Social Services and Other Legislation Amendment Bill 2013

Amanda Biggs, Luke Buckmaster, Carol Ey and Michael Klapdor
Social Policy Section

Contents

Glossary ................................................................. 4
Purpose of the Bill .................................................. 5
    Government amendments—new Schedule 1A—Charities... 6
Structure of the Bill .................................................. 6
Committee consideration ......................................... 6
Financial implications ............................................ 6
Statement of Compatibility with Human Rights ............. 7
Schedule 1—Encouraging responsible gambling ............. 7
    Background ...................................................... 7
    What the Bill proposes .................................. 8
    Potential impacts ......................................... 9
    Stakeholder responses ................................ 9
    Key issues and provisions ................................ 11
Part 1—Amendments to the National Gambling Reform Act 2012 .................................................. 11
Part 2—Repeal of the National Gambling Reform (Related Matters) Act (No. 1) 2012 and the National Gambling Reform (Related Matters) Act (No. 1) 2012 ....... 11
Schedule 2—Continuing income management as part of Cape York welfare reform 11
    Background ...................................................... 12
    Income management ....................................... 12
    Is it working? .................................................. 13
    Key issues and provisions ................................ 14
    Comment ....................................................... 15
    Statement of compatibility with human rights .......... 15

Date introduced: 20 November 2013
House: House of Representatives
Portfolio: Social Services
Commencement: Various dates as set out in the table at clause 2 of the Bill.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation
When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.
Schedule 3—Family tax benefit and eligibility rules ........... 17

Background.................................................................................. 17

Changes part of a broader transformation of the way assistance is provided to young people 17

Key issues and provisions............................................................... 18

Amendments to the A New Tax System (Family Assistance) Act 1999 18

Schedule 4—Period of Australian working life residence ..... 18

Background.................................................................................. 19

Who will the measures affect....................................................... 19

Key issues and provisions............................................................... 20

Amendments to the Social Security Act 1991 ......................... 20

Amendments to the Social Security (International Agreements) Act 1999 20

Schedule 5—Interest charge .................................................... 21

Background.................................................................................. 21

How do social security debts arise? ........................................... 21

Existing provisions allow for interest charges to be applied to social security debts 22

Recipients of student assistance payments are being targeted for savings 22

Key issues and provisions............................................................... 23

Amendments to the Social Security Act 1991 ......................... 23

Amendments to the Student Assistance Act 1973 ................. 24

Schedule 6—Student start-up loans ................................. 24

Background.................................................................................. 24

Policy position of non-government parties/independents ... 25

Financial implications ................................................................. 25

Key issues and provisions............................................................... 26

Schedule 7—Paid Parental Leave .............................. 26

Key issues and provisions............................................................... 27

Proposed changes ..................................................................... 27

Why are employers currently required to be involved? ..... 28

Employer experience of the paymaster role ......................... 28

Comment...................................................................................... 29

Schedule 8—Pension Bonus Scheme ................................. 29

Background.................................................................................. 29

Bonus amount ............................................................................. 29

Closure of the scheme................................................................. 30

Key issues and provisions............................................................... 30

Schedule 9—Indexation......................................................... 30

Background.................................................................................. 31

Key issues and provisions............................................................... 31

Amendments to the A New Tax System (Family Assistance) Act 1999 31

Amendments to the Paid Parental Leave Act 2010......... 31

Schedule 10—Reduction of period of temporary absence from Australia 32

Background.................................................................................. 32
Key issues and provisions ................................................ 32

Schedule 11—Extending the deeming rules to account-based income streams 33

Background ........................................................................ 33
Deeming .............................................................................. 34
Advantages and disadvantages of deeming ......................... 35
Harmer and Henry Review recommendations .................... 35
Stakeholder responses ......................................................... 35
Key issues and provisions .................................................... 36
Amendments to the Social Security Act 1991 ...................... 36
Amendments to the Veterans’ Entitlements Act 1986 ....... 37
Application provisions .......................................................... 37

Schedule 12—Other amendments ........................................ 37
### Glossary

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AHRC</td>
<td>Australian Human Rights Commission</td>
</tr>
<tr>
<td>ATMs</td>
<td>Automatic Teller Machines</td>
</tr>
<tr>
<td>AWLR</td>
<td>Australian working life residence</td>
</tr>
<tr>
<td>CCR</td>
<td>Child Care Rebate</td>
</tr>
<tr>
<td>CYWRT</td>
<td>Cape York Welfare Reform Trial</td>
</tr>
<tr>
<td>DAPP</td>
<td>Dad and Partner Pay</td>
</tr>
<tr>
<td>DHS</td>
<td>Department of Human Services</td>
</tr>
<tr>
<td>DSS</td>
<td>Department of Social Services</td>
</tr>
<tr>
<td>EGMs</td>
<td>Electronic gaming machines</td>
</tr>
<tr>
<td>FA Act</td>
<td>A New Tax System (Family Assistance) Act 1999</td>
</tr>
<tr>
<td>FA Admin Act</td>
<td>A New Tax System (Family Assistance) (Administration) Act 1999</td>
</tr>
<tr>
<td>FaHCSIA</td>
<td>Department of Families, Housing, Community Services and Indigenous Affairs</td>
</tr>
<tr>
<td>FTB-A</td>
<td>Family Tax Benefit Part A</td>
</tr>
<tr>
<td>FTB-B</td>
<td>Family Tax Benefit Part B</td>
</tr>
<tr>
<td>FRC</td>
<td>Family Responsibilities Commission</td>
</tr>
<tr>
<td>HECS</td>
<td>Higher Education Contribution Scheme</td>
</tr>
<tr>
<td>HELP</td>
<td>Higher Education Loan Program</td>
</tr>
<tr>
<td>HESA</td>
<td>Higher Education Support Act 2003</td>
</tr>
<tr>
<td>MYEFO</td>
<td>Mid-Year Economic and Fiscal Outlook</td>
</tr>
<tr>
<td>NTER</td>
<td>Northern Territory Emergency Response</td>
</tr>
<tr>
<td>PPL</td>
<td>Paid Parental Leave</td>
</tr>
<tr>
<td>PPL Act</td>
<td>Paid Parental Leave Act 2010</td>
</tr>
<tr>
<td>RDA</td>
<td>Racial Discrimination Act 1975</td>
</tr>
<tr>
<td>SS Act</td>
<td>Social Security Act 1991</td>
</tr>
<tr>
<td>SS Admin Act</td>
<td>Social Security (Administration) Act 1999</td>
</tr>
<tr>
<td>SSL</td>
<td>Student start-up loan</td>
</tr>
</tbody>
</table>
Purpose of the Bill

The purpose of the Social Services and Other Legislation Amendment Bill 2013 (the Bill) is to:

- amend the *National Gambling Reform Act 2012* to implement aspects of the Government’s responsible gambling policy and remove parts of the existing gambling regulatory regime; and to repeal the *National Gambling Reform (Related Matters) Act (No. 1) 2012* and the *National Gambling Reform (Related Matters) Act (No. 2) 2012*
- amend the *Social Security (Administration) Act 1999* so that income management can continue for a further two years as part of the Cape York Welfare Reform initiative
- amend the *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999* so that Family Tax Benefit Part A can only be paid up to the end of the calendar year in which a teenager is completing senior secondary school
- amend the *Social Security Act 1991* and the *Social Security (International Agreements) Act 1999* to extend the residency requirement for pensioners to receive their full rate of pension while residing overseas from 25 years of working life residency to 35 years; and to change the way residency periods are calculated for couples who receive a payment outside Australia under an international social security agreement so that the residency period of the individual is used rather than that of their partner
- amend the *Social Security Act 1991* and the *Student Assistance Act 1973* to allow for an interest charge to be applied to certain debts relating to the payment of Austudy, fares allowance, Youth Allowance and Abstudy Living Allowance
- amend the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Social Security Act 1991*, the *Social Security (Administration) Act 1999*, the *Student Assistance Act 1973*, the *Taxation Administration Act 1953* and the *Taxation (Interest on Overpayments and Early Payments) Act 1983* to establish a student start-up loan scheme to replace the existing lump-sum student start-up scholarship payment
- amend the *Paid Parental Leave Act 2010* to remove the requirement for employers to provide Paid Parental Leave Pay so that it can be paid by either the Department of Human Services or (with the agreement of the employer and employees) the employer
- amend the *Social Security Act 1991* and the *Veterans’ Entitlements Act 1986* to end late registrations for the closed pension bonus scheme
- amend the *A New Tax System (Family Assistance) Act 1999*, the *Family Assistance Legislation Amendment (Child Care Budget Measures) Act 2011* and the *Paid Parental Leave Act 2010* to extend until 30 June 2017 the current freeze on the indexation of:
  - the Family Tax Benefit Part B primary earner income limit
  - the Paid Parental Leave Pay and the Dad and Partner Pay individual income limits
  - the end of year family tax benefit supplements and
  - the Child Care Rebate limit
- amend the *A New Tax System (Family Assistance) Act 1999*, the *A New Tax System (Family Assistance) (Administration) Act 1999* and the *Paid Parental Leave Act 2010* to reduce the length of time families can receive family assistance payments and parental leave payments while overseas from three years to 56 weeks
- amend the *Social Security Act 1991* and the *Veterans’ Entitlements Act 1986* to apply deemed income test provisions to new account-based superannuation income streams, and
- make minor amendments to various other Acts to strengthen debt recovery under the Student Financial Supplement scheme, clarify provisions relating to the time period for lodging tax returns for family assistance purposes and to ensure funding paid into an account set up for the purposes of managing supports under a National Disability Insurance Scheme participant’s plan, cannot be garnisheed for debt recovery purposes.

With the exception of the gambling reform measures, the Cape York Welfare Reform measures and the changes to Paid Parental Leave arrangements, all of the amendments were savings measures announced by the previous
Government amendments—new Schedule 1A—Charities

Government amendments to the Bill, passed by the House of Representatives on 4 December 2013, inserted an additional schedule which proposes to delay the commencement of the Charities Act 2013 from 1 January 2014 to 1 September 2014. The Charities Act 2013 provides a definition of charity—including an exploration of what purposes are for public benefit and what constitutes a ‘disqualifying purpose’—as well as various definitions of a ‘charitable purpose’. The Act had the broad support of the not-for-profit sector, although issues were raised with some technical elements of the Bill and its Explanatory Memorandum. The Coalition had opposed the Charities Bill 2013 and committed to repealing the Act if elected. The Supplementary Explanatory Memorandum states the delayed commencement ‘will allow for further consultation on the legislation in the broader context of the Government’s other commitments in relation to the civil sector’.

This Bills Digest does not address the Government amendments. See the Bills Digest for the Charities Bill 2013 for background information.

Structure of the Bill

The Bill, as passed by the House of Representatives, is an omnibus Bill divided into thirteen schedules providing for distinct measures and amendments. This Digest will address 12 of the schedules separately including background information, analysis of the provisions and comments on key issues. Schedule 1A, inserted by Government amendments to the Bill, is discussed above.

Committee consideration

On 5 December 2013, an amendment to the tenth report of the Senate Selection of Bills Committee, agreed to by the Senate, referred the provisions of the Bill to three committees for report by 12 December 2013:

- schedules 6 and 9 to the Senate Education and Employment Legislation Committee
- schedule 2 to the Senate Finance and Public Administration Legislation Committee and
- the remaining provisions to the Community Affairs Legislation Committee.

The Senate Scrutiny of Bills Committee raised concerns with some of the proposed provisions in Schedule 5 of the Bill, particularly the use of legislative instruments to allow any other social security payments to be made subject to the proposed interest charge. The Committee’s Alert Digest stated:

The committee expects that important matters will usually be provided for in primary legislation. Therefore, although the power does give flexibility to the Minister to extend the requirement to pay interest, it is not clear why this flexibility is needed and appropriate given that the sort of matters to which it should apply appears to involve a significant question of policy.

The Committee has sought advice from the Minister as to why the proposed approach is considered appropriate.

Financial implications

Details of the financial implications for each Schedule are discussed in the separate sections below, where relevant. The following table from the Financial Impact Statement in the Explanatory Memorandum summarises the impact of the proposed measures:

---

7. Ibid.
### Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights can be found at page 97 of the Explanatory Memorandum to the Bill. As required under Part 3 of the **Human Rights (Parliamentary Scrutiny) Act 2011** (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible. Where a particular Schedule raises issues relating to the Statement of Compatibility with Human Rights, these are discussed in the relevant section below.

### Schedule 1—Encouraging responsible gambling

**Background**

The Bill proposes significant amendments to national gambling reforms that were enacted with the passage of **National Gambling Reform Act 2012**, and two associated Acts. These Acts introduced a national regulatory regime in relation to electronic gaming machines (EGMs), known colloquially as pokies.

