Clean Energy (Household Assistance Amendments) Bill 2011

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Social Policy Section

This Digest replaces an earlier version dated 14 October 2011 to include technical amendments under the heading ‘Clean energy payments under social security law’.

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Clean Energy (Household Assistance Amendments) Bill 2011

Date introduced: 13 September 2011
House: House of Representatives
Portfolio: Families, Housing, Community Services and Indigenous Affairs
Commencement: Various dates as shown in the table in section 2 of the Bill.

The Government intends to provide financial assistance to low to middle income households and others, to compensate for the cost of living impact of the introduction of the carbon price on 1 July 2012. That assistance will be delivered through increases to government welfare payments and tax cuts. The Clean Energy (Household Assistance Amendments) Bill 2011 (the Bill), as originally introduced into the House of Representatives, provides for assistance to be delivered through the welfare system in two ways. First there will be a one-off up-front lump-sum clean energy advance payment. This will be followed by on-going payment of a clean energy supplement.

The types of on-going assistance included in this Bill are:

- a Clean Energy Supplement (CES), which will equate to a 1.7 per cent increase in payments to families, veterans, allowees, pensioners, carers and self-funded retirees
- a $300 annual Low Income Supplement (LIS) for households who do not receive enough assistance through tax cuts or government payments to offset their average expected cost impact under a carbon price

1. The proposed tax changes are contained in the Clean Energy (Income Tax Rates Amendments) Bill 2011. The relevant Bill homepage can be viewed at: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4647%22. In addition, there are proposed changes to existing tax offsets such as the Low Income Tax Offset, the Pensioner Tax Offset and the Senior Australians Tax Offset which are contained in the Clean Energy (Tax Laws Amendments) Bill 2011. The relevant Bill homepage can be viewed at: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4649%22.

2. During the consideration in detail in the House of Representatives on 12 October 2011, 22 government amendments were agreed to. The details of the amendments can be viewed at: http://parlinfo.aph.gov.au/parlinfo/download/legislation/amend/r4662_amend_ffca182b-9cf-4611-ae01-07e131ee9a27/upload_pdf/B11BV238.pdf;fileType=application%2Fpdf

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a Single Income Family Supplement (SIFS) of up to $300 a year to assist single income families with incomes between $68,000 and $150,000—this is to compensate such families for the fact that unlike dual income families, single income families can only access one tax free threshold and therefore only receive one tax cut and

• an annual cash payment of $140 to people who hold Commonwealth concession cards and who rely on certain medical equipment in order to cover the average electricity price increase from the use of their medical equipment due to the carbon price.

Over half of the additional assistance paid to age pensioners in aged care will be paid to aged care providers in recognition of the additional costs (such as electricity costs) they will bear under the carbon price.

Background

In presenting the Bill to the Parliament, the Minister for Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) Jenny Macklin, MP, said that the purpose of the Bill is to ‘direct revenue raised from putting a price on carbon to Australian families and pensioners through increases to their payments’. 3

The Minister also said that the increases are over and above what was anticipated to be the price increases arising from the proposed tax on carbon. 4

One-off up-front lump-sum advance payment

The Bill delivers two separate payments by way of carbon price compensation.

The first is a one-off, up-front, lump-sum advance payment—before the commencement of the carbon pricing scheme. This advance payment is designed to cover a period of six to 18 months, depending on the type of welfare payment that a person is receiving, for example 5:

• for pension payments and most allowance payments, the advance is in respect of the nine month period from 1 July 2012 to 19 March 2013. This period is relevant because it is anticipated that the carbon pricing scheme will impact on the Consumer Price Index (CPI) and this impact will be addressed by the scheduled indexation of the pension/allowance rates (including to the CPI) in March 2013 and

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4. Ibid.

5. Explanatory Memorandum, p. 1, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;orderBy=customrank;page=0;query=Title%3A%20Household%20Dataset%3AbillsCurBef,billsCurNotBef;rec=0;resCount=Default

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• for Youth Allowance, Austudy payment and Disability Support Pension paid to persons under age 21, the advance period is the whole of the 2012-13 financial year, as these payments only receive annualised indexation on 1 January of each year.

The amount of the one-off advance payment is to be 1.7 percent of the person’s maximum rate of payment. This means that the rate of the clean energy advance being provided to maximum rate and part-rate pensioners will be the same.

Clean Energy Supplement

The second payment is a separate, on-going supplement payment, the CES, which will be indexed to the CPI to ensure it maintains its real value over time. For most payments, the CES is to start from the first main indexation of payments in March 2013. It is estimated the annual amount of the CES will be $338 for pensioners and $110 per child for Family Tax Benefit (FTB) recipients. For most recipients the CES is to be paid fortnightly, as is currently the case with the Pension Supplement (PS). Similar to the clean energy advance, the CES is based on the maximum rate of payment so that rate of the CES being provided to maximum rate and part-rate pensioners will be the same. The CES paid in respect of FTB recipients will be calculated using the standard rate and end of year supplements only. The calculation will not include the Large Family Supplement, Multiple Birth Allowance or Rent Assistance.

Who will benefit

The Government claims that eight million households will receive a benefit from payment increases and/or tax cuts. Of these, about four million households will receive a benefit that exceeds the anticipated price impact of the carbon pricing scheme. The Government also says that nine out of 10 Australian families will receive assistance. In more detail the Minister said:

On average, we expect weekly spending to rise by around $9.90 per household, including $3.30 per week on the average electricity bill and $1.50 per week on the average gas bill. On average, food will go up by less than $1 per week for households. Households will receive, on average, $10.10 a week in assistance.

In its carbon price modelling document, the Government explains that:

Aggregate household consumption will continue to grow with carbon pricing. Households face higher prices for emission-intensive products, such as electricity and gas used for heating, but

6. Ibid.
7. Ibid.
8. Pension Supplement (PS) was introduced with the reforms to pension payments of 20 September 2009. It replaced (consolidated) other previous supplement payments such as the Pharmaceutical Allowance, Telephone Allowance, Utilities Allowance, GST Supplement. The current rates of PS are $58.40 per fortnight (single) or $88.00 per fortnight (partnered combined).
10. Ibid.

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most other products, including food and clothing, will see only minimal price increases. Impacts on individual households will depend on the specific goods and services they typically consume and how easily they can change their consumption in response to price changes.\textsuperscript{11}

Further, the Government says that its modelling:

\ldots overstates the effect of carbon pricing on the average level of consumer prices. It assumes emission costs to households are passed on fully, based on fixed consumption patterns. The true change in the average household cost of living is likely to be lower than the estimate here, as households substitute towards lower emission goods and services. Changes in consumption will start to have some effect immediately after the introduction of carbon pricing and become more important over time.\textsuperscript{12}

The Government has also announced funding for the Australian Competition and Consumer Commission to ‘crack down on any business that seeks to gouge its customers by making misleading claims about the impact of putting a price on carbon pollution’.\textsuperscript{13}

\textbf{Committee consideration}

The Bill was referred to the Joint Select Committee on Australia’s Clean Energy Future Legislation (the Committee) for inquiry and report. The Committee’s report was published on 7 October 2011.\textsuperscript{14}

Having considered the contents of this Bill, the Committee concluded:

The household assistance measures in the bills are designed to ensure that many households, particularly low and middle-income households, are not left financially worse off as a result of applying a price to greenhouse gas emissions.

The committee is satisfied that the full suite of household assistance measures will provide compensation for those Australian households that will most directly experience the impacts of pricing greenhouse gas emissions, and provide them with the ability to drive further change. The committee is also satisfied that the measures announced by the Government provide for appropriate support over time to assist community sector service providers in adjusting, and in better assisting vulnerable and low-income Australians.\textsuperscript{15}

\begin{itemize}
\item \textsuperscript{12} Ibid.
\item \textsuperscript{13} J Gillard (Prime Minister), \textit{Transcript of interview with Annie Gastin: ABC Radio Darwin}, media release, 18 July 2011, viewed 29 September 2011, \url{http://parlinfo/parlinfo/search/display/display.w3p?query=Content%3AACCC%20Content%3A%22carbon%20price%22%20Dataset%3Apressrel;rec%3D4;resCount%3DDefault}
\item \textsuperscript{15} Ibid., pp. 121–122.
\end{itemize}

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Issue—‘clawback’

Background

The most recent example of compensation for a major government initiative lies in the introduction of the Goods and Services Tax (GST) in July 2000. Contained within the suite of GST legislation were significant welfare assistance arrangements to help compensate low-income persons and families for the, then, anticipated cost of living increases that would arise from the introduction of a 10 per cent GST.

