s eligibility for social security or reduce the basic rate of the payment they receive. However, if a recipient who is no longer exempt from their mutual obligation requirements fails to attend or participate in required activities, they may be subject to compliance action which may result in a short-term financial penalty. To the extent that this may limit a recipient’s right to social security and the right to an adequate standard of living, this limitation is considered to be reasonable and proportionate to the objective of encouraging recipients with drug or alcohol dependency or misuse issues to actively engage in activities to address those issues.

Mutual obligation requirements are tailored to a recipient’s circumstances and the activities they are required to undertake in their Job Plan are expected to be activities that the recipient is able to comply with. For those with drug or alcohol dependency or misuse issues, this may include appropriate treatment. Importantly, the recipient will remain connected with their employment services provider and will be supported to meet their mutual obligation requirements and to engage in treatment and/or employment preparation activities to address their barriers to employment. This will limit the risk of recipients being unable or failing to meet their mutual obligations requirements and incurring a financial penalty.

The removal of the ability to be granted an exemption from mutual obligation requirements due to drug or alcohol use will not impact job seekers who comply with their participation obligations, including those who are actively trying to address their drug or alcohol dependency and have these activities in their Job Plan. If treatment is not available, recipients who commit to pursuing treatment when available will be able to have this taken into account in setting their mutual obligation requirements.

The effect of the Schedule will be to provide an additional incentive for job seekers to seek the treatment they require and to ensure the activities in their Job Plan are appropriate to their capacity, without penalising or otherwise adversely impacting those who are unable to access treatment. To the extent that this Schedule would limit the right to social security and an adequate standard of living, it would affect a very small minority of income support recipients.
The rights of the family and child to protection and assistance

Article 10 of the ICESCR recognises the rights of the family and the child to protection and assistance. These rights overlap substantially with other rights in the ICESCR, particularly the right to social security and the right to an adequate standard of living.

As noted above, if a recipient is subject to mutual obligation requirements because they are no longer eligible for an exemption and they fail to meet those requirements as set out in their Job Plan, they may be subject to a financial penalty. However, as per existing arrangements, any penalties would only apply to income support payments made to the parent in respect of themselves. Any payments made to parents for the maintenance of their children, such as Family Tax Benefit, or to meet childcare costs, would not be affected by the penalty.

In addition, principal carer parents on working age payments are only required to meet part-time mutual obligation requirements in recognition of the impact of their caring role on their availability for work and other activities. Parents who are no longer eligible for an exemption due to this measure will continue to have access to these flexible, part-time requirements (including the option to undertake appropriate treatment) and support from their employment services provider to ensure they are able to balance their requirements and caring responsibilities.

Importantly, ensuring that parents on income support are doing all that they can to move into employment, including addressing any substance misuse issues they may have, will help parents to secure paid work and ultimately increase the financial support available to their children.

To the extent that this may impact the rights of the family and the child, this is considered to be reasonable and proportionate to the objective of encouraging parents with drug or alcohol dependency or misuse issues to overcome those issues and increase their ability to support themselves and their family.

The rights not to be discriminated against on the basis of disability or race, and not to be discriminated against in the enjoyment of social and cultural rights

Article 4 of the CRPD recognises the rights of those with a disability not to be discriminated against on the basis of their disability. Article 5 of the CERD recognises the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law. Article 2(2) of the ICESCR recognises the right of persons to equality and not to be discriminated against in the enjoyment of their rights under the ICESCR.

This Schedule engages the rights to equality and non-discrimination because people who may have a disability or illnesses associated with drug or alcohol dependency (such as alcoholism) will be subject to differential treatment insofar as they will not be eligible for the exemption that people with another illness or disability could potentially access.
This Schedule may also have a greater impact on job seekers who are Aboriginal and Torres Strait Islander people, who statistically experience higher levels of alcohol or drug dependency compared with the Australian population generally. The Schedule may therefore indirectly result in differential treatment for Aboriginal and Torres Strait Islander people.

Individuals will be affected by this Schedule if they would otherwise use incapacity on the basis of drug or alcohol dependency as a reason for exemption from mutual obligation requirements. However, to the extent that this may discriminate against those with drug or alcohol dependency compared to other conditions, this is reasonable and proportionate to the objective of encouraging these recipients to address the underlying cause of their incapacity.

The Schedule will provide an additional incentive for job seekers with a drug or alcohol dependency, including those who identify as Aboriginal and Torres Strait Islander, to seek the treatment needed to help them improve their ability to move into employment and support themselves. This Schedule also fosters greater engagement between recipients and their employment services provider to negotiate a Job Plan tailored to the recipients’ capacity and circumstances.

As part of this measure, where recipients participate in available and appropriate treatment, this will reduce their other participation requirements or, in some cases, fully meet their requirements. This will provide such job seekers with the opportunities to undertake any relevant treatment they require. Where treatment is not available, job seekers will not be penalised or otherwise adversely impacted and will be supported to engage in other appropriate activities.

To the extent that this Schedule may impact the right not to be discriminated against on the basis of disability or race, whether directly or indirectly, this impact is considered to be reasonable and proportionate to the objective of ensuring that people with disability due to drug or alcohol dependency are supported to engage in treatment or other appropriate activities to improve their employment prospects and increase their capacity for self-support.

The amendments in this Schedule will not apply to designated program participants, as specified by legislative instrument. This will include participants in the Community Development Program, the majority of whom are Indigenous Australians. As such, these recipients will remain subject to existing exemption arrangements. The Community Development Program is specifically designed to reflect the unique labour market conditions that job seekers face in remote Australia. To the extent that these recipients will be treated differently to recipients in other employment services programs, this is reasonable and proportionate to the objective of the Community Development Program.

Necessary and proportionate restriction of rights

Article 4 of the ICESCR provides that countries may subject economic social and cultural rights only to such limitations ‘as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society’. The Committee on
Economic, Social and Cultural Rights has stated that such limitations must be proportionate and the least restrictive alternative where several types of limitations are available, and even where such limitations are permitted, they should be of limited duration and subject to review.