The primary Act required that:

- from 31 December 2014, new EGMs either manufactured in, or imported into, Australia be capable of supporting an approved precommitment system
- by 31 December 2018, EGMs installed in venues must be linked together as part of a state-wide or territory-wide precommitment system, and display electronic warning messages (smaller venues had an extended deadline) and

---


from 1 February 2014, a $250 daily withdrawal limit applies to Automatic Teller Machines (ATMs) located in gaming venues.

The legislation also established a Gambling Regulator and required that levies be imposed on venues—a Gaming Machine Regulation Levy (from January 2019) and a Supervisory Levy to be imposed after regulations were proclaimed, to fund the regulator. In addition, the Acts provided for a 12 month trial of mandatory precommitment and for its evaluation by the Productivity Commission, and the establishment of a new gambling research centre at the Australian Institute of Family Studies (AIFS) along with an expert advisory group.

While precommitment and player warnings would be enabled on EGMs, there was no requirement that players must use these systems—they remained voluntary.

The background to the gambling reforms is explained in detail in the Bills Digests that accompanied the legislation.10 Broadly, while gambling is a popular activity in Australia and the most popular forms such as ‘scratchies’ and lotteries are low risk, some forms of gambling, if undertaken frequently, can be high risk in terms of problem gambling. EGMs in particular are regarded as representing a higher risk of harm compared to other popular forms of gambling because the machines are configured for frequent and intense play, small but frequent payouts (many losses are disguised as wins), and are easily accessible in community venues. Concern over the potential for harm has prompted limited regulation of EGMs in most jurisdictions, for example, caps on numbers of machines, mandatory shutdown periods, no access by minors, controls around jackpots and maximum bet amounts, warning signs in venues and installation of clocks, as well as the development of industry-based responsible gambling codes of conduct. A national gambling helpline is also required to be promoted in venues. Despite these measures, for a small percentage of gamblers the harms from pokies continue to accrue and this also impacts on family members and the wider community.11

The gambling reform legislation resulted from an agreement between the then Prime Minister, Julia Gillard, and Independent member for Denison, Andrew Wilkie. It also followed on from a major Productivity Commission report into gambling which recommended the development of a mandatory precommitment system on EGMs to reduce harms from problem gambling.12 In return for Mr Wilkie’s support for her Government, the Prime Minister undertook to implement a national mandatory precommitment system on EGMs, and to make other reforms.13 Following a concerted campaign against this proposal led by the clubs, hotel and gaming sectors, and uncertain over the level of Parliamentary support, the Prime Minister backed away from the agreement. Instead she announced that the Government would proceed with the implementation of a voluntary precommitment scheme nationally, as well as ATM withdrawal limits and dynamic player warnings.14 The National Gambling Reform Act 2012 and related legislation enacted these reforms.

What the Bill proposes

The Bill proposes that a range of provisions from the primary Act be repealed, and the two related Acts which deal primarily with the levies, be repealed in full.15 Provisions in the primary Act to be repealed include: all provisions relating to precommitment systems, including abolishing requirements on manufacturers and venues to ensure EGMs are precommitment enabled; repealing provisions limiting ATM withdrawals; repealing provisions requiring electronic warning messages be displayed to players; abolishing the proposed gambling regulator and the proposed levies; and removing references to a proposed trial of pre-commitment in the ACT as well as its proposed evaluation by the Productivity Commission. Provisions relating to the research role of the...
Australain Institute of Family Studies (AIFS) into problem gambling and the functions of an expert advisory group remain, although funding is not addressed.

In place of the repealed provisions, the Bill sets out the Abbott Government’s broad support for responsible gambling measures. This includes an explicit commitment to work with the states and territories, the gaming industry, academics and the community sector to develop and implement a voluntary precommitment scheme on gaming machines in venues nationally, within a realistic time period. Further it commits the Government to work with the gaming industry and the states, to ensure all pokies are capable of supporting a venues-based voluntary pre-commitment scheme, and to do this within a realistic timetable.

In his second reading speech for the Bill, Minister for Social Services Kevin Andrews emphasised that the Bill reflected the Government’s commitment to reduce bureaucracy and the duplication of functions between the Commonwealth and the states and territories. The Bill also reflects the Coalition election policy to help problem gamblers, which promised to ‘work with clubs and gaming venues on a realistic timetable for the introduction of venue-based voluntary precommitment’, and to stop the proposed trial and gambling levies from proceeding. The Bill is part of the Coalition’s broader plan to assist problem gamblers, which includes more counselling and support services, better research, effective self-exclusion programmes, better self-help options, strengthening regulations around online gambling and, if required, regulation of gambling advertising. The provisions in this Bill mainly address the voluntary precommitment undertaking and the abolition of the levies, and also retain most provisions around research.

**Potential impacts**

One immediate outcome if this Bill is passed is that the evidence base around the effectiveness of precommitment will remain reliant on trials of voluntary systems only. In the debate around gambling reforms, one enduring issue that was raised by both supporters of the gambling reforms and opponents, was the inadequate level of evidence around precommitment, which is largely based on trials of voluntary systems. As the Library’s Bills Digest explained at the time, ‘results from these trials have produced mixed results’. While the trials demonstrated some benefit for most players, including problem gamblers, players could easily circumvent their set limits by abandoning them or moving to another machine or venue—so the potential benefits of mandatory precommitment over voluntary systems has never been fully tested. Although the future of the proposed ACT trial became uncertain once the election was called, if it had proceeded it would have addressed some of the limitations of the voluntary trials. Firstly, by imposing a territory-wide mandatory system for the duration of the trial, it would have been much harder for players to circumvent their personal limits (although nothing could prevent them from playing EGMs in nearby NSW). Secondly, the proposed evaluation was to be developed with input from the Productivity Commission, which would have ensured a robust and scientific approach would be adopted. Thirdly, it would have been the first time in the world that a mandatory precommitment system would fully operate and be properly assessed. Results from the proposed trial would have been used by researchers, policy makers and potentially governments from around the world and placed Australia in a pioneering research position. Finally, future policy development in the gambling arena will remain constrained without such a robust evidence base.

While the most recent report into the voluntary pre-commitment trials in South Australia continue to show that voluntary measures provide benefits for most players, including problem gamblers, without a mandatory precommitment trial we will continue to be poorly informed as to which approach is preferable.

**Stakeholder responses**

Stakeholder responses to the Bill have yet to emerge, possibly because the provisions are contained in such a large ‘omnibus’ Bill. However, the amendments will no doubt disappoint gambling reform advocates and many directly affected by problem gambling. Independent member for Denison Andrew Wilkie has described the proposed repeal of the gambling reforms as a ‘shocking betrayal of Australia’s almost 100,000 poker machine.

---

problem gamblers and the countless people they affect. Although the *National Gambling Reform Act 2012* ultimately fell short of his original goal to implement a mandatory precommitment scheme nationally, the member for Denison nevertheless expressed some satisfaction that regulation of EGMs was finally being addressed at the national level. Others who advocated in Parliament for stricter controls on pokies, including mandatory precommitment and mandated limits on bet amounts, particularly the Greens and Senator Xenophon, could be expected to oppose these provisions, along with Mr Wilkie. The position of other cross-bench members and Senators are not known. However, media reports state that Labor has indicated it will support the Government amendments.

The proposed shift in emphasis away from addressing poker machine harms nationally, to one that endorses a policy of encouraging responsible gambling may prompt criticism, particularly among gambling researchers. New research suggests that putting the onus on gamblers to ‘gamble responsibly’ can add to their stigma and may prevent them from seeking appropriate help (as it is, just eight to 17 per cent seek help for their gambling problems). Further, unlike responsible drinking messages which generally provide guidance on what constitutes risky drinking, gamblers have very little information on what constitutes risky gambling. Consequently, players remain in the dark as to the potential risks they face playing on a product which is promoted for its entertainment appeal.

The proposed repeal of ATM withdrawal limits may attract criticism as well. Evidence suggests such limits can assist problem gamblers manage their spending. The removal of the requirement for dynamic player warnings may also be criticised, as these were explicitly recommended by the Productivity Commission, which regarded such warnings as more effective at modifying risky player behaviour than static signs.

Some may also question why, if the government is intent on moving towards a voluntary precommitment scheme nationally, it is seeking to abolish an existing regime which was designed to achieve this. Although the mandated time frames for implementation of precommitment and limits on ATM withdrawals were contentious, with many in the industry claiming these deadlines would cause problems, amending these could have been achieved without repealing other provisions.

Certainly, those who advocated against gambling reforms, including many in the gaming and club and hotel industries, should be pleased at the Government’s prompt action to meet its election commitment. Nevertheless, as the proposed provisions in this Bill makes clear, the Government still intends to move towards a national voluntary precommitment scheme, albeit one likely to follow a timetable more amenable to industry. What would be a realistic timeframe is not specified, but may become the main focus of discussions between industry, state governments and the Commonwealth. In any case, some jurisdictions are already moving ahead on precommitment. Victoria has recently introduced legislation to mandate voluntary precommitment on EGMs in Victorian venues from December 2015. South Australia has also sought legislative reform in this area, but so far with limited success.

It should be noted, that while the provisions in this Bill propose a venue-based voluntary precommitment scheme be developed, there is nothing to prevent a jurisdiction with the appropriate communications capability from establishing a networked scheme which links up across venues. Where the capability for networking exists across venues, this could provide additional player protection, allow for better data capture and improve player convenience (for example, by not having to register at multiple venues), so it may prove an attractive option.

Key issues and provisions

Part 1—Amendments to the National Gambling Reform Act 2012

Item 3 of the Bill proposes to amend section 1 of the National Gambling Reform Act to rename the Act the Gambling Measures Act 2012, while item 1 changes the focus of the long title of the Act from ‘national gambling reform’ to ‘encourag[ing] responsible gambling’.

Item 6 proposes to replace section 4 of the Act, which outlines the object of the Act, with a new object which is to ‘recognise the Commonwealth’s commitment to the development and implementation of measures to encourage responsible gambling by all gamblers, including voluntary pre-commitment on gaming machines in venues nationally’.

Item 12 proposes to repeal Chapter 2, which dealt in detail with national gambling reforms including precommitment scheme requirements, dynamic warning requirements, and ATM withdrawal limits, and replaces this with a proposed Part 2, consisting of proposed sections 19 to 21, titled ‘Encouraging responsible gambling’. Proposed section 19 sets out, firstly, that the Commonwealth recognises the importance of meaningful measures to encourage responsible gambling; secondly, that the Commonwealth supports voluntary precommitment on gaming machines in venues nationally; and thirdly, that voluntary precommitment allows a player who chooses to set a limit on the amount they are prepared to lose on the machine, and helps the player keep to this limit. Proposed section 20 specifies that the Commonwealth work with state and territory governments, the gambling industry, academics and the community in order to develop and implement a voluntary precommitment scheme on gaming machines in venues nationally, and to develop a realistic timetable for implementation. It also specifies that the Commonwealth work with state and territory governments to ensure all gaming machines can support a venue-based voluntary precommitment scheme to a realistic implementation timetable. Proposed section 21 specifies that the Commonwealth work with state and territory governments on the most appropriate way to administer voluntary precommitment.

Together, these proposed provisions reflect the broad shift in emphasis away from providing for national gambling reforms which address the harms associated with EGMs, to giving greater weight to providing measures which encourage individuals to gamble responsibly. The proposed provisions also identify an intent on the part of the Commonwealth to work with industry, the states and territories and stakeholders on a venue-based national precommitment scheme to a time-table more amenable to industry. This revised approach is likely to be welcomed by industry, but not by reform advocates.

Item 17 proposes to repeal the heading of Division 1 of Part 2 of Chapter 9, while item 18 proposes to repeal sections 193 to 195, which dealt with the Productivity Commission’s review of the proposed trial of precommitment, and its reviews of other matters.

While the National Gambling Reform Act 2012 did not direct that a trial of precommitment must proceed (the trial was subject to successful negotiations with ACT clubs), it included provisions that if a trial proceeded, it would be reviewed by the Productivity Commission. The amendments proposed by items 17 and 18 would mean that if a trial were to proceed at some future date—which now appears unlikely—a robust evaluation is no longer guaranteed. For those arguing for evidence based policy, these proposed provisions represent a retreat away from such an approach.

Part 2—Repeal of the National Gambling Reform (Related Matters) Act (No. 1) 2012 and the National Gambling Reform (Related Matters) Act (No. 1) 2012

Items 24 and 25 repeal in full the National Gambling Reform (Related Matters) Act (No. 1) 2012 and the National Gambling Reform (Related Matters) Act (No.2) 2012. Together, these Acts established liabilities for levies that would fund the administration of the Regulator, which item 13 of this Bill proposes to abolish, and so are no longer needed.

Schedule 2—Continuing income management as part of Cape York welfare reform

Schedule 2 amends the Social Security (Administration) Act 1999 (SS Admin Act) to extend the operation of income management in Cape York, Queensland, for a further two years until the end of 2015.28 This will be the

third time income management has been extended in Cape York since it began in 2008. The Government argues that income management is a key element of welfare reform efforts in Cape York, which it says have ‘seen improved school attendance, care and protection of children and community safety’.  

