2004-2005-2006

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FAMILY ASSISTANCE, SOCIAL SECURITY AND VETERANS’ AFFAIRS
LEGISLATION AMENDMENT
(2005 BUDGET AND OTHER MEASURES) BILL 2006

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for Families, Community Services and Indigenous Affairs,
the Hon Mal Brough MP)
FAMILY ASSISTANCE, SOCIAL SECURITY AND VETERANS’ AFFAIRS
LEGISLATION AMENDMENT
(2005 BUDGET AND OTHER MEASURES) BILL 2006

OUTLINE AND FINANCIAL IMPACT STATEMENT

This bill gives effect to a number of measures announced in the 2005-2006
Budget and other measures as outlined below.

Family Assistance Measures

From 1 July 2006, the lower income threshold for family tax benefit Part A will
be increased from the current $33,361 to $37,500. This new amount will be
indexed in accordance with movement in the Consumer Price Index on
1 July 2007 and each subsequent 1 July.

Financial impact (total resourcing)
2005-06 $  0.9m
2006-07 $364.0m
2008-9 $371.7m
2008-09 $378.9m

The process of estimating income will be improved by the introduction of
automatic updating of estimates from 1 July 2006. The Secretary will have
the capacity to use default estimates to work out a customer’s fortnightly rate
of family tax benefit where the customer has not provided a reasonable
estimate of income for the current income year. Similarly, in relation to
customers who are conditionally eligible for child care benefit by fee reduction,
the Secretary will also be able to use default estimates to determine the
customer’s CCB%, an income-based component of the child care benefit rate,
used by an approved child care service to work out the customer’s rate of fee
reduction. Importantly, customers would retain the capacity to provide a
reasonable estimate of income that would apply instead of the default
estimate.

Financial impact (total resourcing)
2005-06 $  3.8m
2006-07 $  2.2m
2007-08 $-5.1m
2008-09 $-6.2m

A minor technical amendment will also be made to the definition of ‘returns to
paid work’ so that the family tax benefit Part B income test operates as
intended where a customer returns to work after the birth of a child.

Financial impact: These amendments have no financial impact.
From 1 July 2006, the methods for recovery of child care benefit debts owed to the Commonwealth by customers will be more closely aligned with the recovery methods currently available in relation to family tax benefit debts. In particular, a customer's child care benefit debt will be recoverable by the application of the customer's, or a consenting person's, tax refund.

### Financial impact (total resourcing)

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<tr>
<td>2008-12</td>
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Amendments commencing from the day after Royal Assent will improve distribution of available child care places by enabling the transfer of places from an area with lower demand to an area where the places are needed. The amendments will provide the Secretary with the power to reduce the number of child care places allocated to an approved child care service if the number of places provided by that service is lower than the number of allocated places.

**Financial impact:** These amendments have no financial impact.

### Carer allowance

From 1 July 2006, the backdating provisions for carer allowance will be standardised to allow for a maximum backdating period of 12 weeks prior to the claim lodgment date by carers of both children and adults.

### Financial impact (total resourcing)

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
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<tr>
<td>2005-06</td>
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<td>2008-09</td>
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### Portability

The bill makes amendments to provisions in the Social Security Act and the Family Assistance Act that deal with portability of social security payments and family tax benefit overseas. The amendments allow the Secretary to extend the period of portability of a person's social security payments and family tax benefit, in circumstances where the person is seeking life-saving medical treatment overseas, or needs to accompany such a person, and financial assistance is payable in respect of the treatment under the Medical Treatment Overseas Program administered by the Minister responsible for the National Health Act 1953. The amendments commence the day after Royal Assent.

**Financial impact:** These amendments have negligible financial impact.
Income Streams

The bill gives effect, from 1 January 2006, to measures announced by the Government in its response to the review of pension provision by small superannuation funds. This review was established to examine options for small funds to provide pensions to their members, while addressing the Government’s taxation, social security, retirement income and prudential concerns. The measures allow social security and veterans’ entitlements retirees to manage better their income needs and increase certainty that they will not outlive their retirement savings. They involve:

- extending the term of market-linked income streams and life expectancy income streams so that payments can continue until the member reaches age 100 (or until a person’s spouse reaches age 100), or the greater of the member’s or spouse’s life expectancies where these are greater than age 100;

- allowing annual market-linked income stream payments to vary between plus or minus 10 per cent.

The bill also contains amendments to smooth the operation of the social security income stream rules and to allow certain non-superannuation annuities to be split pursuant to a divorce property settlement. These measures will take effect from the day following Royal Assent.

Financial impact (total resourcing)

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
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<tbody>
<tr>
<td>2005-06</td>
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NOTES ON CLAUSES

Clause 1 sets out how the Act is to be cited, that is, the Family Assistance, Social Security and Veterans’ Affairs Legislation Amendment (2005 Budget and Other Measures) Act 2006.

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

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

This Explanatory Memorandum uses the following abbreviations:

- ‘Family Assistance Act’ means the A New Tax System (Family Assistance) Act 1999;
- ‘Family Assistance Administration Act’ means the A New Tax System (Family Assistance) (Administration) Act 1999;
- ‘Social Security Act’ means the Social Security Act 1991;
- ‘Social Security Administration Act’ means the Social Security (Administration) Act 1999;
- ‘Veterans’ Entitlements Act’ means the Veterans’ Entitlements Act 1986;
- ‘FTB’ means family tax benefit;
- ‘CCB’ means child care benefit; and
Schedule 1 – FTB Part A income free area

**Summary**

From 1 July 2006, the lower income free area for FTB Part A will be increased from the current $33,361 to $37,500. This new amount will then be indexed in accordance with movement in the Consumer Price Index (CPI) on 1 July 2007 and each subsequent 1 July.

**Background**

An individual's annual rate of FTB is comprised of a Part A rate and a Part B rate. FTB Part A can be worked out using one of two methods. Method 1 is used where the individual's adjusted taxable income does not exceed the higher income free area or where either the individual or the individual’s partner is receiving certain income support payments. Method 2 is used where the individual's adjusted taxable income exceeds the higher income free area and neither the individual nor the individual's partner is receiving certain income support payments.

The rate calculation process for deriving a method 1 rate is set out in the method statement in clause 3 of Schedule 1 to the Family Assistance Act. There are various components of rate that make up an individual’s ‘maximum rate’. An income test is then applied to determine whether the individual’s maximum rate needs to be reduced because of income. The maintenance income test then applies to reduce the maximum rate further (if applicable) to the ‘base rate’.

The income test is set out in the method statement in clause 18 of Schedule 1 to the Family Assistance Act. An individual’s adjusted taxable income above the ‘income free area’ is used to work out the individual’s ‘income excess’. The income excess is then subject to a 20% taper to arrive at the individual’s ‘reduction for adjusted taxable income’, which, in turn, reduces the individual’s maximum rate.

Clause 19 of Schedule 1 defines an individual’s income free area. The income free area is indexed every 1 July in accordance with movements in the CPI. The relevant indexation provisions are table item 13 in each of clauses 2 and 3 of Schedule 4 to the Family Assistance Act.

From 1 July 2005, the income free area is $33,361. This is the amount a family can earn in 2005-06 before their FTB is reduced in accordance with the income test taper rules.
The amendments made by this Schedule increase the income free area to $37,500 from 1 July 2006. This is higher than the projected CPI-increased amount of $34,310 that would have replaced the current income free area from that date if these amendments had not been made. The new amount of $37,500 will then be subject to indexation in accordance with movements in the CPI on 1 July 2007 and each subsequent 1 July.

**Explanation of the changes**

**Item 1** replaces the existing amount of the income free area in clause 19 of Schedule 1 to the Family Assistance Act with the amount of $37,500. In accordance with subitem 3(1), this new amount is applicable in relation to FTB for the 2006-07 income year and later income years.

**Item 2** makes a technical amendment to the relevant indexation provision. In accordance with subitem 3(2), this change applies in relation to FTB for the 2007-08 income year (acknowledging that the new amount of the income free area is first indexed on 1 July 2007) and later income years.

**Item 4** is a transitional provision, ensuring that the income free area is not indexed on 1 July 2006 (because it is being replaced with a new and higher amount). Indexation will then occur on 1 July 2007 when the new amount of $37,500 will be indexed in accordance with movements in the CPI and each subsequent 1 July.
Schedule 2 – Indexing estimates of adjusted taxable income for family tax benefit and child care benefit purposes

Summary

The process of estimating income will be improved by the introduction of automatic updating of estimates from 1 July 2006. The Secretary will have the capacity to use default estimates to work out a customer’s fortnightly rate of FTB where the customer has not provided a reasonable estimate of income for the current income year. Similarly, in relation to customers who are conditionally eligible for child care benefit by fee reduction, the Secretary will be able to use default estimates to determine the customer’s CCB%, an income-based component of the child care benefit rate, used by an approved child care service to work out the customer’s rate of fee reduction. Importantly, customers will retain the capacity to provide a reasonable estimate of income that would apply instead of the default estimate.

Background

Most families choose to receive their family assistance on a fortnightly basis. For FTB, this means fortnightly instalments of FTB calculated on the basis of an estimate of adjusted taxable income (ATI) for the current income year. For CCB, it means an ongoing reduction in child care fees calculated by reference to, among other things, an estimate of ATI for the current income year.

An estimate of ATI can also be relevant in determining other forms of entitlement (for example, past period claims for FTB or claims for CCB in substitution because of the death of another individual). However, this measure potentially affects only those individuals who choose to receive FTB by instalments and those who receive CCB by fee reduction.

After the end of the entitlement year, estimated ATI is compared to actual ATI in a process known as income reconciliation. Families who have overestimated their income and have therefore not received their full entitlements are paid the shortfall. Where income has been underestimated and the customer overpaid, a debt may result if the extra reduction under the income test exceeds the extra entitlements included at reconciliation (for example, the FTB Part A supplement). The importance of accurate income estimates is evident.

The legislative framework supporting the use of income estimates is set out below. Different rules apply in relation to FTB and CCB.

For FTB

Section 20 of the Family Assistance Administration Act enables the Secretary (or delegate) to determine an individual’s rate of FTB on the basis of a reasonable estimate of ATI provided by the individual where the amount of the individual’s actual ATI is not available.
The use of a reasonable estimate of ATI of a claimant (which includes the ATI of the claimant’s partner, if any) would be required in determining all claims for FTB by instalment and in making subsequent variation decisions to take account, for example, of changes in the customer’s circumstances.

Customers entitled to payment of FTB by instalment are routinely encouraged to revise their estimate of ATI as their circumstances change. In particular, letters are sent to customers before the end of each income year, encouraging customers to provide a new estimate of ATI for the coming income year.