Similarly, the right to equality and non-discrimination is subject to the international human rights principle of 'legitimate differential treatment'. This principle allows particular groups of people to be treated differently from other groups where the treatment is aimed at achieving a legitimate objective, is based on reasonable and objective criteria and is proportionate to the objective to be achieved.

This Schedule may limit the rights of individuals as outlined above but only to achieve the legitimate objective of encouraging recipients to do all they can to support themselves through work, where they are able. Drug or alcohol use, and particularly dependence, is a significant barrier to successful participation in the workforce. Therefore, this Schedule also encourages recipients to address drug or alcohol dependency so that they can participate fully in employment and training opportunities available to them. Where a recipient's drug or alcohol dependency or misuse prevents them from being able to look for or find work, it is reasonable that they should actively engage in treatment to address that dependency where appropriate and available.

**Conclusion**

This Schedule is compatible with human rights because, to the extent that it may impact human rights, the impact is for a legitimate objective, and is reasonable, necessary and proportionate as outlined above.
Schedule 14 – Changes to reasonable excuses

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Schedule

The Schedule would amend the Social Security (Administration) Act 1999 to provide the Secretary with a new power to make a legislative instrument setting out matters that must not be taken into account when deciding whether a person has a reasonable excuse for committing a no show no pay failure, a connection failure, a reconnection failure, a serious failure, or a non-attendance failure.

It is envisaged that the Secretary would exercise this power to close a loophole in the current provisions surrounding reasonable excuse so that income support recipients will not be able to repeatedly use drug or alcohol misuse or dependency as a reasonable excuse for committing the relevant participation failures without seeking treatment, if it is available and appropriate.

Human rights implications

The measure contained in this Schedule engages the following human rights:

- Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognises the right of everyone to social security;
- Article 10 of the ICESCR, which recognises the rights of the family and the child to protection and assistance;
- Article 11 of the ICESCR, which recognises the right of everyone to an adequate standard of living including adequate food, water and housing, and to the continuous improvement of living conditions;
- Article 4 of the Convention on the Rights of Persons with Disabilities (CRPD), which recognises the rights of those with a disability not to be discriminated against on the basis of their disability. Article 2(2) of the ICESCR recognises the rights of persons to equality and not to be discriminated against in the enjoyment of their rights under the ICESCR; and
- Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which recognises the right of everyone to equality before the law, without distinction as to race, colour, or national or ethnic origin.

The right to social security and the right to an adequate standard of living

Article 9 of the ICESCR recognises the right of everyone to social security. The right to social security requires parties to establish a social security system and, within their maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.
Article 11(1) of the ICESCR recognises the right of everyone to an adequate standard of living including adequate food, water and housing, and to the continuous improvement of living conditions. The right to social security is important in realising many of the other rights in the ICESCR, including the right to an adequate standard of living.

It is envisaged that the Secretary will exercise the new power provided for in this Schedule to make a legislative instrument determining that where a person’s misuse of, or dependency on, drugs or alcohol is used once as a reasonable excuse for a relevant participation failure, such misuse or dependency must not be used in relation to determining whether the person has a reasonable excuse for committing a second or subsequent participation failure.

Following a relevant participation failure due to drug or alcohol misuse or dependency, job seekers will be given the option of voluntarily undertaking treatment for their use or dependency (if appropriate and available), or continuing with their normal mutual obligation requirements as managed by their employment services provider. For job seekers who choose treatment, participating in this treatment will reduce, or in some circumstances fully meet, their mutual obligation requirements. Regardless of their choice, job seekers will continue to be connected with their employment services provider.

The restriction of reasonable excuse relating to drug or alcohol misuse or dependency may limit a person’s right to social security and the right to an adequate standard of living. This is because of the possible penalty for a person who is no longer able to repeatedly rely on drug or alcohol misuse or dependency as a reasonable excuse if they refuse to undertake available and appropriate treatment is a reduction in the amount of their social security payment. This may limit the person’s right to both social security and an adequate standard of living (depending on the extent of the non-compliance).

However, the changes to the operation of the reasonable excuse provisions will not impact job seekers who comply with their participation obligations or who are trying to address their drug or alcohol misuse or dependency. If treatment is not available, or if it is inappropriate for the person, the Secretary will decide whether a job seeker has a reasonable excuse in accordance with the current arrangements.

The effect of the Schedule will be to provide an additional incentive for job seekers to seek the treatment they require, without penalising or otherwise adversely impacting those who are unable to access treatment. Further, to the extent that this Schedule would restrict the right to social security and an adequate standard of living, it would affect a very small minority of income support recipients.

The rights of the family and child to protection and assistance

Article 10 of the ICESCR recognises the rights of the family and the child to protection and assistance. These rights overlap substantially with other rights in the ICESCR, particularly the right to social security.
Financial penalties for those who are no longer able to repeatedly rely on drug or alcohol misuse or dependency as a reasonable excuse for a relevant participation failure without seeking treatment, may affect parents in receipt of income support, and, by extension, support available to their children. However, as per existing arrangements, any penalties would only apply to income support payments made to the parent in respect of themselves. Any payments made to parents for the maintenance of their children, such as Family Tax Benefit, or to meet childcare costs, would not be affected by the penalty.

Ensuring that parents on income support are doing all that they can to move into employment will help parents to secure paid work, and therefore increase the financial support available to their children.

The rights not to be discriminated against on the basis of disability or race, and not to be discriminated against in the enjoyment of social and cultural rights

Article 4 of the CRPD recognises the rights of those with a disability not to be discriminated against on the basis of their disability. Article 5 of the CERD recognises the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law. Article 2(2) of the ICESCR recognises the right of persons to equality and not to be discriminated against in the enjoyment of their rights under the ICESCR.

This Schedule engages the rights to equality and non-discrimination because, if the envisaged legislative instrument regarding drug or alcohol misuse or dependency is made, people with disabilities or illnesses associated with drug or alcohol dependency (such as alcoholism) will be subject to differential treatment.

Further, while the amendments are neutral on their face, this Schedule may have a greater impact on job seekers who identify as Aboriginal and Torres Strait Islander people, who experience higher levels of alcohol or drug misuse and dependency when compared with the Australian population generally. The Schedule may therefore indirectly result in differential treatment for Aboriginal and Torres Strait Islander people.