**Background**

**Income management**

Income management refers to a policy under which a percentage of the welfare payments of certain people are set aside to be spent only on ‘priority items’ such as food, housing, clothing, education and health care. Compulsory income management was introduced by the Howard Government in 2007 as part of the legislation for the Northern Territory Emergency Response (NTER). At this time, income management schemes were also established as part of the Cape York Welfare Reform Trial; for situations of child neglect; and for situations where children of welfare recipients are not enrolled at and/or attending school. Provisions were also introduced for people to have their income managed voluntarily.

Since 2007, there have been a number of changes made to the way income management operates. It has also been extended to cover additional circumstances and geographical areas.

**Cape York income management**

Income management in Cape York forms part of the Cape York Welfare Reform Trial (CYWRT), a joint initiative of the Australian Government, the Queensland Government and Noel Pearson’s Cape York Institute for Policy and Leadership. The CYWRT is being implemented in the communities of Hope Vale, Coen, Aurukun and Mossman Gorge (‘the reform communities’). Around 239 people in Cape York are currently subject to income management out of a total population of 2,040.

The purpose of the trial is to address Indigenous disadvantage in the Cape York region by fostering personal responsibility and local leadership. This builds on the recommendations of the Cape York Institute’s welfare reform project report.

The CYWRT commenced on 1 July 2008 and is administered by a Queensland state statutory body, the Family Responsibilities Commission (FRC). In support of this objective, the FRC holds regular case conferences in each of the reform communities.

Any person who is a welfare recipient living in one of the four CYWRT communities and who fits into any of the following categories may be referred to the FRC:

- the person’s child is absent from school three times in a school term without reasonable excuse
- the person has a child of school age who is not enrolled in school without lawful excuse
- the person is the subject of a child safety report
- the person is convicted of an offence in the Magistrates Court or
- the person breaches his or her tenancy agreement—for example, by using the premises for an illegal purpose, causing a nuisance or failing to remedy rent arrears.

People referred to the FRC are required to attend a conference in order to discuss the issues that have led to their referral. The FRC attempts to link individuals to relevant support services including:

---

32. See Department of Human Services (DHS), *Income management*, DHS website, 3 September 2013, accessed 2 December 2013. For background, see L Buckmaster, C Ey and M Klapdor, op. cit.
- case managers to help children attend school
- money management advisors and
- counsellors for drug and alcohol addiction, family violence and mental health issues.\textsuperscript{35}

FRC Commissioners attempt to reach an agreement with individuals on actions they will take to assume greater responsibility, including attending support services and through personal actions such as putting children to bed early. People who have entered into such an agreement are case managed by the FRC for the period of the agreement.

In addition to this support role, the FRC has the power to require that the person’s income (generally, 60 to 75 per cent) be managed by the Department of Human Services (DHS) for a period of between three to 12 months under a program known as Conditional Income Management. The FRC uses income management both as a mechanism for ensuring that welfare payments are spent on necessities and as an incentive for the individual to engage with social supports and undertake behavioural change.

The extension of the CYWRT also requires funding and legislation to extend the operation of the FRC from the Queensland Government. In March 2013, Queensland Aboriginal and Torres Strait Islander Affairs Minister, Glen Elmes, announced that the Queensland Government would withdraw its support for the CYWRT in its “current form”.\textsuperscript{36} Noting that more than $105 million of state and federal money had been used in support of the trial in the previous four years, he said that:

> It is an extraordinary amount of money and the fear I have is that a very large amount of money is going into those four communities ... The other Indigenous communities—not only in Cape York—but places like Woorabinda and Cherbourg and other parts of the state are missing out on what should be their share.\textsuperscript{37}

Nevertheless, the Queensland Government subsequently extended the trial until the end of 2014 with the passage of the \textit{Family Responsibilities Commission Amendment Act 2013} on 15 October 2013.\textsuperscript{38} The 2013–14 Queensland Budget also includes funding of $5.65 million over two years to continue the Cape York Welfare Reform trial (including the Family Responsibilities Commission) until 31 December 2014.\textsuperscript{39}

This extension of the support by the Queensland Government is one year shorter than the extension to income management in Cape York sought by the Australian Government in Schedule 2 of the Bill.

\textbf{Is it working?}

The best evidence available for evaluating the success of income management in Cape York is the March 2013 Australian Government evaluation of the reform trial.\textsuperscript{40} This found mixed results associated with income management.

There was some evidence that income management assists in reducing behaviours that lead to people being reported to the FRC.\textsuperscript{41} For example:

> In Hope Vale, Coen and Mossman Gorge, the average number of notices per quarter for an individual fell by about 10 percentage points after the individual was placed on income management ... This effect was not evident in Aurukun, however.\textsuperscript{42}

---

\textsuperscript{35} Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and KPMG, \textit{Implementation review of the Family Responsibilities Commission: final report}, FaHCSIA, Canberra, September 2010, p. 12, accessed 2 December 2013.

\textsuperscript{36} G Elmes (Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs and Minister Assisting the Premier (Queensland)), \textit{Cape York Welfare Reform Trial}, media release, 27 March 2013, accessed 2 December 2013.


\textsuperscript{38} \textit{Family Responsibilities Commission Amendment Act 2013}, accessed 9 December 2013.


\textsuperscript{41} Ibid., p. 34.

\textsuperscript{42} Ibid.
The evaluation report noted, though, that ‘the reduction in breaches may not be a function of income management alone, as it is possible that the fact of being repeatedly brought before the FRC conferences encourages individuals to comply’. 43

Further, 78 per cent of income managed people surveyed reported that income management had made their lives better. 44 The evaluation also found some dissent about income management, ‘with common complaints being the inability to use it in some stores and the paternalistic nature of the intervention’. 45

More broadly, the evaluation found that there had been improvements in areas such as school attendance and reductions in crime. 46 However, as two of the report’s authors, Ilan Katz and Margaret Raven, have noted, it is difficult to draw conclusions from this given that ‘many other Indigenous communities in Queensland had also shown improvements’. 47

The evaluation found that progress was lacking in other components of the trial, such as housing and economic opportunities. 48 Again, Katz and Raven suggest caution, given that ‘it was not clear whether this was because of the lack of impact of the trial or the fact that the evaluation took place only five years after implementation and the expected outcomes may take many years to eventuate’. 49

Nevertheless, the report makes the important point that there is a ‘risk that progress to date will not be consolidated if job, business and home ownership opportunities are not readily available at the time that people become motivated to change’. 50

Professor Jon Altman of the Centre for Aboriginal Economic Policy (Australian National University) suggests that, while intended to promote engagement with the mainstream labour market, the gradual abolition of Community Development Employment Projects (CDEP) has meant that fewer people in the reform communities are now engaged in employment than prior to the trial. 51 While the evaluation found that 211 paid jobs had been created during the trial period, this is well short of the over 800 CDEP positions that previously existed. 52

Altman (who views CDEP as a more likely source of economic engagement in remote regions than the mainstream labour market) observes that, while under the reform trial there is a focus on inactivity as a source of social dysfunction, ‘the almost complete elimination of CDEP in the name of real jobs has rapidly swelled the ranks of the unemployed’. 53

Key issues and provisions

As noted above, the Bill seeks to extend income management in Cape York for a further two years.

This requires an amendment to the SS Admin Act to extend the date up to which decisions by the FRC can result in a person being subject to income management to 1 January 2016. Currently, only decisions made before 1 January 2014 can result in a person’s income being managed by DHS.

To make the change, Item 1 of Schedule 2 to the Bill amends paragraphs 123UF(1)(g) and 123UF(2)(h) of the SS Admin Act to omit references to 1 January 2014 and to substitute references to 1 January 2016.

The former Australian Government previously extended income management twice: for 12 months from 1 January 2012 and 12 months from 1 January 2013. 54

43. Ibid.
44. Ibid
45. Ibid.
46. Ibid., pp. 3-5.
49. I Katz and M Raven, op. cit.
52. Ibid.
53. Ibid.
In support of this change, the Government has given the same rationale as was provided in relation to the previous extensions:

To date, Cape York welfare reform has made a real difference in the lives of Indigenous people in the four communities. Since it began in July 2008, the Cape York welfare reform communities have seen improved school attendance, care and protection of children and community safety.  

Comment

There are at least two ways of explaining the impact of the welfare reform trial in Cape York. One, more optimistic, approach would be to suggest that engagement with the mainstream labour market is the way forward and welfare reform is at the centre of the kinds of changes in personal behaviour and social norms necessary to bring this about. Patience is required because changes of this kind may take many years to occur.

The other explanation is more sceptical about prospects for ‘real jobs’ in remote Australia and sees some level of state involvement as inevitable and necessary. From this perspective, the absence of market-based employment opportunities may ultimately undercut any gains in social functioning that may be achieved through welfare reform.

The extension of income management in Cape York would be an indication of further support for the first explanation. Over time, though, substantial gains in areas such as employment and housing will be essential if this story is to be considered plausible and continued support justified.

Statement of compatibility with human rights

The Explanatory Memorandum’s Statement of Compatibility with Human Rights (the Human Rights Statement) suggests that the amendment in Schedule 2 engages the following human rights principles:

- eliminating racial discrimination (Article 2(1) of the Convention on the Elimination of All Forms of Racial Discrimination) and
- equality before the law (Article 26 of the International Covenant on Civil and Political Rights).

While not explained in the Human Rights Statement, these principles would be engaged as a result of the fact that the majority of those subject to income management in the reform communities of Cape York are Indigenous people. While both Indigenous and non-Indigenous residents of the reform communities are subject to the jurisdiction of the FRC, the overwhelming majority of residents are Indigenous people. As such, the amendment in Schedule 2 can be seen as amounting to differential treatment of Indigenous people.

International law does not distinguish between intentionally discriminatory acts and those that have discriminatory effects.

According to the Human Rights Statement, ‘there is no incompatibility with the rights engaged as the circumstances meet the test for legitimate differential treatment under international law’. That is, ‘to the extent that they may limit human rights, [the] limitations are reasonable, necessary and proportionate’.

The Government provides the following arguments in support of this statement:

- the objective of Cape York welfare reform is to support the restoration of socially responsible standards of behaviour and assist in promoting community, individual and family wellbeing
- the Cape York Welfare Reform Trial evaluation indicates that ‘the trial has had a positive impact in participating communities’
- consultations indicate the trial is supported by residents of the reform communities (no source is provided for this statement) and
- the FRC ‘considers appropriate alternatives in conjunction with the individual, with income management only being used as a final measure’.

---

55. Explanatory Memorandum, Social Services and Other Legislation Amendment Bill 2013, p. 5.
56. Statement of Compatibility with Human Rights, Explanatory Memorandum, Social Services and Other Legislation Amendment Bill 2013, p. 3.
57. Ibid.
A 2012 Parliamentary Library paper examined the relationship between income management and the *Racial Discrimination Act 1975 (RDA).* In particular, it looked at the issues that are likely to arise if the question of the compliance of income management with the RDA comes before the Australian Human Rights Commission (AHRC) for determination.

In November 2009, the AHRC issued draft guidelines ‘to provide practical assistance to Parliament and the Government in designing and implementing income management measures that protect human rights and are consistent with the RDA’. According to the AHRC, ‘while not legally binding, they provide important guidance as to the operation of the RDA and will be relevant in assisting the resolution of complaints’. At the time of publication of this Bills Digest the guidelines still appeared to have ‘draft’ status and to not have been finalised by the AHRC.

The draft guidelines indicated that it may be permissible to limit rights in pursuit of a legitimate, non-discriminatory goal. The guidelines specify five criteria that should be met by an income management scheme if it is to be considered compatible with the RDA:

- it should be subject to the application of the RDA and state/territory anti-discrimination legislation
- it should not apply automatic quarantining—different options that should be considered may include allowing for a voluntary/opt in approach or a last-resort suspension approach for income management
- it should provide for a defined period of income management, where the time-frame for compulsory quarantining would be proportionate to the context and/or subject to periodic review
- it must allow for review and appeal processes and
- should include additional support programs that address the rights to food, education, housing, and provide support for welfare recipients, safe houses for women and men, alcohol and substance abuse programs.

The Parliamentary Library paper argued that, in relation to Cape York, the first criterion was met with the removal of the clauses excluding the RDA and Northern Territory and Queensland anti-discrimination legislation (achieved through the *Social Security and other Legislation Amendment (Welfare Payment Reform) Act 2009*). This means that the RDA will apply, and therefore income management can be tested for possible direct and indirect discrimination.

The second criterion appears to be met by the FRC conferencing process.

The third criterion is satisfied by the fact that income management in Cape York is applied for a specified period of three to 12 months.