The GST compensation featured a one-off rate increase for pensions and allowance payments of four per cent on 1 July 2000. The income test free area was also increased and the pension’s income test taper rate was reduced from 50 per cent to 40 per cent. The rate increase was a one-off, and separate from the normal indexation increases of March and September of each year. The four per cent one-off rate increase was comprised of 2.5 per cent compensation in advance for the anticipated affect on prices of the GST and other elements of the package, plus a 1.5 per cent real increase in pension/allowance rates. There were other major elements in the GST compensation package; especially the very major rationalisation and reforms to the family assistance and child care arrangements. This saw the introduction of FTB-A, Family Tax Benefit Part B (FTB-B) and Child Care Benefit (CCB). The FTB-A featured new, higher rates of payment and higher points for the income test free areas and higher cut-off limits. It also saw the abolition of the previous family assistance assets test.

The GST legislation also included measures to ‘claw-back’ 2.5 per cent of the four per cent increase paid on 1 July 2000 by withholding payment of usual indexation increases after 1 July 2000 until the amount of the 2.5 per cent increase had been recovered. This ‘claw back’ was considered appropriate as the 2.5 per cent was a pre-payment of an indexation amount to take into account the immediate effects of a GST on prices. Hence it was to be recovered from subsequent indexation increases.

The PS also had its origins in the introduction of the GST. In negotiations with the Democrats, the Government agreed that the amount of the pension rate increase would be maintained as a separate amount, and indexed to the CPI. The Democrats thought this would ensure this increase would not be eroded by CPI increases and subsequent indexation of the pension rates over time.16

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16. J Howard (Prime Minister), *Changes to the Goods and Services Tax (GST)*, media release, Canberra, 31 May 1999, viewed 15 September 2011, [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;orderBy=customrank;page=0;query=Content%3A%22pension%20supplement%22%20Dataset%3A01%2F01%2F1999%20%3E%3E%201%2F06%2F2000%20Default%3Apressrel;rec=2;resCount=Default](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;orderBy=customrank;page=0;query=Content%3A%22pension%20supplement%22%20Dataset%3A01%2F01%2F1999%20%3E%3E%201%2F06%2F2000%20Default%3Apressrel;rec=2;resCount=Default)

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‘Clawback’ in the clean energy compensation indexation arrangements

There are also elements of a ‘clawback’ in the rate increase arrangements presented in this Bill. If the entire 1.7 per cent rate increase was simply added to the base rate of income support pension, then this increase would be reflected into the future and carried on with subsequent indexation. However, the one-off 1.7 per cent increase will be turned into a separate payment (the CES) and indexed to the CPI alone. The effect of this will probably be that the CES does not increase at the same rate as the base rate of pension.

The basic pension rate is indexed to several other factors which have, in the past, realised greater increases than CPI indexation alone. The pension rate is first increased in line with movements in the CPI and the PBLCI. The index that shows the higher increase is used to increase the MBR of the ‘combined partnered’ rate of pension. The combined partnered rate is then compared to 41.76 per cent of MTAWE and increased to equal that amount if necessary. The single rate of pension is then fixed at 66.33 per cent of the combined partnered rate.

Over the last two years, two of the four pension increases have been driven by the PBLCI and the other two increases have been driven by the MTawe benchmark. If this continues, the indexation of the CES to the CPI alone will probably see its value eroded against the pension rate, thereby costing the Government less than a one-off clean energy increase being added to the basic pension rate.

For allowance and FTB payments that are only indexed to the CPI—the separate indexation of the CES to the CPI sees no similar ‘clawback’.

Issue—CES payment rate complication

The amendments presented in the Bill will see two extra supplement payments, paid in addition to the basic pension rate: the PS and the CES. For allowance payments this will be paid in addition to the basic allowance rate. For FTB payments, it will be two extra payments – the end-of-year supplement and the CES. Also, for FTB, there is the Large Family Supplement and a Multiple Birth Allowance. The net result is that calculating the rate payable is complicated. It would have been far simpler to incorporate the CES into the pension/allowance rates.

However, in relation to pension payments, it would probably have been more expensive in regards to indexation, as is explained above. For allowance income support payments, they are indexed to movements in the CPI twice a year, at the same time as the pension rate is increased, that is, 20 March and 20 September. For FTB payments indexation is annual to the CPI from 1 July each year.

17. Pensioner, Beneficiary Living Cost Index – op. cit.
18. Maximum basic rate.
19. Male Total Average Weekly Earnings.
20. J Macklin (Minister for Families, Housing, Community Services and Indigenous Affairs), Pensioners feeling the pinch set to get a boost, op. cit.

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It may also be that the creation of a separate CES payment was regarded by the Government as providing a more visible form of compensation than would have been the case if it had been simply incorporated into the pension/allowance rates.

Simplification of welfare payments has been a goal in the past. When the pension reforms of 20 September 2009 were made, the Government lauded the new PS as a rationalisation of several previous different supplement payments.21 The PS replaced the then GST Supplement, Pharmaceutical Allowance, Telephone Allowance and the Utilities Allowance. In that sense, the proposed CES seems to be a step backwards.

Financial implications

The cost implications for the financial assistance arrangements contained in this Bill are set out in the Explanatory Memorandum attached to the Clean Energy Bill 2011.22

Structure of the Bills Digest

Due to the lengthy and complexity of the Bill, this Bills Digest is structured so that discussion about the content and operation of the amendments in each of the Schedules to the Bill is found under each relevant heading.

Clean energy payments under social security law

The provisions presented in Schedule 1 to the Bill amend the Social Security Act 1991 (SSA) and the Social Security (Administration) Act 1999 (SSA Act) to provide for:

- clean energy advances
- CES—paid either fortnightly, or quarterly and
- indexation of amounts.

Part 1—Clean Energy advances

Part 1 of Schedule 1 to the Bill amends the SSA to identify those social security payments which will qualify for a clean energy advance, being:

- Age Pension
- Parenting Payment—Partnered
- Bereavement Allowance
- Carer Payment

22. Clean Energy (Income Tax Rates Amendments) Bill 2011, Explanatory Memorandum, p. 40, viewed 11 October 2011, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;orderBy=customrank;page=0;query=Title%3A%22clean%20energy%22%20Dataset%3AbillsCurBef,billsCurNotBef;rec=2;resCount=Default

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• Disability Support Pension (other than a person aged under 21 years with no dependent children)
• Newstart Allowance
• Parenting Payment—Single
• Partner Allowance
• Seniors Supplement
• Sickness Allowance
• Special Benefit (rate paid as if the person was in receipt of Newstart Allowance)
• Widow Allowance
• Widow B Pension and
• Wife Pension

With the exception of the Seniors Supplement, these are the main income support payments provided under the SSA. The reason the Seniors Supplement is included is that it is a quarterly payment provided to recipients of the Commonwealth Seniors Health Card (CSHC).

Only one advance to be paid

New section 914C provides that for the main income support payments (other than the full-time student payments) only one clean energy advance payment can be made. For the other income support payments (that is, the full-time student payments) up to two clean energy advance payments can be made.

Relevant provisions

Items 1–9 of Schedule 1 to the Bill insert new definitions into the definitions subsection of the SSA, being subsection 23(1). These new definitions are for the purposes of the clean energy advances. Item 1 inserts a new section 914 into the SSA setting out those existing recipients of welfare payments who will qualify for the clean energy advance and the days within which a recipient can qualify. In addition, new section 914A provides that the following income support payments have a longer timeframe to qualify for an advance:

• Austudy Payment
• Youth Allowance
• Disability Support Pension (a person aged under 21 years with no dependent children) and
• Special Benefit (rate paid as if the person was in receipt of Youth Allowance or Austudy payment).