There are a number of variation provisions that support the income estimating process once there is a determination in force under which a customer is entitled to be paid FTB by instalment. Section 28A of the Family Assistance Administration Act enables the Secretary to reject a revised estimate provided by a customer if it is not reasonable and to suspend (by variation) payment of FTB by instalment until a reasonable estimate is provided or until actual ATI becomes known. Also of relevance is section 31A of the Family Assistance Administration Act, which allows the Secretary to vary an individual’s instalment determination prospectively using a revised estimate of ATI provided by the customer.

For CCB

Section 42 of the Family Assistance Act sets out the circumstances in which an individual is conditionally eligible for CCB by fee reduction for care provided by an approved child care service for a child. If the Secretary is satisfied that a claimant is conditionally eligible for CCB by fee reduction, then a determination must be made under section 50F of the Family Assistance Administration Act to this effect. If the Secretary makes such a determination, then section 50C also requires determinations to be made in respect of the weekly limit of hours applicable to the claimant and child under section 50H, the CCB% applicable to the claimant and child under section 50J and the schooling % applicable to the claimant and child under section 50K.

CCB% is an income-based component of the CCB rate used by an approved child care service providing care to the claimant’s child to calculate the claimant’s fee reduction rate. Under section 55 of the Family Assistance Administration Act, the CCB% applicable to a claimant and child can be determined on the basis of a reasonable estimate of ATI provided by the claimant where neither the claimant nor the claimant’s partner is receiving certain income support payments and actual ATI is not known. If a reasonable estimate of ATI is not provided, then the claimant’s CCB% is worked out using the minimum taxable income % (as calculated under clause 12 of Schedule 2 to the Family Assistance Act). The result is that the customer will have fee reductions at the level of the minimum CCB rate applicable to a claimant in their circumstances.
Section 57F of the Family Assistance Administration Act applies where there is a determination of conditional eligibility under section 50F and enables the Secretary to require a claimant to provide information as required in an approved data verification form. The consequences for failing to provide information in a data verification form are set out in Subdivision N of Division 4 of Part 3 of the Family Assistance Administration Act.

Of particular note is section 59D, which deals with the situation where a claimant provides an estimate of income as part of their response to the data verification form and the Secretary considers that the estimate is not reasonable. In this situation, the claimant’s determination of conditional eligibility is to be varied so that the claimant’s CCB% is worked out using the minimum taxable income % (as calculated under clause 12 of Schedule 2 to the Family Assistance Administration Act). The result is that the customer will have fee reductions at the level of the minimum CCB rate applicable to a claimant in their circumstances from the beginning of the next income year. The subsequent provision of a reasonable estimate by the claimant leads to an undoing of the earlier variation.

There are other variation provisions relating to a claimant’s CCB% that draw on the concept of an estimate of income in the context of payment of CCB by fee reduction. These provisions are briefly described below.

Section 60B applies where there is a determination of conditional eligibility and CCB% calculated using the minimum taxable income % as the claimant’s taxable income %. If the claimant provides the Secretary with a reasonable estimate of income on which the claimant’s CCB% can be based, then the claimant’s determination must be varied to reflect the new CCB% calculated by reference to the estimate.

Section 60E applies where there is a determination of conditional eligibility and CCB% and the claimant provides the Secretary with an unreasonable estimate of income (outside the data verification form process). Where this happens, the claimant’s determination of conditional eligibility is to be varied so that the claimant’s CCB% is worked out using the minimum taxable income % (as calculated under clause 12 of Schedule 2 to the Family Assistance Administration Act). The result is that the customer will have fee reductions at the level of the minimum CCB rate applicable to a claimant in their circumstances from the beginning of the following week.

Finally, section 65B applies where there is a determination of conditional eligibility and CCB% and the claimant provides the Secretary with a reasonable estimate of income that affects the claimant’s CCB%. In this situation, the Secretary is required to vary the claimant’s determination of CCB% so that it is calculated on the basis of the revised estimate.
The issue

Under the current rules, it is the customer who provides an estimate of ATI. It is also the customer who advises a revised estimate (whether on their own initiative or after prompting by Centrelink or as part of a more formal data verification process). There is currently no capacity for the Secretary to determine a reasonable estimate that can be used to work out an individual’s FTB or CCB entitlement as relevant or CCB%.

There remain customers with debts due to underestimating ATI. There are also many customers who simply do not revise their income estimates on a regular or even annual basis.

This measure seeks to address the issues that arise because of underestimation of income by allowing the Secretary to automatically adjust a customer’s estimate of ATI in prescribed circumstances and in accordance with set formulae. These new income estimate rules would apply where the customer has not provided a recent reasonable estimate of ATI. The intention remains that the provision of estimates of ATI should rest primarily with the customer.

In broad terms, the Secretary would have capacity to use a default estimate in calculating an individual’s rate of FTB in two situations.

- First, the Secretary would have the capacity to use a default estimate, from the beginning of each income year, that is calculated by reference to the estimate of ATI currently being used to calculate the rate, as increased in line with annual movements in the Average Weekly Earnings (AWE). The customer would be notified of the proposed default estimate before it is used and would have the opportunity to provide a reasonable estimate of ATI to be used to calculate rate instead of the default estimate.

- Second, where the customer is being paid FTB on the basis of the Secretary’s default estimate, once the customer’s (or partner’s) actual income for the most recent income year becomes known to the Secretary, the Secretary would have the option of applying an additional ATI uplift. This would generally occur when the ATO makes an assessment of taxable income for the relevant individual’s most recent tax return. At this time, a comparison would be done between the individual’s ATI for the most recent income year, as increased in line with the relevant annual movement in the AWE, and the default estimate currently being used to calculate the rate of FTB by instalment. If the adjusted ATI amount were higher than the existing default estimate, then the adjusted ATI amount would become the new default estimate used in calculating the customer’s rate of FTB by instalment. The customer would be advised of the pending change and given the opportunity to provide a reasonable estimate of ATI to be used in calculating the rate instead of the ‘default estimate’.
The Secretary would have a similar capacity to determine default estimates in calculating a customer’s CCB% where the customer is conditionally eligible for CCB by fee reduction.

**Explanation of the changes**

This Schedule amends the Family Assistance Administration Act.

**New definitions**

**Items 1 and 2** insert new definitions into subsection 3(1) of the Family Assistance Administration Act that support the new system of improved income estimating.

‘Indexed actual income’ is defined by reference to the amount calculated under new subsection 20B(2) for FTB and the amount calculated under new subsection 55AB(2) for CCB.

‘Indexed estimate’ is defined by reference to the amount calculated under new subsection 20A(2) for FTB and the amount calculated under new subsection 55AA(2) for CCB.

**Amendments relating to FTB**

Subsection 20(1) of the Family Assistance Administration Act provides authority for the use of a reasonable estimate of ATI provided by the claimant (customer) for the purposes of determining eligibility for, or rate of, FTB.

Subsection 20(1) is modified by **items 3 and 4** by the inclusion of a new paragraph (e). This modification enables a customer’s eligibility for, or rate of, FTB to be determined using a reasonable estimate of ATI provided by the customer where the reasonable estimate has not been superseded by an indexed estimate or indexed actual income in accordance with the rules set out in new sections 20A and 20B respectively. If an indexed estimate or indexed actual income is being used to determine eligibility or rate and the customer subsequently provides a reasonable estimate of income, then subsection 20(1), as amended, enables the customer-provided estimate to be used.

This is in keeping with the general proposition that it is the customer who should be responsible for providing a reasonable estimate of ATI that can then be used to determine eligibility for, or rate of, FTB by instalment.

A note at the end of **item 4** makes a consequential change to the heading of section 20.
**Item 5** inserts a new subsection 20(2A) into the Family Assistance Administration Act, which provides authority for the use of an indexed estimate or indexed actual income to determine a customer’s eligibility for, or rate of, FTB where the customer has been given notice that an indexed estimate or indexed actual income is applicable and the specified start date has arrived or passed and the customer has not, since being given the notice, provided a reasonable estimate of ATI that can be used instead of the indexed estimate or indexed actual income.

This new rule needs to be read together with new section 20C. An indexed estimate and indexed actual income are amounts calculated in relation to an individual — in the case of a couple, there will be an amount for each individual in the couple. Because eligibility for, or rate of, FTB by instalment can be dependent on the combined ATI of the members of a couple (as required by clause 3 of Schedule 3 to the Family Assistance Act), new section 20C clarifies that the determination of eligibility or rate may involve the use of a combination of indexed estimates and/or indexed actual income amounts where an estimate of ATI for both members of a couple is required (for example, to determine a customer’s rate of FTB Part A) or the lower of the applicable amounts (for the purposes of FTB Part B).

A note is therefore included at the end of new subsection 20(2A) that directs the reader to this new and related provision.

The rules defining the circumstances in which indexed estimates and indexed actual income can be used to determine an individual’s eligibility for, or rate of, FTB and how the relevant default estimates are calculated are set out in new sections 20A, 20B and 20C, as inserted by **item 6**.

**New section 20A and indexed estimates**

Under current administrative arrangements, in May and June of each year, customers are sent a letter by Centrelink, asking them to provide a new estimate of their ATI for the following income year. If the customer provides a reasonable estimate of ATI, this amount is used to determine the customer’s eligibility for, or rate of, FTB from the beginning of the following income year. If not, the status quo remains and payment continues on the basis of the existing estimate. The existing estimate can be several years old and outdated.

In broad terms, new section 20A sets out a series of rules that enable the Secretary to determine an indexed estimate for an individual (and their partner, if any) once each income year. In practice, and utilising current administrative practices, before the start of the relevant income year, the Secretary would give a customer written notice, specifying an indexed estimate for the customer (and partner where relevant) that would then be used to determine the customer’s eligibility for, or rate of, FTB from a specified date. The specified date would usually be 1 July (noting that the customer must be given at least 14 days’ notice of the new amount). The relevant notice provision is new subsection 20A(2).
Such a notice would generally be given to all customers who are entitled to be paid FTB by instalment and whose eligibility or rate is determined on the basis of an estimate of ATI, whether that estimate is a reasonable estimate provided by the customer, an indexed estimate or an indexed actual income. The relevant rule is in new subsection 20A(1).

A note at the end of new subsection 20A(1) refers the reader to new section 20C, which applies where the customer has a partner and clarifies that references to determining the customer’s eligibility for, or rate of, FTB on the basis of an indexed estimate or indexed actual income can include a combination of the two types of default estimate.