The fourth criterion could be said to be met by the various forms of review and appeal available to those who do not agree with a decision made under the *SS Admin Act* about income management arrangements for them. These are outlined in the Australian Government’s *Guide to social security law.* Further, orders by the FRC that a person be subject to income management are subject to review at the six and nine month point of the order. However, there does not appear to be any publicly available information on the use of review and appeal processes by those subject to income management in Cape York. This makes it difficult to evaluate whether

---


60. Ibid.

61. Ibid., p. 17.

62. Ibid., pp. 18-19.

63. L Buckmaster, K Magarey and D Spooner, op. cit., p. 23.

65. Ibid., pp. 24-5.

66. Ibid., p. 25.

67. Ibid., pp. 25-7.


those subject to income management in Cape York have been successful in putting their rights to participate in review and appeal processes into practice.

It is less clear whether the Cape York scheme is compatible with the fifth criterion.\(^69\) While the CYWRT includes various forms of additional support, including referral to relevant services, the difficult question is whether such assistance can be said to have been sufficient to have ‘addressed’ the rights to such things as food, education, housing, safety and health care. One possible method for evaluating this could be to examine social outcomes in the reform communities. As noted above, while there have been some positive outcomes in the reform communities, it is not clear that this can be attributed to the CYWRT. Further, the communities have not seen significant improvements in areas such as housing and employment.

**Schedule 3 — Family tax benefit and eligibility rules**

Schedule 3 proposes amendments to the *A New Tax System (Family Assistance) Act 1999 (FA Act)* and the *A New Tax System (Family Assistance) (Administration) Act 1999 (FA Admin Act)* to limit eligibility for Family Tax Benefit Part A (FTB-A) so that it can only be paid in respect of children aged over 16 until the end of the calendar year in which they finish senior secondary school (Year 12 or equivalent).\(^70\) The proposed amendments were announced by the Gillard Government in the 2013–14 Budget and are expected to provide savings of $76.6 million over four years.\(^71\) If passed, the measures will take effect from 1 January 2014.

**Background**

FTB-A is a payment designed to help families with the cost of raising children. It is paid to parents, guardians or approved care organisations that have an ‘FTB child’ in their care, meet residence requirements and have income under a certain amount.\(^72\) An ‘FTB child’ is a child who:

- is aged up to 15 years or
- is aged 16–19 years and is in full-time secondary study (including those who are exempt from this requirement or who are repeating Year 12) or
- is aged 16 or 17 years old and has completed their Year 12 equivalent qualification.

The Bill proposes changes in relation to FTB children aged 16 or 17 years old who have completed their senior secondary school qualification. Families and approved care organisations will only be entitled to claim FTB-A in respect of these children until the end of the calendar year in which they completed their Year 12 or equivalent qualification.

**Changes part of a broader transformation of the way assistance is provided to young people**

The proposed amendments form part of a broader transformation of the way government benefits are provided in respect of young people. In recent years, the age limit for FTB children has been reduced from 24 years down to 19 and an activity test was introduced for older children requiring them to have completed Year 12 or be undertaking full-time studies towards completion of Year 12.\(^73\) At the same time, changes to age limits and educational requirements for Youth Allowance, the main income support payment for young people aged 16–21, have meant that those aged 16–17 must have completed Year 12 to be eligible for the payment.\(^74\) These changes, together with those proposed in the Bill, represent an overhaul of the way government assistance is provided to young people.

---

69. L Buckmaster, K Magarey and D Spooner, op. cit., p. 27.
74. Young people engaged in full-time study who are considered ‘independent’ and those required to live away from home to study remain eligible for Youth Allowance.
provided in respect of young people. Benefits in respect of young people are now targeted at different points in the transition from school to post-secondary study or work:

- family assistance, primarily FTB-A, is provided up until the end of the year a young person finishes secondary school and
- Youth Allowance is provided to young people who have finished school and are now looking for work or engaged in full-time tertiary education or an apprenticeship.75

The system is now much simpler than that of a few years ago when overlapping eligibility ages, varying participation requirements and different means-testing arrangements meant that families and young people had to attempt to calculate which payment (FTB-A, Youth Allowance or Newstart Allowance) would provide them with the best level of assistance.

**Key issues and provisions**

**Amendments to the A New Tax System (Family Assistance) Act 1999**

*Items 1 and 2* remove the definitions relevant to the ‘FTB activity test’ from *subsection 3(1)* of the *FA Act* and *item 3* repeals *section 17B* which sets out the activity test. The participation requirements set out in the activity test are to be incorporated into a revised definition of *senior secondary school child*, at section 22B, as amended by *items 9* to *12*.

*Item 4* repeals *paragraph 22(3)(e)*, which provides for individuals aged 16–17 to be considered an FTB child of another individual if they meet the FTB activity test, and inserts *proposed new paragraph 22(3)(e)* which qualifies a senior secondary school child as an FTB child in the same circumstances.

The definition of *senior secondary school child* at *section 22B* sets out study requirements for those aged 16–19. *Item 10* replaces *subsection 22B(2)* (which refers to the activity test at *section 17B*) with new provisions outlining exemptions from the full-time study requirements and the discretion of the Secretary to determine what should be considered full-time study hours. These provisions were previously contained in the FTB activity test.

The result of these amendments is that a child aged 16 and 17 will no longer qualify as an FTB child if they no longer meet the senior secondary school study requirements, unless they have an exemption. Existing provisions in the *FA Act* allow a child to still qualify until the end of the calendar year in which they finish senior secondary school.

*Items 5, 6, 7* and *8* propose amendments to *section 22A* which sets out situations in which an individual cannot be considered an FTB child, including provisions relating to an income limit. The child income limit currently prevents a child from being considered an FTB child when their own adjusted taxable income exceeds $14,078 per annum. The proposed amendments remove provisions relating to the income cut-off limit. Other amendments in this schedule will effectively preclude children who have finished full-time study and entered the workforce from qualifying their family for FTB-A, and it is considered that the income limit is no longer considered necessary. While some children may earn an income from casual work while engaged in full-time schooling, it is unlikely they would be able to earn anything close to the income limit in a given year. It is worth noting that children may have non-work related income, such as income from investments or trusts in their name. The proposed amendments will allow children with high levels of income from other sources to still be considered an FTB child.

**Schedule 4—Period of Australian working life residence**

Schedule 4 proposes to extend the Australian working life residence (AWLR) requirement for unlimited portability of a pension payment from 25 year to 35 years. This measure was announced in the 2012–13 Budget and will apply from 1 January 2014.76 Those pensioners already residing overseas will not be subject to the new rules unless they return to Australia for a period longer than 26 weeks. The measure is expected to provide savings of $50.8 million over four years.

---

75. Those over the age of 22 who are looking for work are not eligible for Youth Allowance but may qualify for Newstart Allowance. Youth Allowance can be paid to those under the age of 25 who are in full-time study or undertaking an apprenticeship/traineeship. Those over the age of 25 who are undertaking study or a full-time apprenticeship or traineeship may qualify for Austudy.

**Background**

Portability refers to a continuing entitlement to an Australian social security payment while outside Australia. For most social security payments, portability is limited to six weeks. However, some payments (including the Age Pension, Widow B Pension, and the Wife Pension) have unlimited portability for approved recipients. Disability Support Pension recipients who are severely impaired and have been deemed to have no future work capacity or those who are severely disabled, leaving Australia permanently and in the terminal phase of a terminal illness are entitled to unlimited portability.77

Those with unlimited portability can, however, have their payment reduced or ‘proportionalised’ if they have not resided in Australia for at least 25 years of their working life (defined as age 16 to age pension age).78 This is the AWLR requirement. Those entitled to a payment with unlimited portability but who have less than 25 years AWLR will, after 26 weeks overseas, have their payment reduced to a rate equivalent to the proportion of 25 years their AWLR represents. For example, a person with 16 years of AWLR will receive 64 per cent (16/25) of the rate otherwise payable if they resided in Australia.

Most overseas contributory pension systems pay their minimum overseas rate after about 15 years of contributions to the relevant pension fund and their maximum rate of pension after 40 years of contributions.79 Australia has a flat rate non-contributory pension system funded out of general revenue. Eligibility for the Australian Age Pension, apart from their retirement, is determined by residency in Australia of at least ten years. Contributory systems pay pensions as a percentage of a person’s wage during their working life, adjusted for the number of years contributions have been paid and up to a maximum cap. They are usually paid in addition to whatever other means of support a person has available to them. Australia’s system pays the same rates to all who are eligible but is means tested so that those with other ways of supporting themselves in their retirement might receive a reduced rate or will not be entitled.

Portability provisions for pensions were introduced in May 1973, allowing a pension granted in Australia to be paid in any country. The initial AWLR rules for Age Pension were introduced from 1 July 1986. From 1986 to 2004, different payments had different rules as to how long they could be paid where a person was overseas.80 The Howard Government standardised the payment overseas rules for all payments in 2000 (the general portability period was 26 weeks) and provided a reduced payment during temporary absences overseas. In 2004, this 26 week period was cut to 13 weeks and the Gillard Government cut the period for most payments down to six weeks from 1 January 2013 (excluding those payments with unlimited portability, listed above).81

**Who will the measures affect**

The measures, if enacted, will apply to those who leave Australia permanently from 1 January 2014. Officials from the Department of Families, Housing, Community Services and Indigenous Affairs told a Senate estimates hearing in 2012 that around 5,400 pensioners go overseas permanently each year, but around 2,100 of these are paid under social security agreements with New Zealand and Greece and will not be directly affected by the proposed changes.82 Of the other 3,300 who leave Australia permanently each year, around ‘858 have less than 25 years working life residence, 759 have between 25 and 35 years Australian working life residence and 1,683 have more than 35 years Australian working life residence’.83 If current trends were to continue under the new rules, then around half of those pensioners who leave Australia permanently each year will not receive a full pension payment, compared to 26 per cent under the existing rules. Around 4,000 pensioners leave Australia temporarily each year and those that stay overseas for 26 weeks can also have their payments reduced under the portability rules.84 No estimates have been published as to how many of the 4,000 stay overseas longer than 26 weeks, nor how many might be affected by the AWLR changes.

---

78. The term ‘working life’ refers to ‘working age’—between school education and retirement—but there is no requirement for a person to have actually undertaken paid work during that period.
80. Ibid.
83. Ibid., pp. 46–47.
84. Ibid.
Key issues and provisions

Amendments to the Social Security Act 1991

Items 1–5 of Schedule 4 of the Bill propose amendments of Module C of the Pension Portability Rate Calculator at subpoints 1221-C1 and 1221-C2 of the Social Security Act 1991 (SS Act). Module C determines whether a person eligible for an unlimited portability period will have their payment proportionalised by calculating their AWLR period. The proposed amendments will change the relevant provisions which proportionalise a payment for AWLR periods of less than 25 years to AWLR periods of less than 35 years. This means that those entitled to a payment with unlimited portability, who have less than 35 years AWLR, and who move overseas from 1 January 2014, will have their payment reduced to a rate equivalent to the proportion of 35 years their AWLR represents. Using the same example above, under the proposed provisions, a person with 16 years AWLR will receive around 46 per cent (16/35) of the pension rate otherwise payable if they resided in Australia.

Item 6 provides savings provisions for those outside Australia on 1 January 2014, or those in Australia but not ‘residing in Australia’ on 1 January 2014. Those residing out of Australia on 1 January 2014, who are in receipt of a payment with unlimited portability, will not be subject to the proposed new AWLR provisions unless they return to Australia on or after 1 January 2014 and do not depart again for 26 weeks. Those in Australia on 1 January 2014, who are in receipt of a payment with unlimited portability but who are not resident in Australia, will also not be subject to the proposed new AWLR provisions, unless they remain in Australia beyond the 26 week period beginning on 1 January 2014.

Amendments to the Social Security (International Agreements) Act 1999

Items 7 and 9–14 make amendments to the Social Security (International Agreements) Act 1999 to align provisions relating to the AWLR in that Act (sections 23 and 24) with the proposed changes to the SS Act.

International social security agreements are intended to close gaps in social security coverage for people either migrating to Australia, or to another country from Australia, by overcoming barriers to receiving pension payments under the relevant country’s domestic legislation. Barriers include residency periods, contributions to pension funds and citizenship. International agreements can extend eligibility for payments to those who do not meet either Australia’s residency requirements, or the contribution conditions of the agreement country. Under these agreements Australia equates social insurance periods/residence in other countries with periods of Australian residence and other countries generally count periods of Australian working life residence as periods of social insurance. Usually, each country will end up paying a part pension to those who have lived in both countries.

Under some agreements, the rates of payment of Australian pensions paid to those residing overseas are determined according to the law of Australia. In these cases, the AWLR is relevant and the proposed changes may affect new emigrants’ rates of pension. According to the Explanatory Memorandum, a small number of Australia’s international agreements use AWLR to calculate rates of payment to pensioners in Australia. Future immigrants receiving pensions under these international agreements will, if the measures are enacted, receive lower rates of their Australian pension payment than they would previously have been entitled to.