23. Newstart Allowance is more commonly referred to as the unemployment benefit.
24. More commonly known as the sole parent pension.
25. Seniors Supplement is a quarterly payment provided to recipients of the CSHC. The Seniors Supplement is currently $816.40 (single) and $616.20 (partnered) per year.
26. The CSHC is provided to persons of retired age not on a pension with annual income below $50 000 (single) or $80 000 (partnered).

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For these payments, the window of time to be in receipt of a payment is from 14 May 2012 to 30 December 2013. The reason for this longer period is these payments are provided to students engaged in full-time study, which is usually geared to cover an academic (calendar) year.

**New sections 914D and 914E** set out how the advance is to be calculated. In particular, **new section 914E** provides that the clean energy advance payment is 1.7 per cent of the daily rate the person is receiving multiplied by the number of days the person is qualified for their payment during the advance period. Most pension payments, while provided fortnightly, are actually derived from an annual rate. This is different from the working age allowance payments, which are paid at a fortnightly rate in arrears. **New section 914E** provides a detailed mechanism for reconciling these two different rate calculation processes. This provides consistency in calculating the amount of the advance payment between the differing payments.

**New section 918** empowers the Minister to set out in a legislative instrument provisions excluding the clean energy advance from certain persons.\(^{27}\) According to the Explanatory Memorandum, this applies to persons who transfer from one qualifying payment to another during the clean energy advance qualification period so as to preclude payment of more than one advance.\(^{28}\) There is no explanation as to why any exclusion provisions are not in this Bill and need to be in a legislative instrument written by the Minister. It would be a simple matter to preclude a recipient of a welfare payment from receiving more than one advance in the period.

As it is set out in the Bill, any such legislative instrument would be disallowable.\(^{29}\) It is worth noting that while legislative instruments are subject to examination by the Parliament; their scrutiny is less than that which applies to a Bill which must have a second and third reading after being tabled. A legislative instrument can be subject to disallowance if either a Senator or Member of the House of Representatives moves a motion of disallowance within 15 sitting days of the day that the legislative instrument is tabled. The motion to disallow must be resolved or withdrawn within a further 15 sitting days of the day that the notice of motion is given. However, it should be noted that if there is no notice of motion to disallow a legislative instrument, then there is no debate about its contents.

**Division 2—Other amendments**

**Item 10** inserts **new section 1224** describing that any incorrect payment of a clean energy advance can be classified as a debt under the SSA and is, therefore, subject to the debt creation and recovery processes in the SSA. This is standard, in the context of payments provided under the SSA, for them to be covered by the debt provisions.


\(^{28}\) Explanatory Memorandum, op. cit., p. 13.

\(^{29}\) Department of the Senate, ‘Brief guide to Senate procedure – Brief no. 1: disallowance’, op. cit.
Part 2—Clean Energy Supplement

Part 2 of Schedule 1 to the Bill amends the SSA to provide for the new CES. The CES is very similar to the Pension Supplement (PS), which was introduced with the pension reforms in September 2009. The PS is added to the basic rate of pension and is subject to the income and assets tests. The PS is indexed separately from the pension. Like the pension it is indexed twice yearly but only in relation to the CPI and not the other pension indexation mechanisms, the PBLCI and MTAWE. Indexation of the CES will be identical to that of the PS.

Features of the Clean Energy Supplement

The features of the proposed CES payments are that it:

• is paid fortnightly, in addition to the basic rate of the underlying primary payment
• is generally payable from 20 March 2013, which is after the lump-sum clean energy advance period
• is paid in addition to existing supplement payments such as the Pension Supplement
• is separately indexed to the CPI to maintain its value against price increases paid to persons resident in Australia or temporarily absent for a period of less than 13 weeks. The CES is not to be paid to persons receiving a payment under the SSA and resident overseas. This reflects the objective of providing compensation for households incurring extra costs as a result of the clean energy initiatives incurred in Australia, and
• forms part of the whole income tested rate, so those in receipt of only a reduced rate of payment, (as their income or assets are close to the income/assets cut-off limit), may in fact receive the CES, alone.

Amount of the Clean Energy Supplement

The amount of CES will start off linked to the annual maximum rate of the basic primary payment as on 20 March 2013. This is the first day of the six monthly indexed period that takes effect on 20 March 2013.

It will be 1.7 per cent of the maximum basic rate as at 20 March 2013 then divided by 1/26th to derive a fortnightly CES rate.

The amount of the CES will vary between individuals. Currently, for pensions, the origin of the single rate of pension income support payment is derived from the combined partnered rate payable at

31. PBLCI – Pensioner Beneficiary Living Cost Index.
32. MTAWE – Male Total Average Weekly Earnings.
33. Pension Supplement (PS) was introduced with the reforms to pension payments of 20 September 2009, op. cit.

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the time. The single rate is set at 66.3 per cent of this combined partnered rate. This methodology is also very similar to the current indexation of the pension rate in which the combined partnered pension rate is linked to 41.76 per cent of MTAWE and the single rate is then 66.3 per cent of this rate.

Quarterly payment of the Clean Energy Supplement

**Part 3 of Schedule 1** to the Bill provides for the CES to be paid quarterly rather than fortnightly. While most persons will receive their CES fortnightly along with their main pension or allowance payment, some persons may elect to receive their CES quarterly, which will be essentially in arrears. It is not explained who or why persons might elect to be paid their CES in this way. However, it may assist some recipients in budgeting for quarterly electricity Bills.

Indexation of the Clean Energy Supplement

**Part 4 of Schedule 1** to the Bill amends the indexation provisions in the SSA. Essentially the CES is to be indexed twice a year to the CPI and this to commence from 20 September 2013. Income support pension and allowance payments are generally indexed on 20 March and 20 September of each year.

The main variation to this results from provisions to ensure that recipients are not compensated twice for the anticipated carbon pricing affect on prices. The indexation adjustment to primary payments will only reduce the CPI factor by the expected impact of the carbon price on indexation (0.7 per cent), but not below one. This will ensure that primary payments are not reduced as a result of the indexation adjustment.

This will mainly affect those on the allowance rates of payments as they are indexed to the CPI alone. If current and recent trends continue, this will probably not have as much impact on the pension rate payments as the CPI is only one indexation factor used and it has not been the CPI that has realised rate increases recently. More recently, it has been indexation to movements in the PBLCI or to MTAWE that have seen pension rate increases, not the CPI.

There is further discussion of previous mechanisms used by governments in the past for indexed payments and anticipated price impacts of major initiatives in the Issues section of this Bills Digest.

Relevant provisions

**Item 12** of Schedule 1 to the Bill contains **new section 20B** which sets out a new **‘clean energy pension rate’**. This clean energy pension rate is to be 1.7 per cent of twice the annual rate of pension payable to the individual including their PS.

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34. J Macklin (Minister for Families, Housing, Community Services and Indigenous Affairs), *Pensioners feeling the pinch set to get a boost*, media release, Canberra, 1 September 2011, viewed 15 September 2011, [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1095163%22](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1095163%22)

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This clean energy pension rate is then to be used to derive the rate of the CES, using the method which is set out in item 20 containing the new Module C–Clean Energy Supplement. This module uses a similar rate setting methodology as is used for indexing the basic pension rate, which refers to the combined partnered pension rate and then deriving the single rate being 66.33 per cent of this rate.

Item 17 repeals and replaces section 1061UB to amend the rate of the seniors supplement to include a reference to the clean energy pension rate in the calculation.

The remaining provisions presented in Part 2 repeat the CES rate setting provisions but for different payment rates in the SSA. Part 3 provides provisions for the payment of the CES quarterly in arrears rather than fortnightly. Part 4 provides for the indexation of the CES to the CPI.

Part 5—Other amendments

The proposed CES is to be an income tested amount added on to the basic payment rate and can reset the income test cut-off limits. This is the same as currently applies with the PS. Under the income test there are two elements that are indexed—firstly the basic rate and then the free area, that is, the amount of income a person/s can have before the maximum rate is reduced. The income test cut-off point is not directly indexed—it is only increased indirectly. Currently, for pension, income above the free area reduces the maximum basic rate by 50 cents in each $1 (non-transitional rate recipients). This rate reduction continues until nil rate is payable and it is at this point the income test cut-off point is reached above which no pension is payable. As the rate is increased or the free area is increased (by indexation), the cut-off point is indirectly increased.