Individuals will be affected by this Schedule if they have used drug or alcohol misuse or dependency as a reasonable excuse for relevant participation failures. Accordingly, those with disabilities or illnesses associated with drug or alcohol dependencies are also likely to be overrepresented in the group of affected job seekers.

However, those individuals who have drug or alcohol-related conditions that do not affect their ability to meet their participation requirements will be unaffected.

The Schedule will provide an additional incentive for job seekers with a drug or alcohol dependency, including those who identify as Aboriginal and Torres Strait Islander, to seek treatment needed to help them improve their ability to move into employment and support themselves. As part of this measure, where job seekers are referred to available and appropriate treatment, they will be able to reduce their other
participation requirements, or in some cases fully meet their requirements. This will provide such job seekers with the opportunities to undertake any relevant treatment they require. Those who are unable to access treatment will not be penalised or otherwise adversely impacted.

**Necessary and proportionate restriction of rights**

Article 4 of the ICESCR provides that countries may subject economic social and cultural rights only to such limitations ‘as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society’. The Committee on Economic, Social and Cultural Rights has stated that such limitations must be proportional and the least restrictive alternative where several types of limitations are available, and even where such limitations are permitted, they should be of limited duration and subject to review.

Similarly, the right to equality and non-discrimination is subject to the international human rights principle of ‘legitimate differential treatment’. This principle allows particular groups of people to be treated differently from other groups where the treatment is aimed at achieving a legitimate objective, is based on reasonable and objective criteria and is proportionate to the objective to be achieved.

This Schedule may limit the rights of individuals, but only to achieve the legitimate objective of encouraging job seekers to do all they can to support themselves through work, where they are able. Drug or alcohol misuse or dependency can be a significant barrier to successful participation in the workforce. Therefore, this Schedule also encourages job seekers to address drug or alcohol misuse or dependency so that they can participate fully in employment and training opportunities available to them. Where a job seeker’s drug or alcohol misuse or dependency prevents them from being able to look for or find work, and they are referred to appropriate and available treatment, it is reasonable that they be required to undertake that treatment or face a potential reduction in their payment.

Noting that the intended exercise of the power in this Schedule may have a more significant impact on job seekers who identify as Aboriginal or Torres Strait Islander people, and people with disabilities or illnesses associated with drug or alcohol dependency, it is intended that financial penalties will not be imposed following an initial participation failure due to drug or alcohol dependency, or where treatment is unavailable or inappropriate for the person. Therefore, to the extent the Schedule may result in distinctions between different groups of job seekers, it complies with the principle of legitimate differential treatment and does not constitute prohibited discrimination.

Those who comply or who genuinely cannot comply with their participation requirements for other reasons would not be adversely affected by this Schedule. This ensures that any limitation on the rights to social security and an adequate standard of living is proportionate to the objectives of this Schedule. While a person with a drug or alcohol-related condition may face a financial penalty as a result of this Schedule, a financial penalty will not be imposed if:
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- the person’s drug or alcohol-related condition does not affect their ability to meet their participation requirements while in receipt of income support; or
- the person agrees to undertake available and appropriate treatment to which they are referred; or
- treatment is not available in the person’s area; or
- participation in the treatment would not be appropriate; or
- the person has another reasonable excuse for the participation failure and, where applicable and reasonable, the person gives prior notice of the reasonable excuse.

Additionally, any penalties that are imposed are potentially subject to review, both within the Department of Human Services and by appeal to the Administrative Appeals Tribunal.

The limitation on the right to social security and the right to an adequate standard of living is necessary because, without the possibility of a penalty for a relevant participation failure, there is less incentive for a person to do all they are reasonably able to do to meet their mutual obligation requirements, which are designed to facilitate participation in the workforce. Insofar as there is any differential treatment for income support recipients with disabilities or illnesses or for job seekers who identify as Aboriginal and Torres Strait Islander people because of association with a drug or alcohol misuse or dependency, this is necessary for the same reason. An ineffective compliance framework has a detrimental impact on job seekers as they are not given a sufficient incentive to take active steps to meet their requirements and therefore increase their chances of moving off income support and experiencing the benefits of participation in the workforce.

**Conclusion**

This Schedule is compatible with human rights because, to the extent that it may limit human rights, the impact is for a legitimate objective, and is reasonable, necessary and proportionate.
Schedule 15 – Targeted compliance framework

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Schedule

This Schedule introduces a new job seeker compliance framework into the Social Security (Administration) Act 1999, which will replace the existing job seeker compliance framework for job seekers in certain employment services programs.

The new targeted compliance framework is designed to change the behaviour of non-genuine job seekers. It will not adversely affect the majority of job seekers who are genuine in their efforts to find work, but will be stringent on those who are not. Job seekers who repeatedly fail to comply with their agreed employment pathway plan requirements, without a reasonable excuse, will face stronger penalties, with graduated loss of income support payments culminating in payment cancellation and a four week re-application preclusion period for the least compliant job seekers.

The new targeted compliance framework will allow for payment suspensions to be applied if a person fails to meet their mutual obligation requirements, whilst limiting the application of stronger penalties (payment reductions or cancellation), so that they can only apply to persons who have persistently committed mutual obligation failures or who have refused or failed to remain in suitable work.

Suspension of payments

Job seekers who fail to meet their mutual obligation requirements will have their income support payment suspended until they comply with a reconnection requirement. That is, until they re-engage with employment services by attending an appointment or meeting a requirement such as entering into an employment pathway plan or demonstrating adequate job search efforts. Once the job seeker’s payment suspension is ended, they will receive full back-pay for the period of the suspension.

However, if the job seeker fails to re-engage with employment services within four weeks of being notified of their reconnection requirement, their participation payment will be cancelled.