The changes may give rise to concern among some countries with which Australia has international social security agreements as the proposed measures amend a key component of the way pension rates are calculated under these agreements. The changes may result in the agreement countries having to pay higher rates of their pensions to those residing overseas in some agreement countries or those who have migrated to Australia from one of the countries whose agreement with Australia uses AWLR in the calculation of rates.

Savings provisions will also apply to those already receiving a relevant pension in Australia, but not residing here, on 1 January 2014 and those already residing overseas on that date, as described above under item 6.

Changes to the way members of some couples have their AWLR calculated

---

88. Explanatory Memorandum, Social Services and Other Legislation Amendment Bill 2013, p. 12.
Item 8 proposes to repeal sections 18, 19, 20 and 22 of the Social Security (International Agreements) Act 1999. The repeal measures will mean that recipients of certain payments under international social security agreements who are members of a couple will no longer be treated as if they have the same AWRL as their partner (or the person to whom they provide care in the case of Carer Payment recipients). Under the existing rules, people who had lower AWRL periods than their partners could be treated as having the same AWRL in order to receive the same rates of payment (where AWRL was used to calculate rates under the agreement). The proposed measure will mean that each member of a couple who receives one of the relevant payments (Age Pension, Disability Support Pension, Wife Pension and Carer Payment) will have their AWRL calculated individually. The intention of this change is to treat these pensioners the same as those who receive payments outside Australia under the portability rules.

Section 18 currently provides for an overseas recipient of an Age Pension or Disability Support Pension under an international social security agreement, who is a member of a couple and whose partner also receives one of these payments, to have their AWRL treated as equal to their partner’s, where the partner has a greater AWRL period. Section 19 provides for the same treatment for a person who is no longer a member of a couple but where the same circumstances applied in relation to their previous partner immediately before they ceased to be a couple (i.e. in situations where their partner has passed away). Section 20 sets out that a wife pension recipient’s AWRL period is to be treated as equal to their partner’s AWRL and section 22 sets out that a Carer Payment recipient’s AWRL is equal to the AWRL of the person to whom they are providing care. All of these provisions will be repealed by item 8 and an AWRL for these overseas residents receiving payments under an international social security agreement will be calculated on the basis of their own residence in Australia during their working life.

Schedule 5—Interest charge

Schedule 5 proposes to introduce an interest charge for certain debts relating to student assistance payments from 1 January 2014. The relevant payments are Youth Allowance (for students and apprentices), Austudy, ABSTUDY living allowance and Fares Allowance. This measure was announced in the 2012–13 Mid-Year Economic and Fiscal Outlook (MYEFO). The charge will apply to social security debts where the debtor does not have or is not honouring an acceptable repayment arrangement. The new interest charge will be based upon the 90-day Bank Accepted Bill rate plus an additional seven per cent that currently applies to tax debts. The Explanatory Memorandum states that this rate has averaged 11.07 per cent over the last four years and currently stands at 9.6 per cent. The measure is expected to provide savings of $33.5 million over three years.

Background

The Government’s purpose in introducing a new interest charge is to ‘encourage debtors to repay their debt, in a timely fashion, where they have the financial capacity to do so’. The Statement of Compatibility with Human Rights for the Bill states that the ‘current lack of an interest charge on student income support debt means recipients have no incentive to repay their debts’.

How do social security debts arise?

Social security debts arise when payments are made to a person who is not entitled, or when overpayments are made to an entitled recipient. In many cases this occurs where an individual has failed to declare income or assets that would have been taken into account by the means test, and would have resulted in a lower payment rate. This can often occur by mistake or in situations where income has been earned, but not received in a particular period of time, and the person has not declared the income until they have received it. Serious cases, where a person has provided misleading information in order to be eligible for a payment or has not declared large amounts of income, can result in prosecution for social security fraud. In most situations, overpayments are recovered by a reduction in future payments to the person. When a person who has raised a debt is no longer in receipt of a social security payment they are usually required to enter into a repayment plan.

89. W Swan (Treasurer) and P Wong (Minister for Finance and Deregulation), Mid-year economic and fiscal outlook 2012–13, p. 167, accessed 27 November 2013.
90. Ibid., p. 17.
91. Explanatory Memorandum, Social Services and Other Legislation Amendment Bill 2013, p. 17.
The Department of Human Services took action to raise more than two million Centrelink debts in 2012–13, to the value of $1.8 billion. More than $1.1 billion in Centrelink debt was recovered in 2012–13.  

**Existing provisions allow for interest charges to be applied to social security debts**

Provision for the application of a penalty interest charge to social security debts already exists in the **Social Security Act 1991** (**SS Act**) and the **Student Assistance Act 1973**. The existing provisions are similar to the proposed amendments, in that interest is only applied in situations where a person is no longer receiving a social security payment and has not entered into an agreement to pay the debt, or is not honouring that agreement. The Secretary has broad discretion to make a determination not to apply interest charges to a particular debt or for a particular period. The **SS Act** provides for an interest rate of 20 per cent per year, however, this can, and has been reduced by a ministerial determination. The **Social Security (Penalty Interest) Determination 2001** has set the penalty interest rate at three per cent per year.

It appears an administrative decision has been made at some point not to apply interest or administrative charges to any social security debts. The Explanatory Memorandum does not provide an explanation as to why the existing penalty interest provisions are not currently being applied, nor why these provisions cannot be amended to the same effect as the Schedule’s proposals. The only reference to the existing penalty interest provisions is a comment that these existing provisions will not apply to those covered by the proposed new arrangements.

**Recipients of student assistance payments are being targeted for savings**

The Explanatory Memorandum also does not explain why it is only student assistance payments that are to be subject to the new interest charge, rather than all social security payment debts. The Statement of Compatibility with Human Rights argues that the ‘differential treatment is for a reasonable and objective purpose’ because:

> Recipients of these payments generally transition from study to employment (and thus are no longer recipients of social security payments) before the full amount of the debt is repaid through the social security withholding mechanism. Once the person has left payments, many often choose not to repay the debt, and indeed there is currently little incentive for them to do so.

This argument does not account for other social security payment recipients who transition off income support and into paid work, particularly Newstart Allowance and Youth Allowance (Other) recipients. The argument for treating recipients of student payments differently on the basis that they move off payment and into employment is weakened by the fact that there are other categories of payment recipients who also move off payment and into employment in large numbers. If the reasoning behind the measure is that those in employment can and should be encouraged to repay their debts in a timely fashion through application of an interest charge, then it is hard to see why it is not applied to all social security debtors exiting payment and entering paid work. This would avoid discriminating against a particular group.

A possible reason for the targeting of the student assistance group is that they may leave income support with significantly more debt than others, or that they are less likely to repay that debt over time without some incentive (and are less likely to come into contact with the social security system again). Another possible reason may be that former students are considered more likely than other social security debtors to be able to repay their debt. There is no recent published data on how much debt students leaving income support have raised. Data from 2011–12 indicated that 62,283 debts had been raised against recipients of Youth Allowance (Student), Abstudy and Austudy worth more than $94.1 million. This compares to 182,133 debts raised by Newstart

---

96. The **Guide to Social Security Law** states, without a reference or date, ‘Note: penalty interest and administrative charges cannot be applied to debts at this time’. **DSS, “6.7.1.40 penalty interest debts”, Guide to Social Security Law, DSS website, accessed 2 December 2013.**
Allowance recipients worth $196.3 million. It is unclear how many of these debts are cleared through the payment recovery system, or how many of those who leave income support have a repayment plan in place.

It would appear that this group is being targeted because it is considered likely that a large number of debts can be recovered that would otherwise have gone unpaid. The proposed provisions allow for other payments to be made subject to the new interest charge if prescribed by a legislative instrument. The scope of the new charge may be gradually widened to include a range of social security payments.

**Key issues and provisions**

As discussed above, the key issues relating to this amendment include the lack of a clear explanation for the need for this new interest charge when provisions exist for interest to be applied to social security debts, the lack of an explanation as to why these existing interest provisions are not currently being applied, and the failure to clearly explain why it is only debts relating to student assistance payments that are being made subject to the interest charge.

Another issue of concern is that, unlike the existing interest provisions, the proposed new interest charge can be applied in cases where a person is still in receipt of a social security payment. The proposed provisions do allow the Minister to make a determination prescribing the circumstances in which a person may be granted an exemption from the interest charge and the Explanatory Memorandum states that it is envisaged these circumstances will include where a person is still in receipt of income support and debts can be withheld from their payment. However, it is unclear why provisions exempting those still in receipt of income support are not included in the statute (as is the case with the existing interest provisions), particularly when debts can be recovered via payment reductions.

The existing provisions for interest payments provide broad discretion to the Secretary to determine whether or not to apply interest to a particular debt or for a particular period. This allows the Department of Human Services to take account of an individual’s particular situation and the impact interest charges will have. It is unclear whether the Secretary will be given similar discretion via the proposed legislative instrument.

**Amendments to the Social Security Act 1991**

**Item 6** inserts proposed sections 1229D, 1229E, 1229F, 1229G and 1229H into the SS Act, setting out the new interest charge provisions.

**Proposed section 1229D** provides for debts outstanding on the following payments to be subject to the new interest charge provisions at proposed sections 1229E and 1229F:

- Youth Allowance (for students and apprentices)
- Austudy
- fares allowance and
- a social security payment prescribed in an instrument.

**Proposed subsections 1229D(2) and 1229D(3)** allow the Minister to prescribe debts relating to other social security payments or the other form of Youth Allowance payable to jobseekers (known as Youth Allowance (Other)) as being subject to the interest charge provisions.

**Proposed section 1229E** provides for an interest charge to be applied to such debts where a notice has been given under existing section 1229(1) of the SS Act, an amount owing has not being paid by the due day and no payment arrangement (as provided for by section 1234 as amended by **item 7**) is in place.

**Proposed subsections 1229E(2) and 1229E(3)** provide for the Minister to prescribe circumstances, via a legislative instrument, in which the interest charge provisions do not apply. In situations where a person has not been penalised with an interest charge, **proposed subsection 1229E(4)** allows the Secretary to issue a notice at a later date for the outstanding debt to be paid within 28 days of the date of issue or a payment plan put in place, before the interest charge is applied.

---

99. Ibid.
100 Explanatory Memorandum, Social Services and Other Legislation Amendment Bill 2013, op. cit, p. 19.
Proposed subsection 1229E(6) sets out that the period for the calculation of the interest charge starts the day after the due day and ends either the last day that either the debt or the interest charge on the debt remains unpaid, or the day before the first payment is made on the debt under a repayment plan. Proposed subsection 1229E(7) sets out that the interest charge amount for a day in this period is the interest charge rate (set out at proposed section 1229(H)) multiplied by the sum of the unpaid debt and any interest charged on previous days. That is, the interest charge is applied to the sum of the debt and any accumulated interest amounts.

Proposed section 1229F sets out circumstances in which an interest charge is payable for periods in which a person is not honouring a payment plan in relation to an outstanding debt amount. In situations where a relevant debt repayment plan has been terminated, the individual has 14 days to pay any outstanding amount, and any previously accumulated interest charges on that outstanding amount, before an interest charge is applied by way of penalty.

Proposed section 1229H sets out that the interest charge rate is the sum of the base interest rate and seven percentage points. The base interest rate is the monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank of Australia for the month occurring two-months before the quarter in which the day falls. So, for a day falling between 1 January and 31 March, the base interest charge is the monthly average yield of 90-day Bank Accepted Bills for the preceding November, and for a day between 1 April and 30 June the relevant month is the preceding February.

Amendments to the Student Assistance Act 1973

Similar amendments are proposed by items 8–12 to the Student Assistance Act 1973 to apply an interest charge on debts raised by a recipient of ABSTUDY.

Schedule 6—Student start-up loans

Schedule 6 proposes to convert the current student start-up scholarship payments into income-contingent loan payments.

Background

The proposal to convert student start-up scholarships into income-contingent loans was part of a package of measures announced by the Gillard Government in April 2013, and then incorporated in the 2013-14 Budget. The other measures announced in the package were an efficiency dividend for university funding and removal of the discounts on paying university fees upfront and on voluntary repayment of Higher Education Loan Program (HELP) loans. Legislation to introduce these measures is included in the Higher Education Support Amendment (Savings and Other Measures) Bill 2013. The savings from these three measures were to contribute to the funding of school education reforms.

Student start-up scholarships were introduced in 2010 as part of the implementation of the Bradley Review recommendations. They are automatically provided to eligible recipients of Youth Allowance, Austudy and ABSTUDY Living Allowance, while undertaking an approved higher education course, and are intended to assist with the costs of study, including purchasing text books, computer equipment and the like. Payment is made through two half-yearly instalments of $1,025 each (a total of $2,050 per year). As at 31 August 2012, 180,872 students had received two payments for 2012, and a further 56,580 had received one.