Relevant provisions

Item 69 of Schedule 1 to the Bill provides for the new CES to be treated like the PS, that is, it is to be a part of the income tested amount on top of the basic rate and the PS. This will lift the income test cut-off points and allow more persons with higher incomes on to part-rate payments.

Clean energy payments under the family assistance law

Part 1–Clean energy advances for individuals

The provisions presented in Schedule 2 to the Bill are to amend the A New Tax System (Family Assistance) Act 1999 (FAA) in a very similar way to the amendments presented to the income support payments provided under the SSA in Schedule 1. It is proposed that there will be a clean energy advance and also an on-going CES.

The family payments referred to are Family Tax Benefit Part A (FTB-A) and also Family Tax Benefit Part B (FTB-B). Both of these payments are to have a clean energy advance and also a CES.

The clean energy household compensation measures for family payments can be summarised as:

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• a one-off advance payment to be arrived at as 1.7 per cent of the annualised rate of FTB-A and/or FTB-B payable to the family and
• an on-going CES, starting off as 1.7 per cent of the annualised FTB-A/FTB-B rate payable and this CES is to be maintained as a separate amount and indexed to the CPI.

One-off up-front lump-sum advance payment

The clean energy one-off lump-sum advance is being paid in respect of the 2012-13 year. FTB is paid based on an annual level of income and paid for the financial year. Entitlement to the clean energy advance will be linked to entitlement to FTB in the period 14 May 2012 to 30 June 2013. Most of the one-off advance payments are to be paid in the period 14 May to 30 June 2012, being before the commencement of the carbon pricing scheme. However, for those FTB claimants, who do not claim their FTB until after the end of the year—they will still get an advance if entitled to FTB in the 14 May 2012 to 30 June 2013 period.

The amount of advance one-off lump-sum payment will vary between families as it is linked to the recipient’s rate of FTB-A/FTB-B, which is linked to their individual circumstances of:

• level of Adjusted Taxable Income (ATI) 35
• number and age of child/ren and
• whether they are a dual or single income family and how much their income is shared between the partners.

For families on FTB, which also receive an income support payment as listed in Schedule 1, there will be one-off lump-sum advances and also on-going CES from both sources. This is for those families which are generally classified as low-income families, that is, being in receipt of an income support payment. In this context, it should be noted that where a person is in receipt of an income support payment, they automatically qualify for maximum rate FTB-A, and may also get maximum rate FTB-B (where they are a single income family). Other FTB families with higher incomes and are therefore not on an income support payment, they will receive the one-off lump-sum advance and on-going CES based on their FTB payment rates.

On-going indexation of the rates of FTB payments is to continue to apply and this is usually to the CPI from 1 July of each year.

Calculating the one-off lump-sum Family Tax Benefit clean energy advance

The one-off lump-sum FTB advance payment is to be paid in respect of the 2012-13 year. Therefore, the calculation of the FTB one-off lump-sum clean energy advance is based on the daily rate of FTB to be paid to the person for the 2012-13 year—expanded out to an annual rate. The clean energy

35. ATI refers to taxable income with several items added back in – salary sacrificed into superannuation, employer provided fringe benefits, foreign income, negatively property or investment loses, tax free pension/benefit but less any maintenance paid.

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advance will be 1.7 per cent of this annual rate. The annualised rate of FTB is to also include the FTB end-of-year supplements.\(^{36}\)

As detailed above, most of the advance payments are to be made in the period 14 May to 30 June 2012, that is, an advanced payment. These advanced payments will require that an estimation of the FTB rate to be paid in the 2012-13 year is made. The method to be used will be to calculate what the person’s daily rate of FTB is in the 14 May to 30 June 2012 period, then apply the CPI indexation that would occur on 1 July 2013 and then using this estimated daily rate calculate it out for 365 days and apply a 1.7 per cent increase.

There will also be FTB claimants who do not claim FTB for the 2012-13 year until on, or after, 1 July 2012. Some will claim after 1 July 2012 and during the 2012-13 year. Others will claim after the end of the 2012-13 year. These persons will not have received an advance payment in the 14 May to 30 June 2012 period. For these claimants, the method will be very similar, that is, calculate a daily rate of FTB for the person for the 2012-13 year and then multiply this by the number of days in the 2012-13 year for which the person is entitled to be paid FTB, and then apply a 1.7 per cent increase.

**Top-ups of clean energy advances**

Division 3 in Schedule 2 of the Bill provides for top-up payments for the FTB clean energy advance and this recognises that a person whose advance has been paid may have a change of circumstances during the year that entitles them to a higher rate of FTB for some part of the year (for example, a child comes into care or a child is born).

**Clean energy advances can be a debt**

Provisions in Division 4 of Schedule 2 to the Bill provides for the creation of a debt of an amount of FTB clean energy advance. This might occur, for example, where a person ceased to have care of an FTB child during 2012–13. However, under the Bill, a debt for all, or part, of the clean energy advance would only arise where the person knowingly made a false or misleading statement, or knowingly provided false information.\(^{37}\)

**Relevant provisions**

Item 3 of Schedule 2 to the Bill inserts new Part 8 into the FAA.

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36. From 1 July 2004 lump sum supplements to the rates of FTB-A/FTB-B were introduced, to be paid after the end of each income year when FTB paid was then reconciled with entitlement based on the family’s actual adjusted taxable income. The supplements were applied from the 2003-04 year and have been indexed to the CPI on 1 July each year. As the supplement payment was made at the time of reconciliation, it reduced or eliminated a large number of the debts accrued during the course of the previous year, as a result of underestimation of family actual income.

37. Item 10 of Part 1 of Schedule 1 to the Bill inserts new section 1224 into the SSA to this effect. This is similar to the debt rules for the economic stimulus payments that were linked to certain FTB entitlements in relation to 14 October 2008 and 3 February 2009. Explanatory Memorandum, p 51.

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Within Part 8, **new section 103** provides for the normal circumstances in which a person will be entitled to a clean energy advance, in terms of being entitled to FTB and the period within which the person needs to be entitled to FTB. **New subsection 103(1)** relates to the period 14 May 2012 to 30 June 2012. **New subsection 103(2)** refers to the period 1 July 2012 to 30 June 2013.

**New section 106** provides for the calculation of a daily rate for the purposes of the clean energy advance. This is essentially derived for the annualised rate of FTB (plus the end-of-year FTB supplement) multiplied by 1.7 per cent. **New section 105** then provides the method statements which require that the daily rate is multiplied by the number of days a person is entitled to FTB in the advance period as set out in **new section 103**.

**Part 2–Clean Energy Supplement for individuals**

**Part 2 of Schedule 2** to the Bill provides for the creation and payment of a FTB CES as parts of the payment of FTB-A and also FTB-B. The proposed CES for FTB is very much like the proposed CES that is created in **Part 2 of Schedule 1** to the Bill, that is, to be paid as an adjunct to the main income support payments. Likewise, the FTB-A and FTB-B CES will be very similar in construct to the current FTB end-of-year supplement payments. That is, the CES will be paid in addition to the basic payment rate and will make up a component of the income tested rate.

**Quarterly payment of Clean Energy Supplement**

The intention is to pay the FTB CES as a part of the fortnightly rate of FTB provided to the recipient. However, there is also provision for the FTB recipient to elect to receive the CES as a lump-sum paid at the end of each quarter.

**Calculation of the amount of the Family Tax Benefit Clean Energy Supplement**

The calculation of the amount of the CES to be paid in addition to FTB-A and FTB-B follow the same principles as the CES calculations as set out in **Schedule 1**. The FTB CES is essentially to be an amount of 1.7 per cent of the annualised rate of FTB-A and/or FTB-B to be paid. Those on higher rates of FTB, as they have less income and/or have more qualifying children, will receive larger FTB CES amounts. The component parts of the FTB-A rate to be used to determine an annualised CES rate is to be the sum of:

- the standard FTB-A rate
- any large family supplement
- any multiple birth allowance
- any FTB-A end-of-year supplement and
- any rent assistance

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38. Ibid.