The idea is that estimates of ATI should be reviewed before the beginning of each income year. This will mean that either an indexed estimate for the customer and, if relevant, the customer’s partner, or a revised reasonable estimate as provided by the customer, will be used to determine eligibility for, or rate of, FTB at the start of each income year.

The rule in new subsection 20A(3) ensures that the estimate of ATI being used to determine a customer’s eligibility or rate of FTB can only be indexed once under new section 20A in a given income year. Where the customer has a partner and an estimate of the partner’s ATI is also relevant in determining the customer’s eligibility or rate, then the estimate of the partner’s ATI would also be indexed once under new section 20A in the relevant income year.

After being given a notice under the new arrangements, the customer would still have the option of providing a reasonable estimate of ATI for the relevant income year – if they do, the indexed estimate would not apply.

Situations will arise where the ATI for the most recent income year of a customer (and/or their partner) becomes known to the Secretary after an indexed estimate notice has been issued but before the start day specified in the notice. In this situation, it may be more appropriate to apply new section 20B to set an indexed actual income that would be used to determine the customer’s rate. New subsection 20A(4) covers off this possibility of overlapping notices by negating the effect of the indexed estimate notice in favour of the indexed actual income notice (which is based on actual ATI).

The indexed estimate to apply from the relevant 1 July would be calculated by increasing the relevant individual’s ‘current ATI number’ by movements in Average Weekly Earnings (AWE). The calculation process is set out in new subsection 20A(5), as supported by definitions in that provision and in new subsection 20A(6).

An indexed estimate for an individual would be calculated by multiplying the individual’s current ATI number by the indexation factor and rounding the result to the nearest dollar. The result can be nil – this would be the result where the current estimate of ATI for the individual is nil.
The concept of an individual’s ‘current ATI number’ is set out in new subsection 20A(6). Notably, where the customer has a partner, both customer and partner are treated separately for the purposes of this concept – each member of the couple is treated as an individual for whom an indexed estimate is calculated. At the end of the process, the two indexed estimates for the individuals in the couple are combined for the purposes of determining the customer’s rate of FTB Part A (in the same way as ATI for a customer who has a partner includes the ATI of the partner) and the lower indexed estimate is used for the purposes of FTB Part B.

That said, an individual’s current ATI number will usually be the current estimate of the individual’s ATI that is being used to determine eligibility for, or rate of, FTB. It can be an estimate provided by the customer (for the customer and/or partner as relevant) an indexed estimate or indexed actual ATI amount for a relevant individual. This is the amount that the Secretary is permitted to use under section 20 of the Family Assistance Administration Act (as amended by this Schedule). However, because a current ATI number is an amount for an individual, the effect for couples set out in new section 20C and clause 3 of Schedule 3 to the Family Assistance Act is not appropriate and therefore disregarded.

The exception is where, at the time the indexed estimate is calculated, a notice setting an indexed actual income for the individual has been given but the start date has not yet arrived or passed. While new subsection 20A(4) negates the effect of the indexed actual income notice, the amount in that notice remains relevant in calculating the indexed estimate for the individual.

The indexation factor is the greater of one and the factor worked out by dividing the AWE for the reference period in the most recent November by the AWE for the reference period in the highest previous November, rounded as specified.

For the purposes of this formula:

- ‘AWE’ means the amount published by the Australian Statistician in the document titled ‘Average Weekly Earnings’ under the headings ‘Average Weekly Earnings, Australia – Original – Persons – All employees total earnings’;

- ‘highest previous November’ means the November before the most recent November with the highest AWE, but not earlier than November 2004;

- ‘most recent November’ means the November of the income year before the year in which the start day for the indexed estimate occurs; and

- ‘reference period’, in relation to a particular November, means the last pay period ending on or before the third Friday of that November.
A notice under subsection 20A(2) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. New subsection 20A(7) makes this clear.

The customer would continue to have the option of providing a reasonable estimate of ATI under section 20 of the Family Assistance Administration Act that would then be used (instead of an indexed estimate) in determining the customer’s eligibility for, or rate of, FTB in accordance with the date of effect rules in section 31A of the Family Assistance Administration Act. This means that, if a customer’s rate of FTB is being calculated on the basis of an indexed estimate and the customer subsequently gives the Secretary a reasonable estimate of ATI, the rate can again be worked out on the basis of the reasonable estimate of ATI provided by the customer.

**New section 20B and indexed actual incomes**

New section 20B enables the Secretary to apply an indexed actual income for an individual in determining a claimant’s eligibility for, or rate of, FTB by instalment in circumstances where:

- the individual is the claimant or the claimant’s partner; and
- the claimant has not provided a reasonable estimate of ATI since last being given a notice stating an indexed estimate or indexed actual income for the individual; and
- the actual ATI of the individual becomes known to the Secretary and it is the most recent income year for which the individual’s ATI is known.

These conditions are set out in new subsection 20B(1).

A note at the end of this provision cross-references the rule in new section 20C.

An individual’s ATI will generally become known to the Secretary after the relevant tax returns are lodged and the Commissioner of Taxation makes an assessment of taxable income of the individual for the relevant income year. This can happen several times in the one income year where, for example, tax returns for multiple income years for an individual are lodged at the same time. This means that the conditions set out above can also apply more than once for an individual in the same income year.
Where the conditions in new subsection 20B(1) are satisfied and provided the indexed actual income for the individual is greater than the individual’s current ATI number, the Secretary can give the customer a notice under new subsection 20B(2) stating the indexed actual income amount for the individual (which can be the customer or partner) that will be used from a specified date to determine the customer’s eligibility for, or rate of, FTB by instalment. The specified date must be at least 14 days after the day on which the notice is given.

New subsection 20B(3) deals with overlapping notices and establishes rules to ensure that the appropriate estimate prevails.

Where a notice is issued under new subsection 20B(2) in relation to an individual and there has already been a notice issued under new subsection 20A(2) in relation to the same individual but the start date has not arrived or passed, then the notice under new subsection 20B(2) prevails. Where a notice is issued under new subsection 20B(2) in relation to an individual and there has already been a notice issued under the same provision in relation to the same individual but the start date has not arrived or passed, then the second notice prevails. This ensures that, in the absence of a reasonable estimate of ATI provided by the customer, the latest information available regarding the customer’s ATI is used to calculate the rate.

The process of calculating an indexed actual income amount is set out in new subsection 20B(4). It involves multiplying the ATI of the individual that becomes known by an indexation factor worked out as specified. The method for working out the indexation factor and rounding rules are the same as those set out in subsection 20A(5) and are described above in that context.

The concept of a ‘current ATI number’ for an individual is described in new subsection 20B(5).

Where the customer is not partnered, the customer’s current ATI number will be the indexed estimate or indexed actual income that is currently being used to determine the customer’s eligibility for, or rate of, FTB. This is the amount that the Secretary is permitted to use under section 20 of the Family Assistance Administration Act (as amended by this Schedule). If the customer has been issued with a notice under new subsection 20A(2) or 20B(2) with a start date that has not yet arrived, the current ATI number will be the amount specified in the notice.
Where the customer has a partner, both customer and partner are treated separately for the purposes of this concept – each member of the couple is treated as an individual for whom an indexed actual income amount can be calculated as appropriate. It follows that the current ATI amount is the current indexed estimate or indexed actual income for the relevant individual (customer or partner). This is the amount that the Secretary is permitted to use under section 20 of the Family Assistance Administration Act (as amended by this Schedule). However, because a current ATI number is an amount for an individual, the effect for couples set out in new section 20C and in clause 3 of Schedule 3 to the Family Assistance Act is not appropriate and therefore disregarded. If there has been a notice issued under new subsection 20A(2) or 20B(2) in relation to the individual (customer or partner) with a start date that has not yet arrived, the current ATI amount will be the amount specified in the notice.

Importantly, there is no capacity in new section 20B to apply a default estimate where eligibility or rate is being determined on the basis of a reasonable estimate of ATI provided by the customer when actual ATI become known.

A notice under subsection 20B(2) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. New subsection 20B(6) makes this clear.

The customer would continue to have the option of providing a reasonable estimate of ATI under section 20 of the Family Assistance Administration Act that would then be used (instead of an indexed actual income) in determining the customer’s eligibility for, or rate of, FTB in accordance with the date of effect rules in section 31A of the Family Assistance Administration Act. This means that, if a customer’s rate of FTB is being calculated on the basis of an indexed actual income and the customer subsequently gives the Secretary a reasonable estimate of ATI, the rate can again be worked out on the basis of the reasonable estimate of ATI provided by the customer.

**New section 20C**

Where a customer is a member of a couple, it can be the ATI of both customer and partner that is relevant in determining the customer’s eligibility for, and rate of, FTB. However, the FTB Part B income test is based on the lower of the customer’s ATI or partner’s ATI. The relevant rules are in clause 3 of Schedule 3 to the Family Assistance Act. The process of income estimating under section 20 of the Family Assistance Administration Act therefore involves the provision of an estimate of ATI for the customer and an estimate of ATI for the partner, which are combined for the purposes of FTB Part A and treated separately for the purposes of FTB Part B.
The new rules relating to indexed estimates and indexed actual incomes (in new sections 20A and 20B respectively) enable a new default estimate of ATI to be applied for an individual in accordance with the relevant rules, which can then be used for the purposes of eligibility and rate under authority of section 20 of the Family Assistance Administration Act (as amended by this Schedule). New section 20C applies to members of a couple and ensures that the estimate of ATI used for the purposes of FTB Part A can include a combination of the most recent indexed estimates and/or indexed actual income amounts as appropriate and that the appropriate lower amount is used for the purposes of FTB Part B.

New section 20C does not cover reasonable estimates provided by the customer. This is because a customer who is partnered is required to provide a reasonable estimate for both the customer and partner for the purposes of section 20 of the Family Assistance Administration Act. Where this happens, eligibility for, or rate of, FTB can be determined in accordance with the existing rules. The ‘default’ estimates of ATI determined under new sections 20A and 20B cease to apply if a customer provides a reasonable estimate of ATI (although it is open to the Secretary to apply section 20A at the beginning of the next income year to increase existing estimate/s).

Item 7 amends section 28A of the Family Assistance Administration Act. Section 28A applies where an FTB instalment customer provides the Secretary with an estimate of ATI that is considered by the Secretary to be unreasonable. Where this happens, the Secretary must vary the customer’s entitlement determination with the effect that the customer is not entitled to be paid FTB by instalment from the beginning of the next instalment period.

With the introduction of a new system of income estimates, there will be an alternative to sole reliance on a customer-provided estimate. This means that the significance of the customer not providing an estimate of income that is reasonable becomes less significant. This is reflected in the amendment made by item 7, which makes the application of section 28A discretionary rather than mandatory.