This Bill proposes the creation of two new loans:

• the student start-up loan (SSL) and
• the ABSTUDY SSL.

These loans will replace the student start-up scholarships for new recipients of Youth Allowance, Austudy and ABSTUDY from 1 January 2014. Students who received a student start-up scholarship or a Commonwealth Education Costs Scholarship (the predecessor to the start-up scholarships) prior to 1 January 2014 will continue to receive these scholarships as grants while they remain continuously on student payments. Whereas the current scholarships are paid automatically to eligible student payment recipients, recipients will need to apply separately for the new loans. It is expected that some students will choose not to take up the loans, in order not to incur the debt.\(^{109}\)

The arrangements for the SSL and ABSTUDY SSL essentially replicate those currently applying to Higher Education Contribution Scheme (HECS) loans under the HELP. That is, there are no administrative charges, the loans are indexed at the rate of the Consumer Price Index (CPI), and repayment is through the taxation system. No repayment is required where taxable income is below a threshold level ($51,309 for the 2013-14 tax year) and then a sliding scale of rates applies up to a maximum of 8.0 per cent of income for those with taxable income above $95,288 in 2013-14.\(^{110}\) However, repayment of the SSL will not commence until all HELP debt has been repaid.

There is some concern that moving a grant payment to a loan (albeit on generous terms and with repayment contingent on sufficiently high income) may deter some students from undertaking study, or, by not taking up the loan, suffer unnecessary hardship. The student start-up scholarships are only available to students who are receiving means-tested income support payments, and hence are more likely to be those from disadvantaged backgrounds. For example, 23.9 per cent of those who received a student start-up scholarship in 2012 were from regional and remote areas,\(^{111}\) compared with only 21.3 per cent of all domestic undergraduate students.\(^{112}\)

However, when questioned at a Senate Estimates hearing on this issue, a departmental witness stated ‘we have now had income contingent loans in place in higher education since 1989 and during that period they have not suppressed participation; they in fact have done the reverse. So we would not necessarily expect this income contingent loan to have a different impact.’\(^{113}\)

**Policy position of non-government parties/independents**

The Greens have expressed concern at the increasing debt for students that converting student start-up scholarships to loans will mean, and in particular, about the potential impact on disadvantaged students.\(^{114}\)

**Financial implications**

For the student start-up loans, the Explanatory Memorandum identifies savings of $1.2 billion over five years.\(^{115}\) This reflects savings to outlays through the removal of the cash payments to eligible students. However, there are hidden costs associated with moving these costs to loan arrangements.

The outstanding loan amounts that will replace the outlays are shown as assets in the Government’s financial statements, but the stated asset value does not reflect its true value. Firstly, the Government estimates that by 2016–17, 22 per cent of new HELP debt is not expected to be repaid.\(^{116}\) Given that debtors will not begin to repay the new SSL debt until after they have paid off their HELP debt, the default rates for these new loans would be expected to be even higher.

---

115. Explanatory Memorandum, Social Services and Other Legislation Amendment Bill 2013, p. 5.
In addition, the SSL debt is indexed in line with the CPI, which is lower than the notional cost of government borrowing—the bond rate. The estimated average time for repayment of HELP debt is currently 8.6 years and expected to rise to 9.1 years for new debt in 2016–17. Therefore, the SSL debt will not begin to be repaid for an average of around nine years and is expected to take about two years to be repaid. At present, the CPI is 2.2 per cent per annum, while government 10 year bonds have an interest rate around 4.0 per cent. If these rates continued over a ten year period, the result is a difference in the loan repayment amount of nearly 20 per cent, which effectively represents lost government revenue.

Key issues and provisions

The provisions of Schedule 6 primarily reproduce those concerning HELP loans, which are contained in Chapter 4 of the Higher Education Support Act 2003 (HESA). Relevant provisions are replicated in the Social Security Act 1991 (SS Act) for recipients of Youth Allowance and Austudy, and the Student Assistance Act 1973 for recipients of ABSTUDY. Other changes to tax law relating to the repayment arrangements for the loans are also included.

Items 1 to 11 insert new definitions in the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997 to add the SSL and ABSTUDY SSL arrangements in the same manner as already provided for HELP loans.

Item 25 inserts a new Chapter 2AA—Student start-up loans in the SS Act. Proposed Part 2AA.1—Qualification for and amount of student start-up loan defines eligibility criteria for the loans. Proposed Part 2AA.2—Indebtedness, Part 2AA.3—Discharge of indebtedness and Part 2AA.4—Tax administration matters replicate the relevant provisions from the HESA relating to HELP loans, with the exception of proposed section 1061ZVGE which provides that repayment of SSL loans will only occur once accumulated HELP debt has been repaid.

Items 27 and 28 provide for the indexation of the SSL loan amounts, which mirror those currently applying to student start-up scholarships. This includes the provision that no indexation will occur before 1 January 2017. Where a recipient has received a loan and it is then determined that the person was not eligible for the loan at some time after they qualified for it, and before the ‘enrolment test date’ (generally 35 days after the commencement of the course), Item 30 provides that the loan amount will become a social security debt.

Items 32 to 45 propose amendments to the SS Admin Act. These include arrangements concerning the payments of the loans and provisions for the review of decisions. Items 42 to 45 concern review of decisions, primarily by the Commissioner of Taxation, included inserting proposed Division 2A into Part 4 of the SS Admin Act covering internal review processes.

Items 46 to 82 propose equivalent changes to the Student Assistance Act 1973 for ABSTUDY SSL loans. Item 67 proposes the insertion of new Part 2—ABSTUDY student start up loans, which includes the same provisions as the proposed Chapter 2AA in the SS Act, but in relation to ABSTUDY rather than Youth Allowance and Austudy. Item 81 inserts proposed Division 1A into Part 9 of the Student Assistance Act 1973 covering internal review processes by the Commissioner of Taxation.

Items 83 to 105 add ABSTUDY SSL and SSL repayments to the provisions in the Tax Administration Act 1953 and the Taxation (Interest on Overpayments and Early Payments) Act 1983 that address HELP repayments.

Schedule 7—Paid Parental Leave

This schedule amends the Paid Parental Leave Act 2010 (PPL Act) to remove the requirement for employers to make payments to employees under the national Paid Parental Leave (PPL) scheme from 1 March 2014. Instead, employees would be paid directly by the Department of Human Services, unless the employer chooses to make the payments and the employee consents to this arrangement.

---

117 Ibid., p. 93.
118 Senate Economics Legislation Committee, Official committee Hansard, 3 June 2013, op. cit., p. 112.
The Government’s reason for making the change is to ‘ease administrative burdens on business’. The Government estimates that total annual (national) savings to employers from removing the paymaster requirement will be $48 million, though it is unclear how it arrived at this figure.

**Key issues and provisions**

Currently, in most cases, the Commonwealth Government funds employers to provide instalments of PPL to their eligible long-term employees for up to 18 weeks at $622.10 per week before tax (based on the rate of the National Minimum Wage). Employers are required to pay PPL instalments to a person if the Department of Human Services (DHS) has determined that they must do so.

Under section 101 of the PPL Act, DHS is required to make an ‘employer determination’ (that the person’s employer is required to pay instalments of PPL) if:

- the person is eligible for PPL
- instalments are likely, if the determination is made, to be payable by the employer for at least 40 consecutive PPL days that are week days
- the person has been, or will have been, employed by the employer for at least 12 months immediately before the expected date of birth of the person’s child where the person claims before the birth, or the later of the expected date of birth and the day the child was born where the person claims after the birth
- the person is likely to be an Australian based employee of the employer for the person’s PPL period where a payability determination has been made, or the period of days for which instalments are likely to be payable if a payability determination has not yet been made and
- the employer has an Australian Business Number (ABN).

Employers may also elect to pay PPL to one or more of their employees even if the above conditions have not been met (section 109). In 2012–13, 11.7 per cent of businesses elected to provide PPL to non-mandatory employees.

**Proposed changes**

Under the changes in this Schedule, employers will no longer be required to provide PPL to an employee but will still have the option to elect to do so. For an employer to pay PPL, DHS will continue to need to make an employer determination. As such, the Schedule adds the following new conditions to those required for an employer determination to be made:

- the person’s employer must have made an election (or ‘opted in’) to pay instalments of PPL and that election must apply to the person (proposed paragraph 101(1)(b))
- the person must have consented in the claim form to the employer paying them instalments of PPL (proposed paragraph 101(1)(c)).

Even where an employer has ‘opted in’ to paying PPL instalments to a person and received notice of an employer determination, they may still (within 14 days) inform DHS, orally or in writing, that they do not accept the obligation to pay PPL instalments to the person (proposed subsection 103).

Employers who do not respond to a notice of an employer determination will no longer potentially be subject to a compliance notice (proposed subsection 157(1), inserted by item 34 of Schedule 7). Currently, under section 157(1), DHS may give compliance notices to employers who, for example, do not respond to an employer determination or provide bank account and pay cycle information after a review. This is intended to reflect ‘the non-mandatory nature’ of the employer role in paying PPL instalments and that ‘review of an employer determination is no longer required because the employer can simply decline the paymaster role’.

---

126 Explanatory Memorandum, Social Security and Other Legislation Amendment Bill 2013, op. cit., p. 53.
130 Explanatory Memorandum, Social Security and Other Legislation Amendment Bill 2013, op. cit., p. 54.
Why are employers currently required to be involved?

The employer role in making these payments was suggested by the Productivity Commission in its report recommending the current scheme. The Commission argued that:

... the more that parental leave arrangements mimic those that exist as part of routine employment contracts, the more they will be seen by employers and employees as standard employment arrangements.

It suggested that this would benefit employers in two main ways. First, it would promote ‘employment continuity and workforce retention’. Second, it would signal that ‘a genuine capacity to take a reasonable period of leave from employment to look after children is just a normal part of working life’. 131

During the Commission’s parental leave inquiry, some employer representatives and individual companies gave qualified support to playing the ‘paymaster’ role for the scheme. 133 Others, however, were opposed on the grounds of the perceived administrative burden.

The Commission, however, was sceptical of these concerns, suggesting that:

... it is arguable whether there would be any material addition to administrative costs, not only for large employers with access to sophisticated payroll and human resource management systems, but also for smaller firms because (as acknowledged by some participants) the probability of an employee actually being on parental leave at any point in time would be quite low. 134

Nevertheless, the Government says that feedback to a legislated review of the PPL scheme currently underway suggests that employer groups ‘generally [do] not support the employer role’ because it ‘places an unnecessary administrative burden on business, and any benefits to employers in terms of employee retention were not commensurate with the administrative burden imposed’. 135

During the 2013 election campaign, the Labor Party announced a policy under which businesses with fewer than 20 employees would no longer have to administer Government-funded PPL. It argued that ‘the Federal Government’s evaluation of the scheme found that most employers have found their role straightforward and easy, but we recognise that some small businesses would prefer to have Centrelink pay their employees directly’. 136

Employer experience of the paymaster role

While there is clearly some opposition to the paymaster role among employers, there is evidence from a Government evaluation of the early impacts of the scheme (the 2013 PPL Phase 2 Report) that employer experiences in implementing PPL have generally been positive.

According to a survey of 501 employers undertaken as part of the evaluation:

- 54 per cent disagreed with the statement that 'organising payments for PPL has been time-consuming'
- only 29 per cent of employers stated additional costs were involved in implementing the scheme
- of those reporting additional costs, 94 per cent stated that this arose from extra workload they took on themselves, rather than from purchasing a new payroll system or hiring extra administrative staff
- in terms of staff hours required to process PPL:
  - 25 per cent of employers reported one to two hours were needed
  - 24 per cent said it required three to five hours
  - 22 per cent reported it took 15 hours or more

132 Ibid.
133 Ibid., 8.29-8.30.
134 Ibid., 8.31.
136 K Rudd (Prime Minister), C Bowen (Treasurer), G Gray (Minister for Small Business), J McLucas (Minister for Human Services) and B Ripoll (Parliamentary Secretary for Small Business), Cutting business red tape—Paid Parental Leave payments, media release, 22 August 2013, accessed 5 December 2013.
• costs to organisations implementing PPL were minimal, with estimates ranging between:
  – $1 and $250 for 45 per cent of employers
  – between $250 and $1,000 for 21 per cent of employers
  – over $1,000 by 20 per cent of employers
• 74 per cent agreed that PPL had been easy to implement.\(^{137}\)

In terms of possible retention effects associated with employers providing PPL, interviews conducted as part of the evaluation were inconclusive because ‘most employers had little experience with return to work as the majority of their employees were still on leave’. \(^{138}\)

**Comment**

The above indicates that it may be premature to suggest that the benefits of the employer role in providing PPL are outweighed by the costs (especially when the available evidence suggests that employers have generally had positive experiences with the scheme). It could also be argued that the Government’s provision of up to $11,000 to employers towards the costs of parental leave pay for their employees should be considered in evaluating the costs and benefits of the scheme.