Persistently non-compliant job seekers – payment reductions and cancellation

Job seekers who have persistently committed mutual obligation failures will also face graduated loss of income support payments for further failures to meet their mutual obligation requirements. The penalty amount will be either 50% or 100% of the person’s income support payments for the fortnight. Job seekers may also be subject to payment cancellation, and, if they then reapply for income support, a four week non-payment period starting from the date of cancellation.
Immediate cancellation of payments for certain failures

Job seekers who refuse to accept an offer of suitable work or fail to commence in suitable work will also be subject to payment cancellation, with a four week non-payment period if they then reapply for income support.

Job seekers who voluntarily leave a suitable job (without a valid reason) or are dismissed due to misconduct and who are in receipt of participation payments at the time will also be subject to payment cancellation, with a four week non-payment period (or a six week non-payment period where the person received relocation assistance to move to take up the work) if they then re-apply for income support. Job seekers who voluntarily leave a suitable job (without a valid reason) or are dismissed due to misconduct and are not receiving income support at the time but subsequently make a claim for a participation payment, will also be subject to the four week non-payment period (or a six week non-payment period where the person received relocation assistance to move to take up the work) commencing from the date they became unemployed.

The new framework will retain existing protections to ensure that job seekers are not penalised unfairly. Job seekers who have a reasonable excuse for any failure will not be subject to any payment reductions or cancellation. Job seekers who have participation payments suspended, reduced or cancelled will continue to be eligible for concession cards (including health care cards) and any benefit to which a person may be entitled under A New Tax System (Family Assistance) Act 1999 (the Family Assistance Act) during the non-payment period applicable to them at the time.

Human rights implications

This Schedule engages the following rights:

- the right to social security in article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR);
- the right to an adequate standard of living in article 11(1) of the ICESCR;
- the rights of the family and child to protection and assistance in article 10(1) in the ICESCR and article 26 of the *Convention on the Rights of the Child* (CRC); and
- the right to work in article 6 of the ICESCR.

Additionally, it is envisaged that this Schedule will, in conjunction with legislative instruments to be made for the purposes of the Schedule, also engage the following rights:

- the right to equality and non-discrimination in article 2(2) of the ICESCR and article 26 of the *International Covenant on Civil and Political Rights* (ICCPR); and
- the right to equality before the law in article 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD).

Article 9 of the ICESCR recognises the right of everyone to social security. The right to social security requires States to establish a social security system and, to the
maximum of its available resources\textsuperscript{[1]}, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education\textsuperscript{[2]}.

Article 11(1) of the ICESCR recognises the right of everyone to an adequate standard of living including adequate food, water and housing, and to the continuous improvement of living conditions.

Article 10(1) of the ICESCR recognises that ‘the widest possible protection and assistance should be accorded to the family’, particularly for its establishment, and ‘while it is responsible for the care and education of dependent children’. A similar right in Article 26 of the CRC recognises that every child has the right to benefit from social security. The Committee on Economic, Social and Cultural Rights has noted that the provision of family benefits by way of cash payments and services is crucial for the realisation of the rights under article 9 and article 10, thereby acknowledging that article 10(1) may require provision of financial assistance (this may require the provision of family benefits as a measure of assistance).

Article 6(1) of the ICESCR recognises the right to work, which includes the right to the opportunity to gain a living by work which the job seeker freely chooses or accepts.

Article 2(2) of the ICESCR and article 26 of the ICCPR recognise the right to equality and non-discrimination on a range of grounds including of race, sex, colour, language, national or social origin or ‘other status’. Place of residence within a country is considered to fall within ‘other status’ for the purposes of these articles.

Article 5 of the CERD reinforces this general prohibition and provides that States ‘undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law’.

Article 4 of the ICESCR provides that countries may only subject economic, social and cultural rights to such limitations ‘as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society’. The Committee on Economic, Social and Cultural Rights has stated that such limitations must be proportionate and the least restrictive alternative where several types of limitations are available, and even where such limitations are permitted, they should be of limited duration and subject to review.

**General overview**

The new targeted compliance framework engages the right to social security, the right to an adequate standard of living, and the rights of the family and child to protection and assistance. It also engages the right to work and the right to equality and non-discrimination.

\textsuperscript{[1]} Article 2 of the ICESCR.
\textsuperscript{[2]} Committee on Economic, Social and Cultural Rights, General Comment 19, paragraph 59.
Right to social security, right to an adequate standard of living and rights of the family and child to protection and assistance

To the extent to which this measure may limit the right to social security or the right to an adequate standard of living, that limitation is reasonable, necessary and proportionate to achieving the legitimate objective of encouraging persons to remain engaged with employment services and actively seek and accept suitable work. This is because persons who comply, or who genuinely cannot comply, with their participation requirements will not be adversely affected by this measure. Failures by job seekers to meet their participation requirements will not result in a payment reduction or cancellation if the job seeker has a reasonable excuse for failing to comply with their participation requirements.

The matters a decision maker must take into account and not take into account when making a determination that a person had a reasonable excuse will be outlined in a legislative instrument made by the Secretary under section 42AI.

A reasonable excuse may include (but is not limited to) whether the person or a close family member has suffered an illness or was prevented from complying by circumstances beyond their control. When making a decision that a person has a reasonable excuse, the decision maker must take into account a range of factors listed in the instrument, including (but not limited to) whether the person has access to safe housing, their literacy and language skills, unforeseen caring responsibilities, or whether the person was affected by an illness, impairment or condition that impeded their ability to meet their requirements.

All failures by a job seeker to meet participation requirements that lead to a determination to suspend payments, reduce payments or cancel a participation payment are subject to review, both within the Department of Human Services and by appeal to the Administrative Appeals Tribunal. This is an important safeguard in the operation of these provisions.

In addition, despite a job seeker being affected by a suspension, cancellation or reduction in participation payments under the new targeted compliance framework, this measure ensures job seekers continue to be eligible for concession cards (including health care cards) and other benefits to which a person may be entitled under the Family Assistance Act as a result of receiving social security payments.