Items 8 and 9 make consequential amendments to section 31A of the Family Assistance Administration Act.

Section 31A applies where an individual provides the Secretary with a revised estimate of ATI because of the occurrence of an event (there are specified exceptions), the revised estimate is considered reasonable and it would have an effect on the individual’s rate of payment. In this situation, the Secretary is required to vary the individual’s entitlement determination to reflect the revised estimate. Subsection 31A(2) sets out the date of effect of the variation decision.
Item 8 amends this provision to take account of the possibility of an individual’s rate of FTB being worked out using a reasonable estimate provided by the customer, or an indexed estimate or an indexed actual income (or a combination of default estimates where the individual is a member of a couple).

Item 9 inserts a note at the end of subsection 31A(1), which relevantly cross-references new section 20C.

Item 10 inserts new sections 31C and 31D into the Family Assistance Administration Act. In broad terms, these provisions enable the Secretary to vary a determination under which a customer is entitled to be paid FTB by instalment so their rate of FTB is worked out using the applicable indexed estimate or indexed actual income. Such a variation could only be made if applying the new indexed estimate or indexed actual income would result in a change in the customer’s rate of FTB (consistent with existing section 31A).

New section 31C enables the variation of an instalment determination to reflect an indexed estimate stated in a notice issued under subsection 20A(2). The variation would generally have effect from the start day specified in the notice or, if the variation is made after the start day, from the later of the start day and the first day in the instalment period in which the variation is made.

New section 31D enables the variation of an instalment determination to reflect an indexed actual income stated in a notice issued under subsection 20B(2). The variation would generally have effect from the start day specified in the notice or, if the variation is made after the start day, from the later of the start day and the first day in the instalment period in which the variation is made.

Notes are also inserted at the end of new subsections 31C(1) and 31D(1) to refer the reader to new section 20C, acknowledging that rate can be calculated on the basis of a combination of indexed estimate and indexed actual income where the customer is a member of a couple.

Example

The following example illustrates how the new system of estimating income would work in the given scenario.

Sarah is being paid FTB by instalment. It is November 2006 and Sarah’s FTB is being calculated on the basis of an indexed estimate for the 2006-07 income year of $15,000 for Sarah and $30,000 for her partner Tom. Sarah’s Part A rate is worked out on the basis of an estimate of ATI of $45,000. Sarah’s Part B rate is worked out on the basis of an estimate of $15,000.

Centrelink gets information from the ATO that Sarah’s taxable income for 2005-06 is $25,000. The ATI of $25,000 is the previous year’s ATI and therefore the most recent income year’s ATI known to the Secretary.
Sarah’s ATI is increased by the relevant movement in AWE (from November 2004 to November 2005). The AWE indexation factor will not be known until AWE in November 2005 is published at the end of February 2006. For the purpose of this example, it is assumed that the annual AWE growth at November 2005 is 4.3%, and therefore the AWE indexation factor for 2006-07 is 1.043. Therefore, Sarah’s ATI is increased to $26,075, which is higher than her indexed estimate of ATI of $15,000.

The conditions for the application of new section 20B for Sarah are therefore satisfied and, if Sarah does not provide an alternative reasonable estimate of ATI for the 2006-07 income year, her indexed actual income will be $26,075 from a specified start day. An indexed estimate of $30,000 will continue to apply for Tom. From the relevant date, Sarah’s Part A rate will be determined on the basis of ATI of $56,075 ($26,075 for Sarah and $30,000 for Tom) and Sarah’s Part B rate will be determined on the basis of ATI of $26,075 (which means that she will probably be precluded from eligibility for Part B due to income).

If the ATO subsequently advises Centrelink of Tom’s taxable income for 2005-06, then section 20B could potentially apply in that same income year to set an indexed actual income for Tom and to adjust Sarah’s Part A rate and, if appropriate, her Part B rate accordingly.

In May 2007, Sarah is being paid FTB Part A on the basis of an estimate of ATI of $56,075, which comprises an indexed actual income of $26,075 for Sarah and an indexed estimate of $30,000 for Tom. Sarah has a determination in force under which she is entitled to be paid FTB by instalment and her rate is being determined on the basis of a mix of indexed estimate for her partner Tom and indexed actual income for herself. Assuming a start day in 2007-08 (that is, 1 July 2007), the conditions for issuing a notice under new subsection 20A(2) are satisfied.

The existing default estimates of ATI for Sarah and Tom are increased by the relevant movement in AWE (from November 2005 to November 2006). The AWE indexation factor will not be known until AWE in November 2006 is published at the end of February 2007. For the purpose of this example, it is assumed that the annual AWE growth at November 2006 is 4.0%, and therefore the AWE indexation factor for 2007-08 is 1.040. Therefore, Sarah’s estimate is increased by the indexation factor to $27,118, and Tom’s estimate is increased to $31,200. In May 2007, a notice under new subsection 20A(2) is issued to Sarah, stating the proposed new indexed estimates for 2007-08 with a start day of 1 July 2007.

If Sarah does not provide an alternative reasonable estimate of ATI for herself and Tom for the 2007-08 income year before 1 July 2007, her indexed estimate will be $27,118, and Tom’s indexed estimate will be $31,200, from 1 July 2007. From that day, Sarah’s Part A rate will be determined on the basis of ATI of $58,318 ($27,118 for Sarah and $31,200 for Tom) and Sarah’s Part B rate will be determined on the basis of ATI of $27,118 (which means that she will probably be precluded from eligibility for Part B due to income).
For CCB

For CCB, section 55 of the Family Assistance Administration Act enables the Secretary to determine the CCB% applicable to a claimant and child on the basis of a reasonable estimate of ATI provided by the claimant. A claimant’s CCB% is relevant in calculating the claimant’s fee reduction/CCB rate.

The concept of ATI for CCB purposes is the same as for FTB (see Schedule 3 to the Family Assistance Act).

Section 55 for CCB is the equivalent of section 20 for FTB insofar as both provisions facilitate the calculation of rate on the basis of an estimate of ATI provided by the claimant. **Items 11, 12 and 13** amend section 55 in the same way for CCB as section 20 is amended for FTB by **items 3, 4 and 5**.

**Item 14** inserts new sections 55AA, 55AB and 55AC into the Family Assistance Administration Act. These new provisions outline the circumstances in which an indexed estimate and indexed actual income can be calculated for an individual, the calculation process and, because the provisions apply to set a new estimate of ATI for an individual, how the new provisions apply in relation to individual who is a member of a couple. These new provisions are the CCB equivalents of new sections 20A, 20B and 20C of the Family Assistance Administration Act (as described above in the context of the amendments made by **item 6**).

Section 60E of the Family Assistance Administration Act applies where a claimant gives the Secretary an unreasonable estimate of ATI (other than in response to a data verification form) and requires the Secretary to vary the determination that the claimant is conditionally eligible for CCB by fee reduction with the effect that CCB% is calculated using the minimum taxable %. The result is fee reductions at the minimum CCB rate applicable to the claimant.

Consistent with amendments made to section 28A by **item 7**, the application of section 60E is made discretionary by **item 15**.

Section 65B of the Family Assistance Administration Act applies where determinations of conditional eligibility and CCB% are in force, the individual provides the Secretary with a revised estimate of ATI that is attributable to the occurrence of an event (other than specified exceptions), the revised estimate is considered reasonable and it would require a new CCB%. In this situation, the Secretary is required to vary the determination of CCB% on the basis of the revised estimate. Subsection 65B(2) sets out the date of effect of the variation decision.

Section 65B is the CCB equivalent of section 31A of the Family Assistance Administration Act. **Items 16 and 17** amend section 65B for CCB in the same way that section 31A is amended for FTB (as described above in the context of the amendments made by **items 8 and 9**).
**Item 18** inserts new sections 65BA and 65BB into the Family Assistance Administration Act. These new provisions enable the Secretary to vary the relevant determination of CCB% to reflect an indexed estimate or indexed actual income relevant in working out the claimant’s CCB%. These new provisions are the CCB equivalent of sections 31C and 31D (new variation provisions for FTB inserted by **item 10**). The difference is in the date of effect of the variation. For CCB, the variation would have effect from the start day specified in the relevant notice or if the variation is made after the start day, from the Monday after the variation is made.

A notice of the variation is then required to be given to the customer and the relevant child care service in accordance with existing section 65E of the Family Assistance Administration Act.

Section 219A of the Family Assistance Administration Act sets out approved child care services’ obligations to act on various notices prescribed under that Act (including a notice given under section 65E). Compliance with those obligations is a condition of continued approval of an approved child care service. Sanctions under section 200 may apply for failure to comply with any obligation (for example, suspension or cancellation of a service’s approval for the purposes of the family assistance law). A criminal penalty applies if services fail to comply with these obligations.

**Item 19** makes a consequential amendment to section 219A (table item 8) to include a reference to new sections 65BA and 65BB. This imposes additional obligations on a service to act in accordance with the variations that will be made due to the application of indexed estimates.

**Item 20** provides for the application of the amendments made by this Schedule. The amendments apply in relation to FTB and CCB for the 2006-2007 income year and later income years.
Schedule 3 – Returns to paid work

Summary

A minor technical amendment is made to the definition of ‘returns to paid work’ in section 3B of the Family Assistance Act. The amendment modifies the way in which the FTB Part B income test operates in certain circumstances where a customer returns to work after the birth of a child.

Background

FTB Part B is intended to assist families with one main income. In the case of couples, Part B is calculated on the basis of the secondary (or lower) income earner’s adjusted taxable income. Part 4 of Schedule 1 to the Family Assistance Act sets out the rate calculation process for FTB Part B, including the income testing arrangements.

From 1 July 2005, amendments were made to modify the way in which the FTB Part B income testing arrangements operate where the secondary earner in a couple commences, or returns to, paid work for the first time after the birth of a child. Instead of applying the usual annual income test to the secondary earner’s income for the particular income year (which can result in a debt on reconciliation), the new legislation enables the secondary earner to receive the maximum rate of FTB Part B for the period in the particular income year that the secondary income earner was not working or receiving passive employment income (for example, paid leave).

Clause 29A of Schedule 1 to the Family Assistance Act sets out the conditions that need to be satisfied for an individual to be paid the maximum rate of FTB Part B in respect of a particular day under the new calculation method for Part B. One of these conditions is that the secondary income earner returns to paid work for the first time since the child became an FTB child of the secondary earner (subclause 29A(4) refers).

The period in respect of which the new calculation method applies commences on a day worked out under clause 29C of Schedule 1 to the Family Assistance Act and ends immediately before the day the secondary income earner returns to paid work.