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Likewise, for FTB-B, the component parts of the FTB-B rate to be used to determine an annualised CES rate is to be the sum of:

- the standard FTB rate and
- any FTB-B end-of-year supplement

Relevant provisions

The amendments in Part 2 of Schedule 2 to the Bill provide for the on-going payment of a CES which is in addition to the basic FTB rate. This CES is to be a separate amount and indexed to the CPI. Item 27 inserts new Division 2B—Clean Energy Supplement (Part B) into the FAA. Within Division 2B, new section 31B sets out the CES rate for FTB-B. Likewise, item 28 inserts new Division 2AA—Clean Energy Supplement (Part A) into the FAA. Within new Division 2AA, new section 38AA sets out the CES rate for FTB-A. Essentially, the CES rate is to be 1.7 per cent of the annual rate of FTB payable for a child.

Part 3—Clean energy advances for approved care organisations

Background

In the vast majority of cases, FTB is paid to the parent/carer of a young person. There is also provision for FTB to be paid to an Approved Care Organisation (ACO). An ACO is an organisation that co-ordinates or provides residential care services to young people in Australia and has been approved as an ACO by the Secretary. Some examples are agencies which assist homeless youth, care for intellectually or physically handicapped children, accommodate young refugees in order to help them adjust to Australian society, and adoption and foster care agencies that arrange pre-adoptive foster care. An ACO can also refer to a public hospital providing long-term or permanent care for an intellectually, emotionally or physically disabled young person.

An ACO that is eligible for FTB-A receives an annual rate of $1372.40 for a 0-24 year old person. An ACO cannot be paid FTB-A supplement, any bereavement payment of FTB, or any FTB-B.

Part 4—Clean Energy Supplement for approved care organisations

Part 4 inserts CES for ACO. This refers only to FTB-A and the proposal is to pay a CES rate of 1.7 per cent of the annual FTB-A ACO rate which is currently $1372.40.

Relevant provisions

Parts 3 and 4 of Schedule 2 to the Bill refer to the payments of clean energy advances and CES to ACOs. Apart from the rate differences that apply to the payment of FTB-A to ACOs, the general principles for the calculation of the clean energy advance and the CES for FTB that are described above are to apply to these payments to be paid to ACOs.

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Item 36 of Schedule 2 to the Bill provides for the Minister, by legislative instrument, to determine a scheme under which payments of clean energy advances may be made to an approved ACO. The Minister may vary or revoke the scheme, also by legislative instrument.

Item 37 of Schedule 2 to the Bill repeals and replaces subsection 58(2) of the FAA to provide a new method statement for an approved care organisation’s annual rate of family tax benefit to take into account the Clean Energy Supplement.

Part 5—Other amendments

Part 5 contains further amendments to the FAA to provide for the indexation of the CES to the CPI and, like the indexation provisions in Schedule 1, there is to be some offsetting. The offsetting refers to the carbon price CPI impact to be not counted twice. The anticipated carbon price impact is 0.7 per cent and this is to be accounted for in the CES indexation but not also in the basic FTB rate CPI indexation. The offset is to be achieved by reducing the CPI indexation of the basic FTB payment rate by the amount the CES is indexed to the CPI. This offsetting is not to apply where the amount of the CPI indexation applied to the CES rate is less than 0.7 per cent plus 1.0.

Clean energy payments under the Veterans’ Entitlements Act

Part 1—Clean energy advances

Schedule 3 of the Bill presents amendments to the Veterans’ Entitlements Act 1986 (VEA) to provide for carbon price household compensation measures very similar to the amendments to the SSA presented in Schedule 1.

Clean energy advances

Like the pension and allowance clean energy advances, the advance payments under Schedule 3 to the Bill are to cover the nine month period from 1 July 2012 to 19 March 2013. The reason for this period is that it is anticipated that the carbon pricing impact on the CPI will have taken affect by then and the scheduled indexation of the veterans’ payment rates is undertaken on 20 March 2014. Thereafter, compensation for the carbon price impact will be in the form of the CES to be attached to the VEA payments from 20 March 2013, as outlined below.

One-off up-front lump-sum advance payment

The veterans’ payments provided under the VEA that are to qualify for a lump-sum advance payment are the:

- Disability rate pensions\(^{39}\)

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39. The disability rate pensions refer to General rate paid from 10% to 100%, Special rate (commonly referred to as the T&PI rate), Intermediate rate and the Extreme Disablement Adjustment (EDA) rate.

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The calculation of the amount of the clean energy lump-sum advance payments for veterans’ payments are like the calculations for advances presented in Schedule 1. The main elements of the clean energy advance payments are:

- advances will commence to be paid from 14 May 2012
- advances are generally in respect of the nine month period from 1 July 2012 to 19 March 2013
- where a person is qualified to receive underlying primary payment\(^{43}\) in the period 1 July 2012 to 19 March 2013, they can qualify for an advance payment
- a person may also be eligible for an advance where they are qualified to receive an underlying primary payment in the period from 14 May 2012 to 30 June 2012 and
- the calculation of the advance requires the calculation of the person’s daily rate of payment as at 1 July 2012 and then deriving an annual rate payment and then calculating 1.7 per cent of this rate, then adding 20 cents to this amount to account for the indexation that would have occurred on 20 September 2012.

The above refers to the compensation payments under the VEA (disability pensions and WWP) as they are paid at a standard rate for all recipients and do not include single or partnered rates.

For those on an income support payment under the VEA (Age and Invalidity Service Pension) and also for the Seniors Supplement, the same methods are used to calculate the advance as is done in Schedule 1. This involves working from the daily rate of the person’s payment rate, calculating the number of days the person is entitled to in the advance period (1 July 2012 to 19 March 2013) and then paying 1.7 per cent of this amount.

For the proposed advance payments, the amendments in Schedule 1 that refer to top-ups of advances, payment of the advance in a lump-sum and the creation of debts, are duplicated in Part 1 of Schedule 3 to amend the VEA.

**Part 2—Clean Energy Supplement and quarterly Clean Energy Supplement**

Part 2 of Schedule 3 presents amendments to the VEA to provide for a new CES payment to be attached to VEA payments. These CES payments are very much like the CES payments that are

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40. Age service pension is very much like the civilian age pension provided under the SSA, except the VEA age service pension has qualifying ages 5 years under the age pension ages.
41. Invalidity Service Pension is payable to a person with qualifying service and is not of age service pension age and has a severe invalidity to work.
42. Seniors Supplement is a quarterly payment provided to recipients of the CSHC, op. cit.
43. ‘Underlying primary payment’ refers to one of the main VEA payments that also qualifies the recipient to also receive a clean energy advance payment.

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contained in Part 2 of Schedule 1, which amend the SSA. The features of these new CES payments are:

- paid fortnightly in addition to the basic rate of the underlying primary payment
- payable from 20 March 2013, which is after the lump-sum clean energy advance payment period
- paid in addition to existing supplement payments like the Pension Supplement 44
- separately indexed to the CPI to maintain its value
- paid to persons resident in Australia or temporarily absent for a period of less than 13 weeks and
- forms a part of the whole income tested rate (where the rate is means tested), so those on a very small amount of payment, as their income or assets are close to the income/assets cut-off limit, may merely be in receipt of the CES.

For income tested payments, the amount of the CES will vary between individuals. Currently, for pensions, the single rate of pension income support payment is derived from the combined partnered rate payable at the time. The single rate is then 66.3 per cent of this combined partnered rate. This methodology will also be used to derive partnered and single rates of the CES. This methodology is also very similar to the current indexation of the pension rate in which the combined partnered pension rate is linked to 41.76 per cent of MTAWE and the single rate is then 66.3 per cent of this rate.

Clean Energy Supplement for war widows/ers

WWP is not means tested because it is a compensation payment. However, some WWP recipients can also qualify for Income Support Supplement (ISS). ISS is payable to those WWP recipients whose income and assets are below the pensions’ income and assets test limits. ISS is paid as income support to assist these low-income WWP recipients with their living costs. ISS is paid at a lower rate than other income support payments, recognising the person is also getting WWP. The CES amendments in Schedule 3 of the Bill propose to pay the CES to all WWP recipients, not just to those who also get ISS.