The only instance when a job seeker will not continue to be eligible for their concession card and/or benefits under the Family Assistance Act is when a participation payment has been cancelled as a result of the person failing to reconnect with employment services within four weeks of being notified of the requirement to reconnect. However, where such job seekers are otherwise qualified, they are able to reclaim immediately and so regain access to all income support payments and benefits.
Right to equality and non-discrimination

This measure engages the right to equality and non-discrimination because it is likely to involve differential treatment for people in certain employment services programs (these will be income support recipients with mutual obligations to whom the new targeted compliance framework will not apply). The Schedule will not apply to individuals in specified employment services programs (these people will be “declared program participants”). The Schedule allows the Secretary to make a legislative instrument, specifying an employment services program for the purposes of the definition of a declared program participant. The instrument would be disallowable for the purposes of the Legislation Act 2003 and therefore subject to scrutiny by Parliament.

It is appropriate to declare the relevant employment services programs in a legislative instrument to allow for flexibility in determining which program participants are not subject to the new targeted compliance framework. This permits the needs of different cohorts of job seekers to be considered and addressed in the application of the framework.

It is envisaged that, at least initially, this Schedule will not apply to job seekers in the Community Development Programme (CDP) (i.e. they will be in an employment services program declared by the Secretary under the above instrument). The CDP supports job seekers in remote Australia. Approximately 83 per cent of job seekers in the CDP identify as Aboriginal and Torres Strait Islander people.

The right to equality and non-discrimination is subject to the international human rights principle of ‘legitimate differential treatment’. This principle allows particular groups of people to be treated differently where the treatment is aimed at achieving a legitimate objective, is based on reasonable and objective criteria and is proportionate to the objective to be achieved.

In particular, the CDP provides employment services to job seekers in remote Australia who face unique obstacles such as fewer job opportunities, higher levels of dependence on welfare, lower levels of literacy and numeracy and persistent and entrenched disadvantage. These factors and the lack of a labour market in remote Australia when compared with the opportunities for employment available in other parts of Australia, mean it is appropriate to further consider the most appropriate and effective compliance framework for CDP participants. As the Government is currently reviewing the operation of the CDP generally, it is appropriate to consider the compliance framework (and related participation requirements) that should apply to CDP participants as part of that broader review, and in the interim for the current compliance framework to continue to apply to CDP participants.

This aspect of the measure is therefore reasonable, necessary and proportionate to achieve the legitimate objective of applying a compliance framework that the Secretary considers is most appropriate for persons in certain employment services programs.
The right to work

This measure promotes the right to work because it will encourage social security recipients who have mutual obligation requirements to remain engaged with employment services and to actively seek work and to accept suitable work when it is available. Activities directed towards finding suitable work include attending appointments and undertaking activities designed to improve employment prospects. It is appropriate that a person who is able to work and is receiving social security payments while they are unemployed should demonstrate that they are actively looking for work and attending appointments to improve their employment prospects and, where appropriate, that they are accepting suitable job offers.

Specific compliance actions to be taken and their interaction with relevant rights

Suspensions, payment reductions, and payment cancellation for non-compliance

Suspensions, payment reductions and payment cancellation for non-compliance encourage non-genuine income support recipients to remain engaged with employment services. This is important so income support recipients can continue to receive assistance and support in finding employment. As such, these aspects of the measure promote the right to work as the legitimate objective.

To the extent that suspensions may limit the right to social security or the right to an adequate standard of living, therefore, the impact of payment suspensions is reasonable, necessary and proportionate as income support recipients will have their social security payments reinstated, with full back pay for the period of the suspension, simply by reengaging with their employment services provider or fulfilling reasonable requirements related to looking for work. As long as a job seeker re-engages prior to the end of a fortnightly instalment period, they will not even suffer any delay in receiving their regular social security payment.

To the extent that payment reductions and cancellation limit the right to social security or the right to an adequate standard of living, the use of financial penalties and cancellation is reasonable, necessary and proportionate as job seekers must have persistently committed mutual obligation failures with no reasonable excuse before any penalties resulting in permanent loss of payment may be applied (except for refusing suitable work).

The details of when a person may be found to have persistently committed mutual obligation failures will be contained in a legislative instrument made by the Minister under s 42AR.

In practice, persistent non-compliance will apply in a staged manner. It will only be found where a job seeker has committed multiple failures to meet requirements in a six month period. These job seekers will also have undergone multiple assessments to ensure they do not have any undisclosed issues which are making them unable to comply, and to ensure that their mutual obligation requirements are suitable for their circumstances.
Job seekers who have previously demonstrated that they have persistently committed mutual obligation failures can avoid further penalties by consistently meeting their requirements for a period of time. Once they have demonstrated a good compliance record, they will no longer be subject to loss of payments for future failures. Given these limitations on the circumstances in which penalties will be applied, any impact on the right to social security is reasonable and proportionate. These aspects of the measure therefore promote the right to work as a legitimate objective by ensuring that job seekers remain engaged with their employment services provider and continue to look for work and undertake activities that will improve their employment prospects.

These aspects of the measure also promote the rights of the family and child to protection and assistance because job seekers will still be entitled to concession cards (including health care cards) and any benefits under the Family Assistance Act they are eligible for despite these payment suspensions, reductions and cancellations applying to them.

To the extent that these aspects of the measure limit the right to social security or the right to an adequate standard of living, those limitations are reasonable, necessary and proportionate to achieving that legitimate objective. 

Refusing or failing to commence in suitable work

The penalty for refusing or failing to commence in suitable work is also reasonable, necessary and proportionate. This aspect of the measure does not affect a job seeker who complies by accepting a suitable job offer. If a job seeker accepts a suitable job offer, they will be receiving income from paid work and, as such, will reduce or remove the need to continue to rely on participation payments. In fact, paid work is essential for realising an adequate standard of living.

Strong incentives for job seekers who are capable of working to engage in suitable employment will assist those job seekers to experience the benefits that result from paid employment. By enabling and encouraging participation in the work force for job seekers who are able to work, the right to work is made more achievable for those job seekers.

This aspect of the measure is necessary, reasonable and proportionate because existing protections such as reasonable excuse provisions will still apply. Further, the existing provisions that prevent the Secretary from requiring job seekers to look for work that is unsuitable for them will ensure that job seekers are not penalised where they have a good reason not to accept a job. A job seeker cannot be penalised for failing to accept a job that they are not capable of doing (or for which the employer will not provide training), that does not meet the applicable statutory conditions, that involves unreasonable commuting, that would involve moving to a new place of residence or that would aggravate any pre-existing medical conditions.