The concept of ‘returns to paid work’ is defined in subsection 3(1) by reference to section 3B of the Family Assistance Act. One of the preconditions for an individual to be regarded as returning to paid work in a particular income year is that the individual is ‘neither engaging in paid work, nor receiving passive employment income’ (subsections 3B(2) and (3) refer). The definition of passive employment income in subsection 3(1) of the Family Assistance Act includes paid leave.
An unintended consequence arises where:

- an individual stops work for the birth of a child;
- the individual receives paid leave for the whole period while off work caring for the child;
- the individual resumes work;
- subsequently, the individual stops work for a second time (for example, for holidays, etc), and has a period of unpaid leave while off work;
- the individual resumes work.

In this example, the individual’s period of paid leave is a period of receipt of passive employment income – resumption of paid work at the end of that period of leave would therefore not come within the definition of ‘returns to paid work’ in section 3B of the Family Assistance Act. It is the second episode of stopping and resuming work that would be the first time that the individual returns to paid work after the birth of the child (thereby satisfying the requirement in subclause 29A(4) of Schedule 1). Assuming that all other relevant conditions are also met, the individual would be able to access the maximum rate of FTB Part B for each day in the period beginning when the individual stopped work on the second occasion and ending when the secondary earner returned to paid work (by operation of clause 29C).

This is not the intended outcome. The policy intention is that the second episode of stopping and resuming work should not be regarded as returning to paid work for the first time since the birth of the child. Instead, the resumption of paid work after the first period of paid leave in the above example should count as the individual’s first return to paid work after the birth of the child. The result would be that the new rate calculation method in clause 29A would not apply. This result would be achieved if the definition of ‘returns to paid work’ did not mention passive employment income.

**Explanation of the changes**

The concept of ‘returns to paid work’ is defined in subsection 3(1) by reference to section 3B of the Family Assistance Act. One of the preconditions for an individual to be regarded as returning to paid work in a particular income year is that the individual is ‘neither engaging in paid work, nor receiving passive employment income’ (subsections 3B(2) and (3) refer). The amendments made by **items 1 and 2** have the effect of removing from these provisions the references to receiving passive employment income.
These amendments are taken to have commenced on 1 July 2005 and apply in relation to the 2005-2006 income year and later income years (Item 3 refers). This is consistent with the commencement and application dates for the recent changes to the FTB Part B income test referred to above and made by Schedule 1 to the *Family and Community Services Legislation Amendment (Family Assistance and Related Measures) Act 2005*.

While these changes are technically retrospective, the practical benefit of the FTB Part B quarantining measure (incorporating the amendments made by this Schedule) first applies to families from July 2006 for the 2005-06 year. This is because the measure is applied after the end of the relevant income year when the FTB reconciliation conditions are satisfied and not during the financial year.
Schedule 4 – Recovery of child care benefit debts

Summary

From 1 July 2006, the methods of recovery of CCB debts owed to the Commonwealth by customers will be more closely aligned with the methods currently available in relation to recovery of FTB debts. In particular, a customer’s CCB debt will be recoverable by the application of the customer’s, or a consenting person’s, income tax refund.

Background

As part of the 2005-06 Budget, the Government announced that tax refunds would be used to offset previous year FTB and CCB debts.

While the Family Assistance Administration Act allows for the recovery of a customer’s FTB debt via the application of an income tax refund owed to the customer or to a consenting person, the Act precludes the use of this method to recover a customer’s CCB debt.

An amendment made by this Schedule enables the recovery of a CCB debt incurred by a customer through the application of the customer’s, or a consenting person’s, income tax refund.

Explanation of the changes

Item 1 amends subsection 82(1) of the Family Assistance Administration Act.

Subsection 82(1) lists in paragraphs (a) to (i) the methods of recovery of a family assistance debt owed by a person, including a CCB debt. These debt recovery methods do not apply to a debt owed by an approved child care service.

Of all those methods, the methods referred to in paragraphs (f) and (g) do not apply to the recovery of CCB debts.

Paragraph (f) specifies the application of an income tax refund owed to the person who has a family assistance debt. Paragraph (g) specifies the application of another person’s income tax refund if section 93 applies to that other person, that is, if that person consents to his or her income tax refund being applied to reduce a customer’s family assistance debt.

The last sentence of subsection 82(1) precludes the application of the methods in both paragraphs (f) and (g) in relation to recovery of a debt owed in relation to CCB. Item 1 omits that sentence, thereby making all the recovery methods specified in subsection 82(1), including those in paragraphs (f) and (g), applicable to CCB debts owed by a person other than an approved child care service.
Item 2 provides for the application of the amendment made by item 1. As a result of this provision, a CCB debt of a customer determined on or after 1 July 2006 will be recoverable by the application of the customer’s income tax refund, or a consenting person’s income tax refund, determined on or after 1 July 2007. For the purposes of the application of this amendment, it is not relevant in respect of which period the debt arises and to which income year the refund relates.
Schedule 5 – Reducing allocation of child care places

**Summary**

Amendments commencing from Royal Assent will improve the distribution of available child care places by enabling the transfer of places from an area with lower demand to an area where the places are needed. The amendments will provide the Secretary with a discretionary power to reduce the number of child care places allocated to an approved child care service if the number of places provided by that service is lower than the number of allocated places. To monitor the level of utilisation of allocated places, the Secretary will also have discretion to require a service to provide periodic information required to determine any reduction in the number of allocated places.

**Background**

Parents using child care provided by child care services approved for the purposes of the family assistance law under Part 8 of the Family Assistance Administration Act may be eligible for CCB. Some kinds of child care services (family day care services, in-home care services, occasional care services and outside school hours services) cannot be approved unless the Secretary allocates child care places to a service. Once the places are allocated, it is a condition of continued approval of the service that the service does not offer places in excess of the allocated number. Sanctions (including the reduction of places or cancellation of approval) may apply for non-compliance with this condition. Depending on the demand for the places allocated to a particular service, the service may, at any time, have all the allocated places occupied or not. There is no legislative requirement that the services use all the allocated places.

As a result of various factors (changing demographics, changing employment opportunities, etc), demand for care in particular areas (or by particular services) is higher than in other areas (or by other services). Therefore, some services do not use all their allocated places (some of the allocated places are constantly vacant) while other services face an unmet demand.

There is no express power in the Family Assistance Administration Act to reduce an allocation of child care places in circumstances where places allocated to an approved child care service are not in use. Some services that have unused places voluntarily relinquish those places. However, a considerable number of unused places are still locked into areas where there is no demand. The amendments made in this Schedule will give the Secretary the power to reclaim unused places, regardless of whether the service concerned consents to the reduction of its allocation.
Explanation of the changes

Item 1 is described in the context of the amendment to which it relates made by item 5, and item 2 is described in the context of the amendment to which it relates made by item 4.

Section 207 of the Family Assistance Administration Act provides for the allocation of child care places to an approved child care service by the Secretary. In making the decision relating to the initial or additional allocation, the Secretary must follow guidelines determined for that purpose by the Minister under section 206 of that Act. The determination is a legislative instrument. The relevant instrument is the Child Care Benefit (Allocation of Child Care Places) Determination 2000 (the Allocation Determination).

Section 206 specifies the matters that are the subject of the Minister’s guidelines. Item 3 amends section 206 to enable the Minister to make guidelines relevant to the reduction of the number of places allocated to an approved child care service. Specifically, the Minister will be able to determine guidelines about procedures relating to the reduction under new section 207A (new paragraph 206(e) refers), matters to be taken into account in working out the number of child care places by which the allocated number of places may be reduced (new paragraph 206(f) refers) and any other matters to be taken into account when reducing, or when deciding whether to reduce, child care places (new paragraph 206(g) refers).

Reduction of allocation of child care places by unused places

Item 4 inserts new sections 207A and 207B relating to the reduction of allocated child care places.

New section 207A provides for the reduction of a service’s existing allocation of child care places, which may occur in two situations.

New paragraph 207A(1)(a) gives the Secretary power to reduce the number of child care places allocated to an approved child care service by the number that exceeds the number of places provided by the service (the excess). The existence of the excess provides the trigger for reduction.

New paragraph 207A(1)(b) gives the Secretary power to reduce the number of child care places allocated to an approved child care service by the number that exceeds the number of child care places the service can lawfully provide under a State or Territory licence.

New subsection 207A(1) precludes reduction that would be greater than the excess.
The reduction power is a discretionary one, to allow flexibility as to whether to make a reduction (it may not always be practicable, or appropriate, to make a reduction). The reduction is to occur in accordance with the relevant guidelines determined for this purpose under section 206 (as amended by item 3). It is intended that the ministerial determination under section 206 will provide guidelines for working out the number of places a service provides, for the purpose of determining the excess that may be subject to reduction. As an indication, a place allocated to a service may not be seen as provided by the service if the place has been continually vacant for 6 months.

New subsection 207A(2) provides safeguards against the reduction of places used by a service at the time of the reduction decision or against the reduction of places the use of which may be imminent. This subsection requires the Secretary to give a service, before a reduction decision is made, a notice of intention to make a reduction of the service’s allocation. The notice must specify the number of places proposed to be reduced and invite the service to make a written submission about the proposed reduction.

The requirement to give a notice of the intention to reduce a service’s places does not apply if the service informed the Secretary in writing that the number of places allocated to the service may be reduced; that is, if the reduction is triggered by a service that volunteers to give back all or some of its excess places. New subsection 207A(3) provides that, in such a case, the Secretary will have the power to decide whether to give a notice under new subsection (2) to the service. As it is the service that advised the Secretary that some of its places are unused and that its allocation may be reduced, there will be normally no need to give the service a notice under subsection (2) before reducing the service’s allocation by the number of places specified by the service (or by a fewer number of places). However, the Secretary may decide to give a notice under new subsection (2) if, for example, it is not clear how many places the service volunteers to give back or whether the information provided by the service is still current at the time the reduction decision is to be made.

It is intended that the guidelines under section 206 will set out a time limit for the service’s submission and lay down the rules relating to the making of the reduction decision. The information provided to a service in a notice of the proposed reduction must be consistent with the guidelines (new paragraph 207A(2)(d) refers).

The submission allows the service potentially affected by the reduction to put forward reasons for retaining all of the excess places or some of those places. For example, the service may be able to demonstrate the current usage of the places (the places having started to be used again) or to provide sufficient evidence of an imminent use of the places. New subsection 207A(3) requires the Secretary to have regard to any submission made by the service in deciding whether to make the reduction.
If the Secretary makes a reduction decision under new section 207A, the Secretary must, as required by new subsection 207A(4), give the affected service a notice of the reduction. The notice must specify the number of places reduced, the number of places allocated (after reduction) and the day from which the reduction takes effect. The day of effect of the reduction cannot be earlier than the day on which the notice is given.