Quarterly payment of the Clean Energy Supplement

Schedule 3 to the Bill also contains provisions to pay the CES quarterly rather than fortnightly. While most persons will receive their CES fortnightly along with their main pension or allowance payment, some persons may elect to receive their CES quarterly, which will be in arrears.

Relevant provisions

Schedule 3 to the Bill amends the VEA to provide for carbon price household compensation measures very similar to the amendments to the SSA presented in Schedule 1.

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44. Pension Supplement (PS) was introduced with the reforms to pension payments of 20 September 2009, op. cit.

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Item 5 of Schedule 3 to the Bill inserts a new definition of ‘clean energy underlying payment’ into subsection 5Q(1) of the VEA. Recipient of those payments will be entitled to clean energy payments.

Item 6 of Schedule 3 to the Bill inserts new sections 61A–61H. New section 61A sets out the normal qualification requirements for a person to be entitled to a clean energy advance, in terms of being entitled to a clean energy payment and the period within which the person needs to be entitled to the payments. These days refers to 14 May 2012 to 30 June 2012 and also to 1 July 2012 to 19 March 2013.

New sections 61C, 61D and 61E contain new sections for the setting of the clean energy advance rate and the amount of the advance derived from this daily rate. Like the provisions in Schedule 1 for income support payments the advanced payment amount is to be 1.7 per cent of the annualised rate of payment.

New section 65A empowers the Minister to set out in a legislative instrument provisions excluding the clean energy advance from persons. According to the Explanatory Memorandum this refers to persons who transfer from one qualifying payment to another during the clean energy advance qualification period to preclude payment of more than one advance. As with the similar provision in Schedule 1 to the Bill there is no explanation as to why any exclusion provisions are not in this Bill, rather than in a legislative instrument.

As it is set out in the Bill, any such legislative instrument would be disallowable. However, as stated in relation to the amendment in Schedule 1 to the Bill, above, if there is no motion of disallowance moved within 15 sitting days of the day that the legislative instrument is tabled, there is no debate about the substance of the legislative instrument.

Clean energy payments under the Military Rehabilitation and Compensation Act

Schedule 4 to the Bill amends the Military Rehabilitation and Compensation Act 2004 (MRCA). The amendments are very much like the other amendments in the Bill containing provisions to pay clean energy advances and a CES to payment recipients under the MRCA.

Background

The MRCA provides compensation and rehabilitation coverage for the following members and former members of the Australian Defence Force (ADF) for service on and after 1 July 2004:

- all members of the permanent Defence Force
- all members of the Reserve Force

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46. Explanatory Memorandum, op. cit., p. 75.
47. Department of the Senate, ‘Brief guide to Senate procedure – Brief no. 1: disallowance’, op. cit.

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• cadets and officers and instructors of cadets and
• other people declared in writing by the Minister for Defence to be members of the ADF.

The MRCA also provides benefits to certain dependants of these persons in the event that they are severely injured or lose their life as a result of their service.

The MRCA is separate to the VEA and is a workers’ compensation Act. The VEA is a repatriation Act providing assistance to persons who have been engaged in special kinds of defence service, like in a war time or a period of armed conflict. One of the main differences is the VEA does not provide for lump-sum payments. Given that some assistance provided under the VEA can refer to service which is not warlike or armed conflict service, there are some overlaps between the assistance under the VEA and the MRCA. That is an injured person may have entitlements to assistance under both the VEA and the MRCA at the same time. Where this occurs the person commonly has to choose the assistance they wish to receive and there can be offsets between payments from the two Acts for the same illness/injury/death.

Payments under the Military Rehabilitation and Compensation Act 2004

Under the MRCA, a person may be entitled to an on-going disability payment paid as compensation for a service related injury/illness. Likewise, a dependant of a deceased service person may also be entitled to payments under the MRCA where it is accepted the death of the service person was service caused/related.

The similarity between MRCA payments and VEA payments explains why there are also clean energy compensation payments under the MRCA.

One-off up-front lump-sum advance payment

The MRCA payments for which clean energy advances and the CES will be payable are:

• compensation under Part 2 of Chapter 4: this essentially refers to weekly compensation for accepted service related impairment
• Special Rate Disability Pension (SRDP): this provides an alternative form of on-going compensation for people whose capacity for work has been severely restricted because of conditions due to military service. SRDP is a tax-free payment that can be made to a former ADF instead of MRCA incapacity payments. SRDP is designed for former members whose income, if they received incapacity payments, would fall below what is provided to the person if they were on a Special Rate pension provided under the VEA. SRDP is payable indefinitely whereas incapacity payments under the MRCA cease at the age of 65 and
• compensation under Division 2 of Part 2 of Chapter 5: this refers to compensation to the partner of a service person after death and can be regular or lump-sum payments.

48. The disability rate pensions refer to General rate paid from 10% to 100%, Special rate (commonly referred to as the T&PI rate), op. cit.

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The clean energy advances proposed for payments provided under the MRCA are the same as the advances presented in other parts of the Bill and refer to the period from 1 July 2012 to 19 March 2013 or 30 June 2013, depending on when the MRCA payment is indexed.

The amendments to the MRCA specifically refer to advances rate setting sections in the VEA to calculate the rate of the clean energy advance.

**Clean Energy Supplements**

The CES proposed for payments provided under the MRCA are the same as the CES provisions presented in other parts of the Bill and refer to commencing from 20 March 2013 (or 1 July 2013), being after the end of the clean energy advance payment periods under the MRCA. This date is linked to when the MRCA payment is indexed.

The amendments to the MRCA specifically refer to advances rate setting sections in the VEA to calculate the rate of CES.

**Relevant provisions**

Consistent with the drafting in the earlier Schedules to the Bill, item 4 inserts the definition of ‘clean energy underlying payment’ into existing subsection 5(1) of the MRCA. The definition lists those payments which will attract a clean energy payment.

Item 9 inserts new Part 5A–Clean energy payments into the MRCA. New Part 5A creates two new payments the clean energy advance and the CES. It also sets out the eligibility, payability and rate rules for both of those payments.

As with the amendments to the SSA in Schedule 1 to the Bill, new section 424K provides that where an amount of clean energy advance is paid to a person who is subsequently found to be not entitled to the payment, the amount paid is a debt due to the Commonwealth which can be recovered in a court of competent jurisdiction.

Item 10 of Schedule 4 to the Bill inserts a new definition of ‘clean energy bonus’ into subsection 5(1) of the MRCA. A reference to the clean energy bonus in the MRCA is a reference to the payment of CES whether paid fortnightly, or quarterly.

Items 14 and 15 insert new sections 209A and 238A respectively setting out the conditions to be satisfied by recipients of SRDP and wholly dependent partners of deceased members, in order for CES to be paid to them. Similarly, item 18 inserts new section 83A which sets out the conditions to be satisfied by those persons who are in receipt of weekly compensation under the MRCA, in order for the CES to be paid to them.

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Clean energy payments under the Farm Household Support Act

Schedule 5 to the Bill amends the Farm Household Support Act 1992 (FHSA) to provide a clean energy advance payment to recipients of Exceptional Circumstances Relief Payment (ECRP). The CES will automatically flow through to recipients of ECRP as the rate of ECRP is linked to the rate of Youth Allowance or Newstart Allowance, depending on the recipient’s circumstances.

Background

The FHSA is the legislative basis for providing certain farmers with income support payments under the ECRP arrangements. This can arise where a state/territory has declared a drought area and farmers within that declared area can then access ECRP. A major component of ECRP assistance is in the form of income support. Income support can assist farm families in EC declared areas experiencing difficulties in meeting basic living expenses. Income support is also available to eligible small businesses that rely on farmers for their income.

ECRP income support is paid at a rate equivalent to the Newstart Allowance and is subject to an assets and income test similar to that for Newstart, with a $20,000 off-farm salary and wages exemption. Assets, including the farm, that are essential to the running of the business are not included in the assets test. The ECRP is delivered by Centrelink and is taxable. Applicants must meet the definition of a ‘farmer’, that is, a person who:

- owns or leases land for farming
- contributes significant labour and capital to the farm and
- gains a significant part of their income from the farm.