Finally, it is worth noting that an argument often used in support of the more generous schemes proposed by the Coalition and the Greens is that PPL should be seen as a workplace entitlement, rather than a welfare payment. \(^{139}\) On this view, removing the paymaster requirement from employers takes away one of the few aspects of the scheme specifically intended to promote PPL as a standard employment arrangement.

**Schedule 8—Pension Bonus Scheme**

Schedule 8 proposes to end late registrations for the closed Pension Bonus Scheme from 1 March 2014. The scheme has been closed to new registrations since September 2009; however, people who were eligible at the time it was closed can still register for the scheme. This measure will cease registrations for the scheme altogether. The measure was announced in the 2013–14 Budget and is expected to save $80.5 million over three years. \(^{140}\)

**Background**

The Pension Bonus Scheme was announced in the 1997–98 Budget. The purpose of the scheme was to offer an incentive for older-workers to extend their working life and encourage greater self-provision in retirement, as well as achieve some Budget savings. Under the scheme, when a person reaches age pension age (currently 65 for men, different for women depending on their date of birth) they are able to defer receipt of the age pension and be paid a bonus later on if they:

• continued to work past the date they meet age and residence requirements for the Age Pension
• had registered for the scheme and
• met a flexible work test with a minimum of 960 hours for at least one year after registration.

Once registered, a person can accrue bonus periods until they reach the age of 75 as long as they continue to meet the work test and other eligibility criteria. \(^{141}\)

**Bonus amount**

The bonus is a multiple of 9.4 per cent of the claimant’s basic Age Pension for each accruing bonus period. The bonus is paid as a non-taxable lump-sum at the time the claimant claims payment of their Age Pension.

The amount of bonus a person gets depends on:

---


138. Ibid., p. 114.


140. See J Macklin (Minister for Families, Community Services and Indigenous Affairs and Minister for Disability Reform), *Budget 2013: change to the Pension Bonus Scheme*, media release, 14 May 2013, accessed 6 December 2013.

• the amount of basic Age Pension the claimant is entitled to when they claim it after they leave the workforce
• the length of time the claimant has been an accruing member of the scheme and
• whether they are single or have a partner during the time they deferred their Age Pension.\(^\text{142}\)

**Closure of the scheme**

The 2009 Harmer Review of Pensions recommended the closure of the scheme finding that it had been ‘less successful than anticipated in achieving its objectives, and that the goal of improving labour market participation by older, pension eligible, Australians can be done more efficiently, effectively and equitably by alternative approaches’.\(^\text{143}\) The Review found that the scheme was complex, that it was flowing to individuals who would have continued employment past the age pension age anyway (therefore acting as a windfall gain rather than a participation incentive) and that aspects of the scheme inadvertently penalised some older workers. Overall, the Review found:

> ... the Pension Bonus Scheme is a cumbersome and inefficient mechanism to achieve higher levels of workforce participation. It is a program that was developed in a different program and retirement income environment and is no longer effectively serving the role it was established for.\(^\text{144}\)

The scheme was closed to new registrations from September 2009 and a new ‘Work Bonus’ was introduced, which allowed Age Pension recipients to have half of their employment income, up to a cap of $500 per fortnight, disregarded from the pension test.\(^\text{145}\) The Work Bonus was considered to be a simpler and more targeted workforce participation incentive for older people.

**Key issues and provisions**

Schedule 8 proposes amendments to Social Security Act 1991 (SS Act) and the Veterans’ Entitlements Act 1986 so that applications for registration to the Pension Bonus Scheme cannot be made on or after 1 March 2014.\(^\text{146}\) As noted above, those who were eligible for the scheme at the time it closed on 20 September 2009 were still eligible to register for the scheme.

In June 2009, there were 81,000 people registered for the Pension Bonus Scheme.\(^\text{147}\) The number registered declined to 73,000 people in March 2010, shortly after the closure of the scheme.\(^\text{148}\) No figures have been provided as to how many were eligible for the scheme at the time of its introduction and did not register. The estimated savings suggest a substantial number of people may have been eligible to register. FaHCSIA’s Annual Report 2012–13 states that its estimated liability for the Pension Bonus Scheme, taking account of the proposed measure, is $847 million.\(^\text{149}\)

**Schedule 9—Indexation**

Schedule 9 proposes amendments to continue a freeze on the indexation on the Family Tax Benefit Part B (FTB-B) primary earner income limit, the Parental Leave Pay (PLP) and Dad and Partner Pay (DAPP) individual income limit, the higher income free area for Family Tax Benefit Part A (FTB-A), the FTB-A and FTB-B end-of-year supplement amounts and the annual Child Care Rebate limit of $7500, until 30 June 2017. The continued pause on the indexation of these limits and amounts was announced in the 2013–14 Budget and is expected to save around $1.3 billion over the next four years.\(^\text{150}\)

---

142.Ibid.
144.Ibid., p. 95.
148.Ibid.
Background

Indexation in the family assistance system is the automatic adjustment of certain amounts or limits in line with movements in prices, as measured by the Consumer Price Index (CPI). The affected amounts are usually indexed once a year to maintain their real value over time.

The relevant threshold amounts to be affected by the proposed measures are:

- the upper income limit of $150,000 for FTB-B—if the higher income earner in a couple, or a single parent, has an annual adjusted taxable income over this amount then they will not be eligible for FTB-B

- the upper income limit of $150,000 for claimants of PLP and DAPP—if a potential recipient has adjusted taxable income over this amount in the year prior to the date of claim, or the date of birth or adoption, then they are not eligible for these payments

- the FTB-A upper income free area of $94,316 (plus $3,796 for each child after the first)—FTB-A payment rates reduce by 30 cents for each dollar above this ‘free area’ until they reach zero

- the FTB-A supplement ($726.35 per child) and the FTB-B supplement ($354.05 per family)—these supplements are paid to families in receipt of FTB-A and/or FTB-B at the end of the financial year and

- the annual Child Care Rebate (CCR) cap of $7,500—eligible families can claim up to 50 per cent of their out-of-pocket costs for using approved child care up to this maximum cap.

The FTB-A upper income free area and the FTB-B upper income limit have not been adjusted since July 2008. The FTB supplements were frozen for three years from 2011–12. The CCR cap was reduced from $7,941 to $7,500 in 2011–12 and has not been adjusted since.151

These indexation freezes produce savings as a result of families gradually earning more income and moving above these limits in which case they either lose eligibility or receive a lower rate of payment. In the case of CCR, savings are produced by preventing entitlements rising as fees increase. In 2014–15, an estimated 127,000 families will receive a lower rate of FTB-A as a result of these changes while around 17,300 will lose eligibility for FTB-A and 2,400 for FTB-B.152

The ongoing freeze on the indexation of various limits and payments to families will produce significant savings to the Budget over the forward estimates period and will primarily affect those with higher incomes (or those who spend large amounts on child care fees). Concerns have been raised by some commentators that the pursuit of these savings may have inadvertent effects, such as increasing rates of child poverty (as payment levels do not keep pace with growth in incomes) and decreasing public and political support for the family assistance system (as fewer families find that they are eligible for the payments).153

Key issues and provisions

Amendments to the A New Tax System (Family Assistance) Act 1999

Item 1 amends the FA Act at paragraph 84F(ea) to set the Child Care Rebate limit at $7500 for each of the financial years ending 30 June in 2014, 2015, 2016 and 2017—the limit will remain unchanged for a further three years.154 Item 2, 3 and 4 amend subclause 3(6A) and subclause 3(6B) of Schedule 4 of the FA Act so that the annual indexation of the Child Care Rebate limit will not resume until 1 July 2017.

Items 6, 7, 8 and 9 amend the FA Act so that indexation of the FTB-A higher income free area, the FTB-B income limit, the FTB-A supplement amount and the FTB-B supplement amount will not occur until 1 July 2017.

Amendments to the Paid Parental Leave Act 2010

Similar amendments are made to the PPL Act to pause indexation of the income limits for PLP and DAPP until 1 July 2017.155

---

153 G Redmond and P Whiteford, ‘Middle class welfare—are we hitting the target?’, The Conversation website, 16 May 2013, accessed 28 November 2013.
Schedule 10—Reduction of period of temporary absence from Australia

Schedule 10 proposes to reduce the length of time that families can continue to receive family and parental payments while they are temporarily overseas from three years to 56 weeks, starting from 1 July 2014. The measure was announced in the 2013–14 Budget and is expected to save $18.8 million over four years. The Schedule also provides for some extensions to this 56-week period in specific special circumstances. The payments affected are Family Tax Benefit Part A (FTB-A), Family Tax Benefit Part B (FTB-B), Parental Leave Pay (PLP) and Dad and Partner Pay (DAPP).

Background

Recipients of family assistance payments (such as FTB-A and FTB-B) and parental leave payments can, currently, continue to be eligible for these payments while they are temporarily overseas for up to three years. Eligibility for an Australian welfare payment while overseas is known as its portability (see discussion in relation to Schedule 4). Most income support payments, such as Newstart Allowance or Parenting Payment, can only be paid for up to six weeks of temporary absence from Australia. Family assistance payments are a different category of payment in that they are intended to assist families with the costs of raising children rather than provide for basic living requirements. As such, they are payable for longer periods of absence overseas.

While families may retain eligibility for family assistance payments under the portability rules, their entitlement to the payment changes depending on how long they are absent from Australia. For the first six weeks of a temporary absence, a family’s normal entitlement rate of FTB-A and FTB-B is payable. After six weeks of absence, FTB-A is only payable at the base rate per child and FTB-B is no longer payable. Entitlement rates of PLP and DAPP are not reduced during temporary absences.

The measures will affect only a very small number of families, those temporarily overseas for periods longer than 56 weeks. Those who leave Australia permanently do not qualify for payments at all as they are no longer Australian residents. The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) estimated that the families of 2,800 children will be affected by the changes in the first year of operation.

Key issues and provisions

The measure is primarily intended to produce savings to the Budget. It will only affect a small number of families, and Australian Defence Force and Australian Federal Police personnel who are deployed overseas will be exempt from the measures and continue to be eligible for the payments for up to three years. Other Australian Government personnel who are stationed overseas temporarily, such as diplomatic staff and those deployed on Australian aid projects, will not be protected from the changes.

Amendments to the A New Tax System (Family Assistance) Act 1999

Items 1–4 amend relevant points in section 24 of the A New Tax System (Family Assistance) Act 1999 (FA Act) to substitute the term ‘three years’ with ‘56 weeks’. Section 24 provides for the effect of temporary absences from Australia on eligibility for family tax benefit payments. The effect of the proposed changes will be that if a child for whom family tax benefit is paid in respect of, or an individual to whom family tax benefit is paid, is temporarily absent from Australia for longer than 56 weeks, then they will no longer be considered to meet the eligibility requirements for the payment. Where a child or individual who has been temporarily absent for more than six weeks but less than 56 weeks returns to Australia but then leaves less than six weeks later, they are not considered to have returned to Australia for the purposes of working out the duration of their temporary absence. That is, their period of temporary absence is not reset if they do not remain in Australia for longer than six weeks before departing again.

---

Item 5 inserts new subsections 24(7), 24(8), 24(9) and 24(10) into the FA Act, to set out the circumstances under which an extension can be granted to the 56-week temporary absence period by the Secretary. These circumstances include situations where a person is unable to return to Australia because of a serious accident or illness involving the person or a family member, the death of a family member of the person, or where the person is involved in custody proceedings in the country where the person is located. Other circumstances include natural disasters, war, political or social unrest, or where a robbery or serious crime is committed against the person or their family member. As referred to above, members of the Australian Defence Force and the Australian Federal Police may also be granted an extension to the 56-week period where they are deployed overseas for longer periods. Under the proposed provisions, extensions cannot be granted for periods longer than three years. These circumstances are similar to those that apply to extensions of the six-week temporary absence period that determines the rate of family tax benefit payable while overseas, at section 63A of the FA Act.

Amendments to the Paid Parental Leave Act 2010

Items 9–12 make similar amendments to section 46 the Paid Parental Leave Act 2010 (PPL Act) as were made to the FA Act to reduce the maximum temporary absence period allowed before eligibility for PLP and DAPP is affected from ‘three years’ to ‘56 weeks’. Item 13 inserts proposed subsections 46(4) and 46(5) into the PPL Act allowing for extensions of this 56-week period to be granted in special circumstances. The circumstances allowing for extensions to be granted that are included in the PPL Act are those relating to Australian Defence Force and Australian Federal Police personnel deployed overseas. Proposed subsection 46(5) allows for other circumstances prescribed in the PPL rules to be accepted for the purpose of granting extensions. The PPL rules are set out in a legislative instrument under the PPL Act.