Item 2 amends subsection 144(1), which specifies decisions that are reviewable by the Administration Appeals Tribunal (AAT). This item inserts new paragraph 144(1)(ia) to make the allocation reduction decision (a decision under new section 207A) reviewable by the AAT.

Effect of reduction in allocation of child care places

New section 207B clarifies the effect a reduction has on the allocation of places held by a service. New subsection 207B(1) states the purpose of this section and notes that a reduction of places may occur either under section 200 (as a sanction for a service’s non-compliance with conditions of continued approval of the service as an approved child care service) or under new section 207 (reduction by excess places). New subsection 207B(2) clarifies that, from the date the reduction of places takes effect, Division 1 of Part 8 of the Family Assistance Administration Act (dealing with approval of child care services) has effect as if the number of places by which the allocation is reduced had not been allocated to the service.

A note to new subsection 207B(2) points out that reduction of places affects the operation of paragraph 197(b) of that Act. Specifically, after the reduction, the requirement of paragraph 197(b), that a service does not exceed the number of allocated places, is to be interpreted as a requirement not to exceed the number of places left after the reduction as the service’s allocation.

The note also mentions that the effect of the reductions may affect the making of allocations to other child care services. This is because the places that are reduced become available for initial or additional allocation to other services.

Obligation to provide information to the Secretary about the number of child care places

Item 5 inserts new section 219NA into Part 8A of the Family Assistance Administration Act.
Part 8A of the Family Assistance Administration Act includes various obligations of approved child care services, for example, the obligation to provide reports to the Secretary on matters relevant to the CCB entitlement of the parents whose children are or were in the services’ care (section 219N refers). As a result of the operation of subsection 196(2), compliance with these obligations is a condition for continued approval of an approved child care service. Sanctions under section 200 may apply for failure to comply with any obligation (for example, suspension or cancellation of the service’s approval for the purposes of the family assistance law).

New section 219NA provides the Secretary with a discretionary power to require an approved child care service to provide information the Secretary needs in order to make a decision under new section 207A whether to reduce the service’s allocation, and imposes an additional obligation on an approved child care service, to provide the information as required. The obligation included in this new section will strengthen the overall effectiveness of reduction of allocation decisions.

The requirement in question must be made by a written notice to the service (new subsection 219NA(1) refers).

The notice must specify the information that the Secretary requires, indicate the period or series of periods in respect of which the information is needed and when the information is to be provided (new subsection 219NA(2) refers).

The notice may specify the form and manner in which the information is to be provided and the length of time for which the service is under the obligation to comply with the requirement to provide the information (new subsection 219NA(3) refers).

If the notice does not specify the length of time for which the service is under the obligation to comply with the requirement to provide the information, the notification obligation continues until the Secretary notifies the service, under new subsection 219NA(5), of the termination of the notification obligation.

If notice of the notification requirement is given to a service, new subsection 219NA(4) imposes the obligation that the service provide the required information to the Secretary in relation to the period or periods specified, at the time specified and, if the form and manner are specified in the notice, in that form and manner.

The service that was given a notice under new subsection 219NA(1) cannot apply for review of the Secretary’s decision relating to the notice by the Social Security Appeals Tribunal (SSAT) or the AAT. Item 1 amends subsection 111(2), dealing with applications for review by the SSAT to achieve this effect.
Application and saving

Subitem 6(1) is an application provision. It provides that amendments made by this Schedule apply to reduction of places allocated before, on or after the commencement of the amendments made by this Schedule.

Subitem 6(2) is a saving provision consequential on the amendment made by item 3 to section 206 of the Family Assistance Administration Act (item 3 expands the range of matters in respect of which the Minister may make guidelines to include matters relevant to the reduction of allocation of child care places). This subitem ensures that the amendment to section 206 affecting the power to make the guidelines does not affect the validity of the guidelines that were already in force under that section at the time the amendments made by this Schedule commenced.

Effect of earlier voluntary relinquishment of places

Item 7 is relevant to child care places voluntarily relinquished by approved child care services before the commencement of the amendments made by this Schedule under an agreement acknowledged in writing by an officer (‘officer’ is defined in subsection 23(1) of the Family Assistance Administration Act as including an officer of the Department). This item provides that, from the commencement of this Schedule, Division 1 of Part 8 of the Family Assistance Administration Act (dealing with approval of child care services) has effect as if the places the service agreed to relinquish had not been allocated to the service.
Schedule 6 – Carer allowance backdating provisions

Summary

From 1 July 2006, the backdating provisions for carer allowance (CA) will be standardised to allow for a maximum backdating period of 12 weeks prior to the claim lodgment date by carers of both children and adults.

Background

In broad terms, CA is a supplementary payment available to people who provide daily care and attention, in a private home, to an adult or child with a disability or a severe medical condition. Under the current rules, payment of CA can be backdated in prescribed circumstances. CA for carers of a child with a disability and who is under 16 years of age can be backdated for up to 52 weeks. CA for carers of an adult with a disability can be backdated for up to 26 weeks where the disability affecting the adult is due to an acute onset.

The backdating rules for payment of CA for carers of a child with a disability are in clause 16 of Schedule 2 to the Social Security Administration Act. The backdating rules for payment of CA for carers of an adult with a disability are in clause 17 of Schedule 2 to the Social Security Administration Act.

This Schedule standardises the backdating provisions that apply to CA, and allows for a maximum backdating period of 12 weeks prior to the claim lodgment date by carers of both children and adults with a disability, regardless of the care receiver’s age. For adults, however, backdating is only applicable if the disability is due to an acute onset.

Current assessment methods are based on functional ability or care needs. As a result, qualification can generally be established quickly, which removes the need for long backdating periods.

Explanation of the changes

Item 1 amends clause 16 of Schedule 2 to the Social Security Administration Act (backdating rules for carers of a child with a disability). All references to the possible maximum backdating period of ‘52 weeks’ are replaced by references to a new standard maximum backdating period of ‘12 weeks’.

Item 2 makes similar amendments to clause 17 of Schedule 2 to the Social Security Administration Act (backdating rules for carers of an adult with a disability). All references to ‘26 weeks’ are replaced with ‘12 weeks’.
Schedule 7 – Portability and Medical Treatment Overseas Program

Summary

This Schedule amends the provisions in the Social Security Act and the Family Assistance Act that deal with portability of social security payments and family tax benefit (FTB) overseas. In particular, it allows the Secretary to extend the period of portability of a person’s social security payments and FTB, in circumstances where the person is seeking life-saving medical treatment overseas, or needs to accompany such a person, and financial assistance is payable in respect of the treatment under the Medical Treatment Overseas Program administered by the Minister responsible for the National Health Act 1953.

Background

Under the social security law, some payments are only payable overseas for a limited period, usually 13 weeks. The rate at which FTB is paid is reduced after 13 weeks in circumstances where either the adult or the FTB child is absent overseas.

The Secretary has a limited discretion in some circumstances to extend the period for which benefits are portable. However, this discretion does not allow the Secretary to extend portability where a person left Australia intending to seek life-saving medical treatment overseas.

The proposed changes are intended to ensure, therefore, that persons who are receiving financial assistance under the Medical Treatment Overseas Program should not be prevented from receiving social security payments or FTB, solely because of their absence overseas, where they remain otherwise qualified to receive the benefit. The person must be eligible for Medicare benefits in order to be eligible for the Medical Treatment Overseas Program. Additionally, the treatment must meet the following criteria:

- the treatment must be an effective treatment not available in Australia;
- the treatment must be of a life-saving nature;
- the treatment must have a real prospect of success; and
- the treatment must be beyond the experimental stage and accepted as a standard form of treatment by the medical profession.

Explanation of the changes

This Schedule amends the Social Security Act and the Family Assistance Act.
Amendments to the Family Assistance Act

Item 1 inserts a new subsection 63A(3) at the end of section 63A of the Family Assistance Act. Presently, the FTB rate payable to a person is unaffected for the first 13 weeks of an adult’s or FTB child’s absence from Australia. However, after 13 weeks’ absence from Australia, the FTB rate decreases. This new subsection 63A(3) allows the Secretary, if he or she is satisfied that the person is receiving financial assistance under the Medical Treatment Overseas Program, to extend beyond 13 weeks the period of time during which the FTB rate remains unaffected while the individual or the FTB child of an individual is overseas.

Amendments to the Social Security Act

Item 2 inserts a new section 1218D after 1218C of the Social Security Act. The new section provides that the Secretary may extend a person’s portability period if the Secretary is satisfied that the person is receiving financial assistance under the Medical Treatment Overseas Program administered by the Minister who administers the National Health Act 1953. Like the existing section 1218C, new section 1218D does not limit the period for which the Secretary may extend a person’s portability period.

Item 3 adds the word ‘and’ at the end of paragraph 1220(1)(e).

Item 4 inserts a new paragraph 1220(1)(f) after paragraph 1220(1)(e) of the Social Security Act. Under subsection 1220(1), if a returned Australian resident has less than 2 years’ residence in Australia, then certain social security payments (age pension, disability support pension and bereavement allowance) are not portable within the first 2 years of the person’s again becoming an Australian resident. However, new paragraph 1220(1)(f) provides that, if the person is receiving assistance under the Medical Treatment Overseas Program within the first 2 years of becoming an Australian resident again, those payments are portable. This is to ensure that returned Australian residents who seek life-saving medical treatment overseas do not lose their social security pensions or allowances, simply because of their short period of residence in Australia. This only applies to returned residents as most newly arrived residents are subject to a 2-year waiting period before becoming eligible for social security benefits.

Item 5 adds the word ‘and’ at the end of paragraph 1220(2)(e).
**Item 6** inserts a new paragraph 1220(2)(f) after paragraph 1220(2)(e) of the Social Security Act. Under subsection 1220(2), if a person has lived in an Australian external territory and has not previously resided in Australia, certain social security payments (age pension, disability support pension and bereavement allowance) are not portable within the first 2 years of the person’s becoming an Australian resident. However, if the person is receiving assistance under the Medical Treatment Overseas Program within the first 2 years of becoming an Australian resident, the pension or allowance is portable. This is to ensure that Australian residents who have lived in Australia’s external territories and who seek life-saving medical treatment overseas do not lose their social security payments, simply because of their short period of residence in Australia.

**Item 7** provides that **items 1 and 2** apply to financial assistance payable only in respect of absences that begin after the commencement of the Schedule, or absences, which began before the commencement of the Schedule, but where the absence has not ended, and the person’s portability period has not expired.