In practice, before deciding whether to cancel a person’s income support payment and impose a four week non-payment period for refusing work, the Department of Human Services (DHS) would talk to the job seeker, the job seeker’s employment
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service provider, and the employer that offered the work. This is to enable DHS to check whether the job that was refused was suitable work, in light of provisions in the social security law about the suitability of work for a person, and that the job seeker did not have valid reasons for refusing it.

Further, this aspect of the measure promotes the rights of the family and child to protection and assistance because job seekers will still be entitled to concession cards (including health care cards) and any benefits under the Family Assistance Act they are eligible for despite the payment cancellation and the four week non-payment period having been imposed on them.

For the reasons above, the right to work is promoted, and to the extent that this measure may limit the right to social security and the right to an adequate standard of living, the impact is necessary and proportionate to the legitimate objective of having demonstrably employable job seekers remain committed to obtaining work as soon as they can rather than continuing to remain in receipt of income support at taxpayers’ expense.

Job seekers who incur penalties for refusing suitable work are demonstrably employable and should be expected to find and take work rather than remain in receipt of income support at tax-payer expense.

Voluntarily leaving employment or being dismissed due to misconduct

The cancellation of a job seeker’s participation payment and the imposition of a four week non-payment period (or a six week non-payment period where the person received relocation assistance to move to take up the work) if they reapply or lodge a claim for participation payment for job seekers who voluntarily leave suitable employment or are dismissed due to misconduct is necessary to promote the right to work and ensure that job seekers do not unnecessarily cease work in order to receive income support payments. Job seekers who are not receiving income support at the time they voluntarily leave suitable employment or are dismissed due to misconduct but who subsequently lodge a claim for income support will also have a four week (or six week) non-payment period imposed.

The measure is reasonable and proportionate because existing protections will still apply. A person cannot be penalised where they leave their job voluntarily and where doing so was reasonable in the circumstances. Further, the Secretary cannot, under existing provisions, require a person to look for or undertake unsuitable work. These protections will ensure that job seekers are not penalised where they have a good reason for leaving a job. The four week waiting period represents a reduction from the eight week waiting period under the existing compliance framework.

This aspect of the measure promotes the rights of the family and child to protection and assistance because job seekers will still be entitled to concession cards (including health care cards) and any benefits under the Family Assistance Act they are eligible for despite the payment cancellation and the four week non-payment period imposed on them.
For the reasons above, the right to work is promoted, and to the extent that this measure may limit the right to social security and the right to an adequate standard of living, the impact is necessary and proportionate to the legitimate objective of having demonstrably employable job seekers remain committed to paid work rather than choosing to receive income support at tax-payers expense.

**Conclusion**

The Bill is compatible with human rights because it promotes the right to work, and to the extent that it may limit human rights, the impact is for a legitimate objective, and is reasonable, necessary and proportionate.
Schedule 16 – Streamlining Tax File Number Collections

The amendments are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the amendments

The amendments to Schedule 16 will allow the request for tax file number provisions in the social security law to apply to a relevant third-party as part of a person’s claim for a social security payment, and to an income-tested health care card. The amendments will also allow the use of tax file numbers to verify qualification for the seniors health card and an income-tested health care card.

Human rights implications

The amendments in relation to an income-tested health care card engage the following human rights:

- the right to social security: Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the right to an adequate standard of living: Article 11 of the ICESCR.

This is because of the consequence that would arise if a person did not satisfy a request to provide a tax file number, which is that the person’s claim for an income-tested health care card would not be granted or an existing card would be cancelled.

The amendments in relation to social security payments and the seniors health card do not engage the rights noted above, as the amendments streamline the existing administrative process through which tax file numbers are already collected and do not remove access to social security payments. The amendments aim to improve the general integrity and administration of the social security system and are machinery in nature.

Right to social security and an adequate standard of living

Article 9 of the ICESCR recognises the right of everyone to social security. The right to social security requires States to establish a social security system and, to the maximum of their available resources (as required by Article 2 of the ICESCR), ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

Article 11 of the ICESCR recognises the right of everyone to an adequate standard of living including adequate food, water and housing, and to the continuous improvement of living conditions.
The amendments in relation to an income-tested health care card would limit these rights to the extent that a person did not satisfy a request to provide a tax file number. However, this consequence is consistent with the existing administration of the tax file number provisions for social security payments and the seniors health card. The amendments would rectify an anomaly of treating health care cards differently, and would enhance the arrangements for protecting the integrity of the social security system.

**Conclusion**

The amendments in relation to an income-tested health care card are compatible with human rights because they only impose limitations on the rights to social security and to an adequate standard of living that are reasonable, necessary and proportionate to uphold these rights by protecting the integrity of the social security system.
Schedule 17 – Information management

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Bill

This Bill amends social security legislation in order to streamline the process of referrals for welfare fraud prosecution by allowing information or documents about a person in the course of an administrative action by the Department of Human Services to be used in subsequent investigation and criminal prosecution.

This Bill includes amendments to the Social Security (Administration) Act 1999 (SS (Admin) Act), the A New Tax System (Family Assistance) (Administration) Act 1999, the Student Assistance Act 1973 and the Paid Parental Leave Act 2010. For clarity, all examples in this explanatory memorandum will be drawn from the SS(Admin) Act.

Currently, the process of gathering admissible evidence is currently hampered by the administrative focus of section 192 of the SS(Admin) Act. This section grants the Secretary the ability to issue coercive notices in order to assess a person’s qualification, payability or rate of payment. However, it cannot currently be used to obtain information after all administrative questions have been resolved. Information or documents obtained under this section are not currently admissible as evidence in criminal proceedings.

Because of this, admissible evidence is obtained by using search warrants pursuant to section 3E of the Crimes Act 1914 (Cth). The Department of Human Services requests around 1,000 of these warrants annually. Each warrant requires two to three business days of a seconded Australian Federal Police agent’s effort. This process places a significant burden on the Department of Human Services, the Australian Federal Police, warrant recipients and the courts, particularly when this information has already been collected under section 192 of the SS(Admin) Act for administrative purposes.