Schedule 11—Extending the deeming rules to account-based income streams

Schedule 11 proposes to apply deemed income rules to account-based superannuation income streams under the social security and veterans’ entitlements income test. The deemed income treatment of these assets will apply to new superannuation account-based income streams assessed under the pension income test after 1 January 2015. Account-based income stream products held before 1 January 2015 will continue to be assessed under the existing asset testing rules for the life of those products. The measure was announced in the 2013–14 Budget and re-announced in April 2013 as part of the Labor Government’s Reforms to make the superannuation system fairer policy. The application of deemed income rules to these products was recommended by both the Harmer Report of Pensions and the Henry Review of Australia’s Future Tax System. The measure is expected to provide savings of $161.7 million over four years.

Background

An account-based superannuation income stream is a form of retirement investment that provides holders with a tax-free retirement income stream and flexible access to their capital. Holders have an investment account within a relevant superannuation or insurance fund. The account balance will increase when investment earnings are added to the account and will decrease as the holder draws down regular income payments. The most common account-based income streams are allocated pensions or allocated annuities in which the holder can choose the level of income they want to draw each year, above a minimum amount. Holders are usually able to withdraw all or part of their investment at any time and income can be drawn until their balance is exhausted. Non account-based incomes streams do not have an account balance. These products generally have a purchase price in which a lump-sum is exchanged for an income stream over a fixed period of years, or for the person’s lifetime.

---

165 Ibid.
Pension means testing of retirement investments

Social security payments are means tested to ensure they are only provided to those who do not have adequate means to support themselves. The pension means testing regime attempts to calculate an individual or couple’s ability to support themselves in retirement via tests on both income and assets. Income or assets over certain threshold values can either reduce a person’s pension payment rate or preclude them from receiving a pension at all.

Currently, for most account-based superannuation income streams, special rules apply because the income a person receives from these investments can include a part of their invested capital. The income stream is assessed under the income test but the invested capital (the account balance) is also assessed under the assets test. In order for the income test to only assess income earned from the asset (not the value of the asset itself which is being drawn upon), an amount is deducted from the income stream which represents the ‘return of capital’ or a return of the purchase price of the product.\(^{166}\) The deduction is equal to the initial value of the account divided by a factor which is either the term of the income stream or life expectancy as derived from life tables.\(^{167}\) The way this return of capital is calculated often results in little or no income being assessed for these products as it falls under the relevant income test threshold.\(^{168}\)

The treatment of most account-based superannuation income streams is different from the way other income-earning assets (such as bank accounts, term deposits or share portfolios) are treated under the pension means test. These other kinds of investment are assessed in terms of their value as assets under the assets test but they are also assessed as providing income under the income test by way of ‘deeming’. Deeming assumes that financial investments are earning a certain rate of income (via dividends or interest for example), regardless of the amount of income actually earned. Some superannuation income streams are already subject to deeming—these are products considered to be ‘short-term’ income streams (that is, five years or less) and most of the products that fit in this category are non-account based income streams.

Deeming

The rationale for deeming is that:

- it is simple
- it provides a similar assessment of investors who have the same amount of financial assets
- it reduces the extent to which income support payment rates fluctuate
- it increases incentives for self-provision because returns above the deemed rate are not counted as income and
- it encourages investors to choose investments based on their own merit, not on how it will impact on their pension payment.\(^{169}\)

The deemed rate of income increases with the value of the assets. The rate is applied to the total value of all financial assets subject to deeming. Currently a deeming rate of two per cent applies to the first:

- $46,600 of a single person’s total financial investments
- $77,400 of a pensioner couple’s total financial investments
- $38,700 of total financial investments for each member of a couple in receipt of an allowance payment (such as Newstart Allowance).

A deeming rate of 3.5 per cent applies to financial investments above these amounts. The thresholds at which the higher deeming rate applies are indexed in line with movements in the Consumer Price Index in July of each year.\(^{170}\)

\(^{167}\) J Harmer, Pension review report, op. cit., p. 139.
\(^{168}\) Statement of Compatibility with Human Rights, Explanatory Memorandum, Social Services and Other Legislation Amendment Bill 2013, op. cit., p. 25.
\(^{170}\) Ibid.
Deeming rates are determined by the Minister for Social Services and they can be changed at any time by a ministerial determination. This usually occurs when there is a significant change in earnings rates that can be realised and it appears that this change is long-term. Deeming rates should reflect rates of return available from a range of financial investments including earnings rates from equities, markets and bond rates (not only cash rates). If the measures in this Bill are enacted, then rates of return from account-based superannuation products will also need to be considered carefully in setting deeming rates.

Advantages and disadvantages of deeming

The use of deeming income as opposed to actual income in social security means testing is often criticised because delays in changes to the deeming rates can disadvantage some payment recipients whose assessed income is larger than their actual return from investments. However, deeming also advantages many payment recipients whose returns are much greater than the deeming rate. Delays in changing the deeming rate will mean that larger returns from their investments are not assessed by the income test.

Harmer and Henry Review recommendations

The Harmer Review of Pensions found that the current treatment of account-based superannuation schemes had unintended distortional effects. While the goal of the current income test treatment of these assets was to exclude assessing the withdrawal of capital, the income deduction ‘front-loads’ the concessional treatment by applying the discount when none of the original investment is likely being withdrawn:

That is, while in the initial period of drawing on superannuation a pensioner will largely be drawing on fund earnings, the ‘income deduction’ is conceptually based on them actually withdrawing capital. In contrast, in later years when they are more likely to be drawing on the capital, the ‘income deduction’ (which is not indexed) will have reduced in value and a higher proportion of the amount drawn down will be treated as if it were income. Similarly, if a person maintains the capital value of their superannuation, for motives of bequest or to protect against longevity risk, they remain entitled to the ‘income deduction’ despite the fact that they are not drawing down on the asset. 171

Another issue raised by the Harmer Review was the way that the concessional treatment of these superannuation products (compared to other investments) introduces distortions in people’s choice of assets in retirement. Media commentary suggests that financial advisers have recommended superannuation income streams to retirees over other investments because of the concessional treatment provided. 172

The Harmer Review recommended a deeming approach to account-based superannuation products to ‘remove the current distortion in the pattern of payments of pensions to pensioners with such income and assist in equalising the treatment of superannuation products and other financial assets’. 173 The Henry Review recommended extending deeming to these products and a range of other investments as parts of it proposals for a more comprehensive means testing arrangement. It found that extending deeming to these products would be fairer than the current arrangements and it would also encourage a person to use their assets to generate an income—i.e. to more effectively use their assets to provide for themselves in their retirement. 174

Stakeholder responses

There has been little response from stakeholders since the proposed measure was announced. Superannuation industry bodies, welfare groups and retiree/seniors groups may have been awaiting the detail contained in the legislation or a formal announcement from the Coalition Government on its position on the reforms prior to commenting. Those that have commented have been in agreement with the extension of deeming to account-based superannuation products. The Combined Pensioners and Superannuants Association of New South Wales stated that ‘extending normal pension deeming rules to superannuation removes an obvious inequity’. 175 The

---

171 J Harmer, Pension review report, op. cit., p. 139.  
173 J Harmer, Pension review report, op. cit., p. 140.  
175 Combined Pensioners and Superannuants Association of New South Wales, CPSA response to super changes: tax free super for over 60s abolished, media release, 5 April 2013, accessed 30 November 2013.
Council of the Ageing (COTA) Australia stated, ‘the changes to the deeming rate and changes to tax treatment of excess contributions both improve the fairness of the system and so are welcomed’.176

**Key issues and provisions**

Many of those close to retirement will be concerned about the impact of these changes on their retirement income. Those in receipt of a pension and an account-based income stream prior to 1 January 2015 will not be affected by the new income test rules unless they choose to invest in a product subject to deeming after this date. For some nearing retirement, the changed treatment of these superannuation products may see them receive a slightly reduced Age Pension than they were expecting. This will depend on a range of factors including the amount they have invested, how much income they choose to draw each year, and what other income and assets they possess. The impact of these measures will depend primarily on the investments retirees choose, their future return rates and the responsiveness of deeming rates. Some pensioners will undoubtedly benefit from astute investment choices where the return rates are above the relevant deeming rates.

Media articles have claimed the changes are likely to trigger a surge in retirements prior to the January 2015 commencement.177 While some people may adjust their retirement plans to benefit from grandfathering, the main impact will be on the choice of retirement investments, as new retirees consider which product will provide them with the greatest return. This is one of the main goals of the measure: to treat most assets in the same way so that investment returns, rather than special rules in pension means testing arrangements, are the key factor in retirees’ decisions about how best to manage their finances.

**Amendments to the Social Security Act 1991**

**Items 3, 4 and 5** propose amendments to subsection 9(1) of the *Social Security Act 1991* (SS Act) to include asset-tested income streams (long-term) in the definition of financial investment.178 The definition of ‘asset-tested income streams (long-term)’ at subsection 9(1) of the SS Act includes account-based pensions as defined by the Superannuation Industry (Supervision) Regulations 1994, and annuities, as defined by the *Superannuation Industry (Supervision) Act 1993*, provided under a contract that meets the requirements determined by an instrument made under proposed subsection 9(1EA) (inserted by item 6). The proposed subsection 9(1EA) provides for the Minister of Social Services, via a legislative instrument, to determine the requirements that must be met for an annuity product to be considered a financial investment under the SS Act. These measures ensure that both types of account-based superannuation income streams, allocated pensions and allocated annuities, will fall under the definition of financial investment, which is relevant to the application of the income test deeming rules.

**Items 7–23** amend various notes to components of the pension rate calculator that make reference to the provisions concerning deemed income from financial assets and income from income streams. The note will now refer to ‘income from financial assets (including income streams (short term) and certain income streams (long term))’ as determined by Division 1B of Part 3.10 of the SS Act. Other kinds of income streams not covered by this division are referred to Division 1C of Part 3.10.

**Items 24** repeals the heading at Division 1B of Part 3.10, ‘Deemed income from financial assets’, and substitutes a new heading ‘Income from financial assets (including income streams (short term) and certain income streams (long term))’. This division provides for the assessment of deemed income from financial assets. ‘Financial assets’ includes financial investments and deprived assets (assets that have been disposed of). As a result of the amendments by items 3, 4, 5 and 6, this definition now includes account-based income streams and therefore they will be subject to the deemed income provisions at Division 1B of Part 3.10.

**Items 25–27** make various amendments to Division 1C of Part 3.10 of the SS Act, which sets out the rules for assessing income from income streams that are not ‘family law affected income streams’ (defined at section 9C), to ensure that the rules in Division 1C only apply to those income streams not covered by Division 1B of Part 3.10. Savings provisions ensure that these rules will continue to apply to those who were receiving an income support payment and receiving a relevant account-based income stream prior to 1 January 2015.

---

Amendments to the Veterans’ Entitlements Act 1986

Amendments are made to the rate calculator/income test in the Veterans’ Entitlements Act 1986 to reflect the changes to the SS Act and the treatment of certain income streams under the deemed income rules. If the proposed amendments are enacted, then account-based superannuation income streams, as described above, will be deemed to earn income under the relevant deeming rules. This income will be taken into account in the calculation of rates of service pension and other veterans’ payments.

Application provisions

Item 48 sets out application and savings provisions for the amendments in Schedule 11. It provides that the preceding amendments apply in relation to the application of the income test from 1 January 2015 onwards. The item also provides for primary beneficiaries of asset-tested long-term income streams, who were in receipt of an income support payment and the income stream prior 1 January 2015, to continue to receive that income stream assessed under the existing rules. This saving provision only applies so long as that beneficiary has been in continuous receipt of both an income support payment and the income stream from 1 January 2015. In situations where a primary beneficiary who was covered by these savings provisions dies, then the reversionary beneficiary (the person to whom the asset is provided to), will also be covered by the savings provisions so long as they have been in receipt of an income support payment continuously, since they became the reversionary beneficiary of the income stream.

Schedule 12—Other amendments

Schedule 12 proposes a range of miscellaneous amendments to the SS Act, the Student Assistance Act 1973, the FA Act, the FA Act (Admin) Act, the National Disability Insurance Scheme Act 2013, the Child Support (Assessment) Act 1989, and the Child Support (Registration and Collection) Act 1988.

The proposed measures include:

- allowing the Commissioner of Taxation to continue administering the recovery of debts under the Student Financial Supplement Scheme and other amendments to the administration of the scheme
- clarifying family tax benefit reconciliation conditions
- ensuring funding under the National Disability Insurance Scheme, paid into the account a person uses to fund their disability supports, cannot be garnisheed for debt recovery purposes
- provide more flexibility under the FA Admin Act in regards to the exchange of tax file number and income information between the Commissioner of Taxation and the Department of Social Services and the Department of Human Services for the purposes of calculating eligibility and entitlement rates of family assistance
- aligning certain legislative provisions for child support administration with the current service delivery structure and
- minor amendments in relation to the payment of the newborn supplement and newborn upfront payment (replacing the Baby Bonus from 1 March 2014).

Details of the proposed amendments are contained in the Explanatory Memorandum to the Bill.

---