**Item 8** provides that **items 3 and 4** apply to people who leave Australia after the commencement of the Schedule.
Schedule 8 – Income streams (social security)

Summary

These social security law changes extend the term of market-linked income streams and life expectancy income streams. They will also allow annual market-linked income stream payments to vary between plus or minus 10 per cent of a default amount. Finally, these changes will also smooth the operation of the income stream rules and allow certain non-superannuation annuities to be split pursuant to a divorce property settlement.

Background

The Government announced in the 2004-05 Budget various integrity measures to tighten the administration of small superannuation funds, that is, those with fewer than 50 members. From 11 May 2004, these funds were not allowed to offer ‘guaranteed’ lifetime and life expectancy income streams to members unless:

- the fund was established before 11 May 2004;
- the fund had governing rules at 11 May 2004 that allowed for the provision of these income streams; and
- the retiree commences to draw the income stream before 1 July 2005. This deadline was subsequently extended to 31 December 2005.

These changes were introduced by the Treasury into the SIS Regulations and did not necessitate changes to the Social Security Act. Following the introduction of these changes, members of small superannuation funds, who were affected by changes, voiced concern that the changes did not allow enough flexibility.

As a result of these concerns, the Government announced that the Treasury would undertake a review of the integrity measures that had been introduced. The Treasury review found that there remained a strong need to address tax, social security and prudential concerns regarding income streams sourced from small superannuation funds. However, it also found that more flexibility was needed to allow these funds to offer income streams that better address the risk that individuals will outlive the income stream payments.

In its submission to the Government, the Treasury recommended, inter alia, that the integrity measures introduced in the 2004-05 Budget be retained but that there be further changes to income streams rules to:

- extend the maximum allowable term over which life expectancy and market-linked income streams can be paid; and
allow the payments from a market-linked income stream to be varied between 90 per cent and 110 per cent of the standard amount that can be withdrawn during a financial year by individuals who currently own one of these products.

These changes extend the opportunities available to members of superannuation funds, particularly members of small superannuation funds, to:

• reduce the risk they will outlive the payments from their income stream; and

• mitigate the impact of variations in annual payments that otherwise would result from large fluctuations in the value of the assets backing the income stream.

These recommendations were accepted by the Government and necessitated subsequent amendment of the SIS Regulations in December 2005. The recommendations also necessitate amendment of the Social Security Act to allow the means test to be applied more beneficially to those income streams that have the characteristics specified above. These beneficial amendments are to have retrospective effect from 1 January 2006 (see explanation of item 14 below).

The other proposed changes to the Social Security Act are intended to improve or enhance the operation of existing income streams rules and to clarify existing policy in relation to these products. They also include consequential amendments, in response to changes in the family law, to allow the means test to be applied to certain non-superannuation annuities that are split pursuant to a divorce property settlement.

**Explanation of the changes**

**Part 1**

**Item 1** amends note 4 to subsection 9(1C) of the Social Security Act to take into account new section 1099AA.

**Item 2** replaces paragraph 5JB(2B)(c) of the Social Security Act, changing the allowable term for a life expectancy income stream. This new paragraph sets the maximum allowable term for a life expectancy income stream, where there is one primary beneficiary only, to the greater of:

• the primary beneficiary’s life expectancy at the commencement of the income stream, calculated as if the primary beneficiary were five years younger than his or her actual age at that point; and

• the number of years between the commencement of the income stream and when the primary beneficiary turns 100 years old.
These maximum allowable terms are to be rounded up, if not a whole number, to the next whole number. As well as extending the allowable term, these new rules allow customers who are very close to turning 100 years old, or are already older, to purchase these products and receive the same means test concessions as younger customers.

**Item 3** repeals the formula for working out the allowable term for a life expectancy income stream found in paragraph 9B(2C)(c) and replaces it with a referral to the new formula in new subsection 9B(2D).

**Item 4** inserts a new subsection 9B(2D), which provides for the maximum allowable term of a life expectancy income stream where there is a primary beneficiary and a reversionary partner. The maximum allowable term is the greater of the maximum allowable terms specified in new paragraphs 9B(2D)(a) and (b). New paragraph 9B(2D)(a) provides that the maximum allowable term is the greater of:

- the primary beneficiary’s life expectancy at an age five years younger; and
- the reversionary partner’s life expectancy at an age five years younger.

New paragraph 9B(2D)(b) provides that the maximum allowable term is equal to the greater of the number of years between the commencement of the income stream and when the primary beneficiary, or the reversionary partner, turns 100 years old. These maximum allowable terms are to be rounded up, if not a whole number, to the next whole number. As well as extending the maximum allowable term, these new rules allow customers who are very close to turning 100 years old, or already have turned 100, to purchase these products and receive the same means test concessions as younger customers.

**Item 5** replaces paragraph 9BA(3)(c) of the Social Security Act, changing the allowable term for a market-linked income stream. This new paragraph sets the maximum allowable term for a market-linked income stream, where there is one primary beneficiary only, to the greater of:

- the primary beneficiary’s life expectancy at the commencement of the income stream, calculated as if the primary beneficiary were five years younger than his or her actual age at that point; and
- the number of years between the commencement of the income stream and when the primary beneficiary turns 100 years old.

These maximum allowable terms are to be rounded up, if not a whole number, to the next whole number. As well as extending the allowable term, these new rules allow customers who are very close to turning 100 years old, or already have turned 100, to purchase these products and receive the same means test concessions as younger customers.
**Item 6** repeals the formula for working out the allowable term for a market-linked income stream currently found in paragraph 9BA(4)(c) and replaces it with a referral to the new formula in new subsection 9BA(4A).

**Item 7** inserts new subsection 9BA(4A), which provides for the maximum allowable term of a market-linked income stream where there is a primary beneficiary and a reversionary partner. The maximum allowable term for the term of the income stream is the greater of the periods specified in new paragraphs 9BA(4A)(a) and (b). New paragraph 9BA(4A)(a) provides that the maximum allowable term is the greater of:

- the primary beneficiary’s life expectancy at an age five years younger; and
- the reversionary partner’s life expectancy at an age five years younger.

New paragraph 9BA(4A)(b) provides that the maximum allowable term is equal to the greater of the number of years between the commencement of the income stream and when the primary beneficiary, or the reversionary partner, turns 100 years old. These maximum allowable terms are to be rounded up, if not a whole number, to the next whole number. As well as extending the maximum allowable term, these new rules allow customers who are very close to turning 100 years old, or already have turned 100, to purchase these products and receive the same means test concessions as younger customers.

**Item 8** amends subsection 9BA(5). Currently, a market-linked income stream is required to provide the customer with a set amount of income each year, calculated in accordance with the formula in this provision. With this change, the customer will now have the option of drawing down an amount in the range between 90 and 110 per cent of the amount calculated under the formula in this provision.

**Items 9 and 10** are technical amendments to the wording of subsection 9BA(6) and paragraph 9BA(8)(a) to take account of the changes to subsection 9BA(5), that is, the ability of a customer to choose now an amount in a range of amounts that will be drawn down from their market-linked income stream each year.

**Item 11** is a technical amendment to section 1098, changing the current provision to subsection 1098(1) to allow for the insertion of new subsection 1098(2) (**item 12**).
Item 12 inserts new subsection 1098(2). Currently, section 1098 provides that any asset test-exempt income stream will be taken to provide an amount of income to the customer each year as calculated under section 1099 or 1099A. This new provision provides that sections 1099 and 1099A no longer apply to an income stream that is a market-linked income stream (that is, meets the requirements of subsection 9BA(1)) or would have been a market-linked income stream at its commencement, but has since lost the capacity to meet the requirements under subsection 9BA(1) (that is, it must have been capable of meeting the requirements of subsection 9BA(1) at its commencement if the primary beneficiary had been a social security customer at that point).

Item 13 inserts new section 1099AA. Section 1099AA applies to a market-linked income stream (that is, meets the requirements of subsection 9BA(1)) or would have been a market-linked income stream at its commencement, but has since lost the capacity to meet the requirements under subsection 9BA(1) (that is, it must have been capable of meeting the requirements of subsection 9BA(1) at its commencement if the primary beneficiary had been a social security customer at that point). Section 1099AA calculates the amount of income that a customer is taken to receive from one of these income streams for the payment period, for social security purposes.

The payment period refers to a whole financial year, or where the income stream is purchased during that financial year, the period from the income stream's commencement date to the end of that financial year.

New subsection 1099AA(2) provides that, where a customer has made an election with their income stream provider, which must be in the range specified in subsection 9BA(5), then the annual rate of ordinary income that the customer is taken to receive from the income stream, on a particular day in the relevant financial year, will be calculated in accordance with the formula provided.

New subsection 1099AA(3) provides that, where a customer has not made an election with their income stream provider, then they will be taken, for social security purposes, to have received an amount from that income stream equal to the amount worked out under the formula in this new provision. This formula relies on a concept of a ‘default amount’, which is 100 per cent of the amount worked out by the formula in subsection 9BA(5). Under subsection 1099AA(4), the ‘default amount’ will be reduced on a pro-rata basis, where the income stream commences after the beginning of the financial year.
New subsection 1099AA(5), in effect, provides that new section 1099AA will not apply to an income stream purchased in June of any year (that is, the last month of the financial year) for the balance of that financial year, if no payment is to be made from the income stream until the following financial year. This means that a customer purchasing a market-linked income stream in June who does not receive a payment for June would not be assessed with any income from the income stream until the following financial year (that is, the customer would not be assessed as receiving any income from the income stream during the month of June in which the income stream is purchased).

Example 1

Fred Wallace, who turned 60 on 5 September 2005, invests $200,000 in a market-linked income stream on 1 June 2006. While the commencement day of the income stream is 1 June 2006, the date of the first payment to Mr Wallace is 1 July 2006. Consequently, the payment period is the 12-month period from 1 July 2006 to 30 June 2007. No income is assessed from the income stream for June 2006.

Example 2

John Smith, who turns 60 on 1 July 2006, commences a market-linked income stream from that date based on an initial account balance of $200,000 and a term of 40 years.

In the first year, the default annual payment amount is worked out using the formula in subsection 9BA(5). In this case the amount is:

\[
= \frac{200,000}{21.36} \text{ (rounded to the nearest $10)}
= 9,360
\]

Mr Smith fails to notify the specific amount that he is planning to withdraw during the first financial year when the income stream is paid.

In this case, the default amount of $9,360, calculated under subsection 1099AA(3) of the Social Security Act, is the amount of income that will be assessed against Mr Smith.