This Bill removes duplication by allowing documents obtained under the Department of Human Services’ administrative information-gathering powers to then be available as evidence for subsequent criminal proceedings. It also allows section 192 to be used to gather evidence while the Department of Human Services is investigating whether to proceed to refer the matter for criminal prosecution.

Under this Bill, there may still be a requirement for the Department of Human Services to require search warrants, however this measure will significantly reduce this burden.

Human rights implications

This Bill engages the following rights:

Fair trial and fair hearing rights
This Bill engages the fair trial and fair hearing rights contained in article 14 of the International Covenant on Civil and Political Rights (ICCPR) in two areas. It modifies the rules of evidence in criminal proceedings and it interacts with the common law right of an individual’s freedom from self-incrimination.

Article 14(3) of the ICCPR provides minimum guarantees for the defendant in any criminal trial. These include:

Article 14(3)(e): ‘To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same condition as witnesses against him.’

and

Article 14(3)(g): ‘Not to be compelled to testify against himself or to confess guilt.’

Freedom from self-incrimination – Article 14(3)(g)

This Bill interacts with an individual’s right to freedom from self-incrimination, as can be seen (for example) in its amendments to the Social Services (Administration) Act 1999. Section 197A of the Act specifies that an individual who receives a statutory demand to provide information or produce a document under Division 1 of Part 5 must produce the information or documents requested, even when doing so would tend to incriminate them.

Nevertheless, subsection 197A(2) provides individuals with a ‘use/derivative use immunity’ for the information and documents so produced. Due to this, any information or document that the individual produces in response to this demand (along with any information or document or thing obtained as a direct consequence of this disclosure) cannot be admitted into evidence against them in criminal proceedings, with only limited exceptions.

The exceptions to this use/derivative use immunity are limited to the criminal offenses that relate to the falsity or incompleteness of information provided in response to a demand to produce under Division 1 of Part 5 of this Act. In this case, the false or incomplete information can be admitted in criminal proceedings against the individual for provision of false information. In these circumstances, this measure is a proportionate limitation on an individual’s right to freedom from self-incrimination, because the Department of Human Services depends on individuals disclosing complete and accurate information in order to ensure the sustainability and integrity of the social security system (see the section: ‘Right to social security’).

Consistent rules of evidence – article 14(3)(e)

Despite the use/derivative use immunity discussed in the previous section, any information or documents obtained under Division 1 of Part 5 of the Act is admissible as evidence in criminal proceedings, provided that the defendant in said proceedings is either not an individual or is not the individual who provided the information or documents. It also allows the Department of Human Services to use its information-
gathering powers to gather evidence to determine whether to refer a matter for criminal prosecution.

The legislative intent for this measure is to streamline the process of gathering evidence for welfare fraud prosecution. This will not only reduce administrative duplication, but will also help provide natural justice to offenders, who will not have to wait as long to find out whether they will face prosecution for their actions. In turn, this will increase the general deterrent to welfare fraud because once this measure becomes more widely known in the community, it will put potential fraudsters on notice that the Department of Human Services will promptly respond to all cases of alleged welfare fraud.

As such, this Bill modifies the standard procedure for gathering admissible evidence for criminal proceedings. Under Federal law, the standard coercive means to acquire admissible information and documents for criminal prosecution is by search warrant pursuant to section 3E of the Crimes Act 1914 (Commonwealth). This requires the approval of a magistrate, who can reject the application if they believe that the case for a warrant has not been made.

The coercive information powers available to the Department of Human Services to demand information about current and former recipients does not go unfettered. The legislation contains two important limitations. First, these powers cannot be delegated to a machine, but must be exercised by an Officer who has the ‘reasonable belief’ that the person is able to provide the information or document requested. Also, the Officer must have a valid reason for obtaining this information, including questions of qualification, payability and rate of payment, and also for the purpose of determining whether a suspected case of welfare fraud should be further investigated and possibly referred to the Commonwealth Director of Public Prosecutions for prosecution through the courts.

These restrictions guard against abuses of this provision, and given the intent of this legislation, constitute a reasonable modification to the standard rules of evidence.

Right to social security

This Bill engages the right to social security contained in article 9 of the International Covenant on Economic, Social and Cultural Rights.

The right to social security requires that the system be established in the domestic law, and that public authorities must take responsibility for the effective administration of the system. The Social Security system provides a basic level of benefits to all individuals and families that will enable them to cover essential living costs. The United Nations Committee on Economic, Cultural and Social Rights lists a number of contingencies that the social security system should address. The contingencies relevant to this policy include payments to individuals for: unemployment, sickness, disability, old age, family and child support, maternity leave and to survivors and orphans of the death of a breadwinner (see General Comment No. 19).

In this same document, a social security scheme should be sustainable so that this right is available to people in future generations.
The Principles of Administration in Section 8 of the Social Services (Administration) Act 1999 reflects these concerns. It states: ‘In administering the social security law, the Secretary is to have regard to… the development of procedures to ensure that abuses of the social security system are minimised’.

This measure improves the information and evidence-gathering powers of the Department of Human Services, so that they can better protect social security outlays from serious non-compliance and welfare fraud. It allows the Department of Human Services to issue coercive notices to obtain information or documents from an individual in order to assess their qualification, payability or rate of payment.

Because recipients of these coercive notices must provide any information or documents that are requested, even if this disclosure would tend to incriminate them, fraudsters and seriously non-compliant recipients will be questioned about their actions sooner. This will help reduce their period of non-compliance, since they will be more likely to cease their fraudulent activities once they realise that they are under investigation.

Furthermore, once the community becomes aware of these changes, it will provide a signal to would-be fraudsters and recipients who are negligent in fulfilling their reporting requirements that the Government is serious about ensuring compliance with the rules of the welfare system. This is thereby expected to improve compliance and so protect the integrity of welfare payment outlays.

Therefore, this provision promotes the right to social security by taking measures to ensure Australia’s welfare system is fair and sustainable.