The reason the ECRP provided under the FHSA is included in this Bill is that the income support provided is essentially the same payment rate as Newstart Allowance and is commonly paid for 12 months.

It is worth noting that there are no provisions for a CES to be attached to ECRP. This is probably because ECRP is a short-term payment—commonly for 12 months.

Relevant provisions

Items 1–8 amend subsection 3(1) of the FHSA to insert definitions which have the same meaning as in the SSA. Item 18 of Schedule 5 to the Bill inserts new Division 1C—Qualification for clean energy advances into the FHSA. Within new Division 1C, new section 8G sets out the qualification periods for individual who are not of youth allowance age. New subsection 8J(1) provides that a person cannot qualify for more than one clean energy advance under section 8G.

New section 8H has the qualification periods for individuals that are of youth allowance age. However, new subsection 8J(2) provides that a person can qualify for up to two clean energy advances under section 8H.
Item 20 inserts new Part 4A—Amount of clean energy advance into the FHSA. Within new Part 4A, new sections 24C and 24D provide the formula for calculating the amount of the clean energy advance.

Item 31 of Schedule 5 to the Bill amends subsection 1227A(1A) of the SSA so that a debt that is recoverable under the FHSA in respect of a clean energy advance is also a debt that is due to, and recoverable by, the Commonwealth under the SSA.

**Low Income Supplement**

In presenting the Bill to the Parliament, the Minister announced a new payment, the Low Income Supplement (LIS):

> This bill also includes provision for new payments for low-income households and households with higher than average electricity costs. Low-income households that do not receive adequate assistance through the tax system or government payments, including self-funded retirees who do not hold a Commonwealth Seniors Health Card, may be eligible for the low-income supplement. The low-income supplement will be paid annually as a lump sum of $300, from 1 July 2012.  

**Background**

Schedule 6 to the Bill introduces a LIS for households which do not receive enough assistance through tax cuts, or government welfare payments, to offset the average expected cost impact under the carbon price scheme.

The LIS is to be paid as an annual, tax-exempt lump-sum of $300 per qualifying individual. Eligibility will be based on the person’s income from the previous financial year. The Government says that the previous financial year is being used in order to ‘facilitate the timely payment of the Low Income Supplement to people as they need it to compensate them for the effect of the clean energy measures’.  

Applicants must make a new claim for the LIS each financial year, and only in the financial year for which the claim is being lodged.

Under the proposed changes to the SSA, in order to qualify for the LIS, a person must meet the following criteria:

- their ATI is less than
  - $30 000 for singles without a dependent child

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– $45 000 for couples without a dependent child
– $60 000 for singles with a dependent child and
– $60 000 for couples with a dependent child (New section 916C).

- they have not already received government assistance either through one of the clean energy payments or through other welfare payments (new section 916D)
- their liability would be less than $300 under the 2011-12 tax system (new section 96E); meaning (generally) that the person’s has an accepted taxable income for the income year is less than $18 000$^{51}$ and
- they have
  - been an Australian resident or a special category visa holder living in Australia at all times during the year
  - remained in Australia for at least 39 weeks of the year and
  - not been subject to a newly arrived resident’s waiting period at any time during the year (new section 916F).

Claims for the LIS will be accepted from 1 July 2012.

Income definition

The income definition to be used for LIS qualification refers to a claimant’s ATI as defined in Schedule 3 of the FAA. This is the income test used for FTB and also CCB. For the purposes of the FAA, an individual’s ATI for the tax year is the sum of the following amounts for that year:

- taxable income
- the value of any adjusted fringe benefits (for example, employer provided fringe benefits)
- target foreign income (including tax exempt foreign employment income)
- total net investment losses (for example, negatively geared property or investment losses)
- tax free pension or benefit (for example, Disability Support Pension, Disability Pension or WWP paid under the VEA) and
- reportable superannuation contributions (for example, salary sacrificed into superannuation)

Subtracted from this amount is 100 per cent of the individual’s child maintenance expenditure.

There is another item to be added to the FAA definition of ATI for the purposes of the LIS. This is superannuation from a private taxed source that is currently not taxable for a person aged 60 or more.

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51. A person has an accepted taxable income for an income year if the Commissioner of Taxation has made an assessment of the person’s taxable income for the income year or the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs accepts an estimate of the person’s taxable income for the income year (New subsection 916E(3)).

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Proof of income

Essentially, to be able to claim LIS the person must have a tax assessment for the previous financial year. As a matter of administrative expediency and simplicity this makes sense as the LIS assessment then does not require a new and separate ATI assessment — it can use the assessment done by the Australian Taxation Office (ATO). This is similar to the ATI testing methodology used for FTB and CCB. The new provisions do allow the use of an income estimate for the year where:

- the Secretary is satisfied the claimant’s estimate is reasonable
- there has not been a tax assessment for the previous financial year done by the ATO and
- the person has not lodged, and is not required to lodge, a tax return for the year.\(^\text{52}\)

Purpose of the LIS

The carbon tax household compensation measures in this Bill target payments of the clean energy advance and the CES to persons in receipt of other government assistance payments. The other carbon tax compensation measures involve changes to taxation arrangements like the raising of the tax free threshold from $6000 to $18 000 a year.\(^\text{53}\) However, the LIS recognises that there will be some persons on ‘low income’ who may miss the benefit of the clean energy advances and the CES proposed in this Bill and also not get much benefit from the tax changes.

One of the main reasons why this may occur is the different income measures used for different government payments and assistance and also for measuring taxable income. The *Income Tax Assessment Act 1997* (ITAA) uses a universal and common usage definition of income, whereas the income tests under the SSA (and VEA) refer to any monies or valuable consideration earned, derived or received and allows fewer income deductions. The main example of differing income tests is the use of ATI for FTB and CCB, whereas the income tests for means tested income support payments provided under the SSA (and the VEA) use a broader income definition and allow fewer deductions and offsets. The net result is that a person’s level of ATI may be lower than their income measured under the SSA/VEA. There will be persons on low income, who are not qualified for a government income support payment and not qualified for FTB as they do not have a dependent child, but who will therefore not gain the benefit of clean energy advances and/or the CES but will also not gain much benefit from the compensation provided under the carbon tax income taxation changes.

Relevant provisions

Under the proposed changes to the SSA, in order to qualify for the LIS, a person must meet the certain criteria.

First, **new section 916C** requires that their Adjusted Taxable Income (ATI) is less than:

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\(^\text{52}\) Persons with income below the tax free threshold are not required to lodge a tax return.


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Clean Energy (Household Assistance Amendments) Bill 2011

- $30 000 for singles without a dependent child
- $45 000 for couples without a dependent child
- $60 000 for singles with a dependent child and
- $60 000 for couples with a dependent child.

The second requirement is contained in new section 916D. Broadly, the LIS is not to be paid where the person was receiving carbon price compensation from other government sources during the year. Payment of the LIS in excluded in the following situations:

- the person not having received a clean energy payment for at least 92 days in the previous financial year. A clean energy payment refers to a clean energy advance or a CES as set out in this Bill
- the person did not have a FTB qualifying dependent child for at least 13 weeks during the year or there has been a determination that the person was not qualified to receive FTB for at least 13 weeks during the year. The purpose here is to ensure that where a person had a FTB dependent child during the year they must test their eligibility for FTB first before they can qualify for LIS. If FTB is payable then the clean energy advance or CES will also be paid and if FTB paid for 13 weeks or more, the LIS is not payable and
- the person did not receiving a LIS ‘excluded payment’ for at least 13 weeks during the year. A LIS ‘excluded payment’ refers to the main income support and some supplement payments in this Bill with a clean energy advance or a CES attached to them.

The third requirement is contained in new section 916E, that is, their liability would be less than $300 under the 2011-12 tax system. This means, generally, that the person has an accepted taxable income for the income year is less than $18 000.54

The final requirement is contained in new section 916F. The person must have:

- been an Australian resident or a special category visa holder living in Australia at all times during the year
- remained in Australia for at least 39 weeks of the year and
- not been subject to a newly arrived resident’s waiting period at any time during the year.