Right to privacy

The right to privacy is outlined in article 17 of the International Covenant on Civil and Political Rights (ICCPR). It protects all individuals from ‘arbitrary or unlawful interference with his privacy, family, home or correspondence,…[and from] unlawful attacks on his honour and reputation.’ Note that it does not provide the same protections for legal persons such as companies.

This measure engages with an individual’s right to privacy because it explicitly provides the Department of Human Services with the ability to make statutory demands for information under Division 1 of Part 5 of the SS (Admin) Act 1999, even when that information would tend to incriminate the information provider, where that information relates to themself.

It is important to note that the amendments proposed do not seek to expand the coercive information gathering powers. The Department of Human Services already exercises this power cautiously and judiciously when obtaining information and documents where the information may be relevant to assess a person’s qualification, payability or rate of payment. These amendments seek to make the information or documents sought available for investigation of potential criminal offences, and for use in criminal prosecutions where necessary. The same information, already obtained for an administrative purpose using the coercive information gathering powers, is currently sought for a second time by search warrant pursuant to section
Statements of compatibility with human rights

3E of the Crimes Act 1914, to enable it to be admissible in criminal investigations and proceedings.

In cases where this measure is used to obtain evidence from individuals other than the person under investigation for welfare fraud, this method does not impose any additional interference to their privacy, family, home or correspondence. This is because any evidence obtained under this measure would previously have been obtained using a search warrant, sometimes after they had already provided this information for administrative purposes.

In cases where this measure is used to obtain information from the individual under administrative investigation, this information is only obtained for the purposes of ensuring the sustainability and integrity of the social security system. This does not entail any risk of reputational harm, except where an individual commits an offence by providing false or incomplete information (see the above section on self-incrimination). As this measure only requires individuals to make a limited disclosure of information necessary for the proper administration of the social security system, it is also not arbitrary or unlawful, and so this measure does not limit a person’s right to privacy.

**Conclusion**

This Bill is compatible with human rights because it only imposes limitations on the fair trial and fair hearing rights that are reasonable, necessary and proportionate to uphold the right to social security by protecting the integrity of the social security system.
Schedule 18 – Aligning social security and disability discrimination law

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Schedule

Currently, the Social Security Act 1991 (the Social Security Act) is exempt from the operation of the Disability Discrimination Act 1992 (the Disability Discrimination Act). This exemption from the Disability Discrimination Act is designed to ensure that social security pensions, allowances and benefits, including for people with disability, can be appropriately targeted according to the purposes of the payments.

At the time the Disability Discrimination Act commenced, the Social Security Act encompassed provisions that were subsequently included in the Social Security Administration Act 1999 (the Social Security Administration Act) and the Social Security (International Agreements) Act 1999 (the International Agreements Act) in 1999. At that time, the exemption from the Disability Discrimination Act was not extended to cover these new Acts.

To ensure all of the social security law is covered by the exemption, the Social Security Administration Act and the International Agreement, as well as legislative instruments made under the Social Security Act and the Social Security Administration Act, will also be exempt from the operation of the Disability Discrimination Act.

Human rights implications

This Schedule engages the following human rights:

- Article 4 of the Convention on the Rights of Persons with Disabilities (CRPD), which recognises the rights of those with a disability not to be discriminated against on the basis of their disability.

- Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the rights of persons to equality and not to be discriminated against in the enjoyment of their rights under the ICESCR.

The rights not to be discriminated against on the basis of disability or race, and not to be discriminated against in the enjoyment of social and cultural rights

Article 4 of the CRPD recognises the rights of those with a disability not to be discriminated against on the basis of their disability. Article 2(2) of the ICESCR recognises the right of persons to equality and not to be discriminated against in the enjoyment of their rights under the ICESCR.

Payments under social security law are made to eligible people on the basis of a variety of factors such as their health, disability, age, income and asset levels. This
ensures that Australia's social security system is targeted based on people’s circumstances and need and constitutes legitimate differential treatment.

As such, the Social Security Act 1991 has always been exempt from disability discrimination law since the Disability Discrimination Act commenced. A number of other key pieces of legislation providing for various pensions and allowances are also exempt, including the Veterans’ Entitlements Act 1986, the Military Rehabilitation and Compensation Act 2004 and the Safety, Rehabilitation and Compensation Act 1988.

The Social Security Act was subsequently split into three separate Acts. The Explanatory Memorandum to the Bills that enacted these changes stated that this division was intended to “implement a simpler and more coherent social security system that more effectively meets its objectives of adequacy, equity, incentives for self provision, customer service and administrative and financial sustainability”. At that time, however, the exemption from the Disability Discrimination Act was not extended to those new Acts.

Given the significant provisions now provided for in the Social Security Administration Act and the International Agreement in relation to the administration and payment of social security pensions and allowances, the amendments in this Schedule extend the existing exemption from the Disability Discrimination Act to cover the those Acts in line with the original intent of the Disability Discrimination Act.

The amendments will also exempt legislative instruments made under the Social Security Act or the Social Security Administration Act from the Disability Discrimination Act. This reflects that the number and complexity of issues that are dealt with in subordinate legislation under the social security law has also increased significantly in particular policy areas. For example, the Impairment Tables for assessing eligibility for the Disability Support Pension, are set out in a legislative instrument.

These amendments will extend the coverage of the existing exemption to all legislation and subordinate legislation that comprise the social security law. This is in line with the original intent of the exemption of the Social Security Act which was designed to ensure that in relation to pensions, allowances and benefits, a person’s entitlement is as set out in the legislation, and is not affected by disability discrimination law4.

This Schedule does not constitute a new engagement with or limitation on the rights of people with a disability. It ensures that all social security law decisions made with respect to pensions, allowances and benefits are made without illegal discrimination.

These changes will not affect the broader protections that the Disability Discrimination Act provides for people with disability.

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4 Disability Discrimination Act 1992, Explanatory Memorandum
Conclusion

This Schedule is compatible with human rights because, to the extent that it may limit human rights, the impact is for the legitimate objective of ensuring that social security payments are appropriately targeted, and is reasonable, necessary and proportionate to this objective.

[Circulated by the authority of the Minister for Social Services, the Hon Christian Porter MP]