**Essential Medical Equipment Payment**

Schedule 7 to the Bill amends the SSA and the VEA to introduce an annual, indexed cash payment for people who hold Commonwealth concession cards and who rely on certain medical equipment that results in higher than average energy use. This is intended to cover the expected additional running costs for the equipment arising from the carbon price.

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54. A person has an accepted taxable income for an income year if the Commissioner of Taxation has made an assessment of the person’s taxable income for the income year or the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs accepts an estimate of the person’s taxable income for the income year (New subsection 916E(3)).

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Relevant provisions

Those who will qualify for the payment include people who use essential medical equipment (such as an external heart pump or a dialysis machine) and those with conditions requiring additional heating or cooling to regulate their body temperature.

**Item 6 of Schedule 7** to the Bill inserts **new subsection 917C** of the SSA which details the medical needs requirements. The types of medical equipment covered, conditions resulting in the inability to regulate body temperature, and residences for the purposes of receipt of the payment will be specified by legislative instrument: **new subsection 917C(3).**

Applicants for the payment will need to provide certification from a medical practitioner that the person suffers from the relevant condition, that the equipment is required and is being used: **new subsection 917B(1)(b) of the SSA.** Alternatively, the Secretary of FaHCSIA or Repatriation Commissioner may be satisfied by other evidence, including that the equipment user is able to show that a state or territory energy authority has accepted their medical condition and is providing a rebate: **new subsection 917B(2) of the SSA.**

The Essential Medical Equipment Payment will generally be payable only once in relation to the same medical equipment in a particular household in a financial year. The payment will be available for each piece of equipment used in a residence regardless of the number of users: **new subsection 917F(1) of the SSA.**

People will only need to claim the Essential Medical Equipment Payment once—all future payments will be made on the anniversary date of the first claim. The payment will be set at $140 in the financial year 2012-13 and will be made from 1 July 2012.

**Single Income Family Supplement**

**Schedule 8** to the Bill amends the FAA to introduce a new Single Income Family Supplement (SIFS) of up to $300 to assist certain single income families. This is intended to compensate them for the fact that unlike dual income families, they only get one tax cut under the carbon price assistance being delivered through the tax system.

To be eligible for the SIFS, a person must have a qualifying child where the main income earner (if partnered, the member of the couple with the highest taxable income) has a taxable income between $68 000 and $150 000 and may be subject the partner’s taxable income (if any).

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55. **Item 23** inserts **new VEA subsection 63C(3)** which provides that ‘specified essential medical equipment means any medical equipment that is specified under subsection 917C(3) of the Social Security Act’.
56. The equivalent provision of the VEA is **new subsection 63B(1)(b).**
57. The equivalent provision of the VEA is **new subsection 63B(2).**
58. The equivalent provision of the VEA is **new subsection 63F(1).**

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The rate at which the SIFS is paid begins from nil at $68 000 and increases by 2.5 cents for each dollar earned over $68 000 until the taxable income reaches $80 000 and the rate reaches the maximum of $300. The rate of payment stays at $300 until the taxable income reaches $120 000, before reducing by one cent for every dollar beyond that amount until the cut-off point of $150 000. If the claimant is a member of a couple, there are also reductions in the rate payable based on the low income earner’s taxable income.

The first payments of the SIFS are to be made from 1 July 2013.

Relevant provisions

Schedule 8 to the Bill amends the FAA. Item 4 inserts several new provisions setting out the qualification requirements for the LIFS. Essentially it will be required a person has a FTB qualifying child, is in Australia and not temporarily absent for longer than 13 weeks.

Under new subsection 57G(3) of the FAA, a ‘qualifying child’ will include:

- an ‘FTB child’ (a child for whom the person receives FTB) who has not been absent from Australia for more than 13 weeks or
- a child who has not been absent from Australia for more than 13 weeks and who would be an FTB child except that the child (or someone on the child’s behalf) is receiving an ‘at home’ rate of one of a number of specified payments.

Item 5 inserts new Division 4B—Rate of single Income Family Supplement into the FAA. Within new Division 4B, new section 84G contains the method statement for calculating the rate of SIFS and new sections 84GA and 84GB sets out relate to the manner of sharing SIFS between members of a couple in a blended family and for separated members of a couple respectively.

Aged care amendments

In the speech introducing the Bill to the Parliament, the Minister stated:

Arrangements will also be made to ensure that household assistance will be shared fairly between aged-care residents and their aged-care facilities. The new clean energy advance and supplement paid to pensioners and Commonwealth Seniors Health Card holders will be shared with aged-care providers through an increase in the basic daily fee payable by a resident of an aged-care facility. From 1 July 2012, the aged-care fee will increase from 84 per cent to 85 per cent of the total basic pension amount. These arrangements mean that pensioners and Commonwealth Seniors Health Card holders living in aged-care homes will get to keep any tax cuts they receive in addition to keeping almost 50 per cent of the assistance paid through their pension or seniors supplement. Aged-care residents who are not eligible for the age pension, service pension or the Commonwealth Seniors Health Card and who are living in an aged-care home on 30 June 2012 will not be disadvantaged by fee increases due to the carbon price. A new Australian government aged-care subsidy will be paid to aged-care homes in respect of these

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residents so that the residents will not pay the increased daily fee. These new arrangements will start from 1 July 2012.59

The intention of the amendments contained in Schedule 9 to the Bill is to share the compensation measures for the clean energy initiatives between aged care residents and aged care providers, recognising that both will incur increased costs.

Aged Care accommodation costs

For residents in high care (that is, nursing home care), the Aged Care Act 1997 (ACA) sets the maximum amount a person can be required to pay for their daily care fee. This is currently 84 per cent of the maximum basic single rate of pension. The Bill provides for this restriction to be raised to 85 per cent. This will allow aged care providers to charge more, and thereby receive more, from residents — thereby receiving some compensation for their cost increases arising from the clean energy initiatives. This will be done at the same time as those low income persons in high care who are on a pension, will also get the 1.7 per cent compensation measures (clean energy advance and the CES) as set out in other Schedules in this Bill. For those not on an income support payment, they will get their clean energy compensation in other ways — for example, from the tax changes and/or the LIS.

There are some other types of residents who are charged different amounts to the 84 per cent and this is set out in the Explanatory Memorandum.60

Relevant provisions

Division 58 of the ACA sets out the responsibilities relating to resident fees. In particular the Division provides that a resident fee in respect of any day must not exceed the maximum daily amount. The maximum daily amount is worked out using the resident fee calculator in section 58-2 of the ACA. Part of that calculation requires the working out of the standard resident contribution.

Item 1 of Schedule 9 to the Bill amends section 58-3(1) of the ACA to reset the standard resident contribution from 84 per cent to 85 per cent of the single rate of pension.

Other amendments

Items 4–17 amend the ITAA to provide that clean energy payments are exempt as income so will not be classified as taxable income.

60. Explanatory Memorandum, pp. 154-155.

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Concluding comments

This Bill is one of the largest single pieces of government initiative compensation legislation seen since the GST legislation of 1999.

The methods of clean energy cost compensation feature advances to be followed by a new on-going CES. Several new payments are proposed to be created featuring the CES, the LIS, the SIFS and the essential medical equipment payment. The methods of calculating the various advances and CESs between different payment recipients are complicated but also consistent with existing methods.

The Government claims the anticipated impact on prices by the clean energy changes will be 0.7 per cent but proposes compensation arrangements featuring increases or advances of 1.7 per cent. Some of this is the passing on of revenue gained from the clean energy changes. 61

The proposed CES is an added complication to the payment rates of income support, income supplement and compensation payments provided under the SSA, the VEA and the MRCA. Many would take the view that, given how complex current welfare assistance arrangements currently are, any extra complication is not desirable. It is, however, likely that the Government has taken this approach in order to restrict the indexation of the carbon price compensation to merely the CPI, and not to other indexation measures like the PBLCI and/or the MTAWE.

Another possible explanation is that the Government regarded the creation of a separate CES payment as a more visible form of compensation than would have been the case if it had been simply incorporated into existing welfare payments.


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