Under the formula in 1099AA(3), the annual rate of income assessed is:

\[
= \left(\frac{9,360}{365} - \frac{200,000}{(21.66 \times 365)}\right) \times 365
= 126.38
\]

Item 14 provides for the application of the amendments made in Part 1 of Schedule 8. The amendments made in Part 1 take effect from 1 January 2006. These amendments are beneficial to customers, and no customer will be adversely affected by the retrospective effect of the amendments.
Part 2

Items 15 and 16 amend note 1 to the definition of ‘income’ and note 3 to the definition of ‘ordinary income’ in subsection 8(1) of the Social Security Act to take into account new section 1099DAA.

Items 17, 18, 19 and 20 omit references to subsection 9C(1) and replace them with references to section 9C in regard to the definitions of ‘family law affected income stream’, ‘original family law affected income stream’, ‘primary FLA income stream’, and ‘secondary FLA income stream’ in subsection 9(1). These changes take account of the repeal of subsection 9C(2) and the renaming of subsection 9C(1) as section 9C.

Item 21 amends note 5 to subsection 9(1C) to take into account new section 1099DAA.

Item 22 replaces subsection 9(1F). In effect, this replaces the definition of a ‘defined benefit income stream’. An income stream will be a ‘defined benefit income stream’ if it meets the definition of a ‘pension’ in regulation 1.06 of the SIS Regulations, including the requirement that it be paid for life, and if the income stream results from a ‘defined benefit interest’, which is defined at regulation 1.03AA of the SIS Regulations. For the purposes of the ‘defined benefit income stream’ definition, subparagraph 1.03AA(1)(b)(ii) needs to be disregarded, that is, the benefit that becomes payable under the income stream cannot be determined wholly from a specified amount, but must, at least in part, be defined by the factors listed at subparagraph 1.03AA(1)(b)(i) or (iii). This definition is intended to capture income streams provided by public sector (for example, Public Sector Superannuation Scheme) and corporate defined benefit superannuation schemes. It is not intended to apply to income streams purchased from retail providers (for example, AMP, AXA), nor to income streams provided from self-managed superannuation funds and small APRA funds.

Item 23 inserts new subparagraph 9A(2)(h)(ivb), which allows a lifetime income stream to be commuted, or split, to give effect to an order of the Family Court under Part VIIIAA of the Family Law Act 1975.
Item 24 replaces the definition of ‘life expectancy period’ in subsection 9A(7). This definition is relevant for working out the guarantee period for a lifetime income stream (that is, the period during which the income stream will continue to be paid, or commuted to a lump sum, even if the primary beneficiary passes away). In the case of a lifetime income stream owned by one person, the income stream must provide an income stream for a period equal to the primary beneficiary’s life expectancy or 20 years, whichever is the shorter. For the purposes of this definition, the primary beneficiary has the option of whether or not to round his or her life expectancy up to the next whole number. In the case of a lifetime income stream that is jointly owned, the income stream must provide an income stream for a period equal to the longer of the primary beneficiaries’ life expectancies or 20 years, whichever is the shorter. For the purposes of this definition, the primary beneficiaries have the option of whether or not to round their life expectancies up to the next whole number.

Item 25 amends paragraph 9B(2)(a) to include a reference to new subsection 9B(2E), that is, a life expectancy income stream’s term must now comply with any of subsections 9B(2B), (2C) and (2E).

Item 26 inserts new subparagraph 9B(2)(h)(ivb), which allows a life expectancy income stream to be commuted, or split, to give effect to an order of the Family Court under Part VIIA of the Family Law Act 1975.

Items 27 and 28 amend subsections 9B(2B) and 9B(2C) so that these provisions now only apply in the case of a life expectancy income stream that was owned by one person on its commencement day.

Item 29 inserts new subsections 9B(2E) and (2F). New subsection 9B(2E) provides the allowable term for a jointly owned life expectancy income stream. To qualify for asset test-exempt status, the term of a jointly-owned life expectancy income stream must be no shorter than the lesser of the primary beneficiaries’ life expectancies, rounded up, and no longer than the period worked out under subsection 9B(2F). New subsection 9B(2F) sets out the maximum allowable term for a jointly-owned life expectancy income stream for social security purposes.

The maximum allowable term is the greater of the maximum allowable terms specified in new paragraphs 9B(2F)(a) and (b). New paragraph 9B(2F)(a) provides that the maximum allowable term is the greater of:

- the primary beneficiary’s life expectancy at an age five years younger; and
- the reversionary partner’s life expectancy at an age five years younger.
New paragraph 9B(2F)(b) provides that the maximum allowable term is equal to the greater of the number of years between the commencement of the income stream and when the primary beneficiary, or the reversionary partner, turns 100 years old. These maximum allowable terms are to be rounded up to the nearest whole number. As well as extending the maximum allowable term, these new rules allow customers who are very close to turning 100 years old, or already have turned 100, to purchase these products and receive the same means test concessions as younger customers.

This change provides members of a couple who are both reversionary partners, and who want to purchase a joint asset test-exempt income stream, with greater flexibility in selecting a term that best suits their individual and joint requirements.

**Item 30** removes the reference to ‘(1)’ in section 9C. This changes subsection 9C(1) into section 9C, as subsection 9C(2) is being repealed by **item 32**, discussed below.

**Item 31** repeals paragraphs 9C(1)(a) and (b) and replaces them with paragraphs 9C(a) and (b). These new paragraphs help to define ‘family law affected income streams’. These changes recognise that, due to amendments to the *Family Law Act 1975*, income streams can now also be the subject of a payment split under Part VIIIAA of that Act.

**Item 32** repeals subsection 9C(2), which contains definitions that were previously used solely in subsection 9C(1), but are no longer used in new section 9C.

**Items 33, 34, 35, 36, 37, 38, 39, 40 and 41** amend:

- note 2 to point 1064-E1;
- note 2 to point 1066-E1;
- note 2 to point 1066A-F1;
- paragraph (d) of note 2 to point 1067G-H1;
- paragraph (d) of note 2 to point 1067L-D1;
- note 3 to point 1068-G1;
- paragraph (d) of note 2 to point 1068A-E1;
- paragraph (d) of note 3 to point 1068B-D1; and
- note 2 to section 1072;

...to take into account new section 1099DAA.

**Item 42** is a technical amendment to section 1099B, changing the current provision to subsection 1099B(1) to allow for the insertion of new subsection 1099B(2) (**item 43**).
**Item 43** inserts new subsection 1099B(2), which provides that, where new section 1099DAA applies to an asset-tested income stream (long term), then sections 1099C and 1099D do not apply to that income stream for the purposes of calculating the annual rate of ordinary income that a social security customer is taken to receive from that income stream.

**Item 44** inserts new section 1099DAA. This section applies to an asset-tested income stream (long term), which is not a ‘family law affected income stream’, and is either an ‘allocated pension’, as defined in subregulation 1.03(1) of the SIS Regulations, or an annuity, as defined in subsection 10(1) of the *Superannuation Industry (Supervision) Act 1993*, which is provided under a contract that meets the requirements of subregulation 1.05(4) of the SIS Regulations. For this section to apply, the income stream must make, or be going to make, payments during the financial year, or during that part of a financial year after the income stream’s commencement where the income stream commences part way through a financial year.

This period during which these payments are made, or are to be made, is defined as the ‘payment period’. The payment period refers to a whole financial year, or, where the income stream is purchased during that financial year, the period from the income stream’s commencement date to the end of that financial year. Where, on a day in the payment period, the amount worked out under the formula in new subsection 1099DAA(2) is less than the amount worked out under the formula in new subsection 1099DAA(3), then the customer is taken to have an annual rate of ordinary income on that day equal to the amount worked out under the formula in new subsection 1099DAA(3). Where the amount worked out under the formula in new subsection 1099DAA(2) is not less than the amount worked out under the formula in new subsection 1099DAA(3) then new section 1099DAA will not apply, and either section 1099C or 1099D should be applied.

New subsection 1099DAA(4), in effect, provides that new section 1099DAA will not apply to an income stream purchased in June of any year (that is, the last month of the financial year) for the balance of that financial year, if no payment is to be made from the income stream until the following financial year. This means that, where section 1099DAA applies to a customer who purchases an income stream in June and the customer does not receive a payment for June, the customer will not be assessed with any income from the income stream until the following financial year, that is, the customer would not be assessed as receiving any income from the income stream during the month of June in which the income stream is purchased.
Example 1

Mary Jones, who turned 62 on 5 September 2005, invests $200,000 in an allocated pension fund on 1 June 2006. While the commencement day of the income stream is 1 June 2006, the date of the first payment to Ms Jones is 1 July 2006. Consequently, the payment period is the 12-month period from 1 July 2006 to 30 June 2007. No income is assessed from the income stream for June 2006.

Example 2

John Barry, who turns 65 on 1 July 2006, commences an allocated income stream from that date based on an initial account balance of $200,000.

Mr Barry elects initially to draw down an annual amount of $15,000 for 2006-07. (This amount is between the minimum and maximum payment limits of $11,560 and $20,200 respectively.) He elects to receive 12 monthly payments of $1,250 on the first of each month.

Under the formula in subsection 1099DAA(2), the annual rate of income assessed for social security purposes is as follows:

\[
\quad = \{(\frac{15,000}{365}) - \frac{200,000}{(17.70 \times 365)}\} \times 365
\]

\[
\quad = $3,700.56
\]

After 9 months, Mr Barry has received 9 monthly payments of $1,250, totalling $11,250.

On 31 March, Mr Barry elects to reduce his annual payment from $15,000 to $12,000 with the remaining $750 to be paid in equal instalments of $250 on the 1st of each of the three remaining months. The elected amount is above the minimum payment limit of $11,560.

While the income stream only pays $750 in gross income during the final three months of the financial year, the total payments for the payment period, being the financial year 2006-07, is $12,000. Assessable income under the formula in subsection 1099DAA(2) would be:

\[
\quad = \{(\frac{12,000}{365}) - \frac{200,000}{(17.70 \times 365)}\} \times 365
\]

\[
\quad = $700.56
\]

Item 45 repeals and replaces sections 1099DB, 1099DC and 1099DD. These new provisions make it clear that in the case of ‘family law affected income streams’ that are either an asset test-exempt income stream or an asset-tested income stream (long term), the Secretary is to determine the annual rate of ordinary income that a customer is taken to receive from one of these income streams. In making such a determination, the Secretary must comply with any decision-making principles that he or she has made for this purpose.
Item 46 repeals and replaces subsections 1120A(2), (3) and (4) and inserts new subsection 1120A(5). These new provisions make it clear that, in the case of ‘family law affected income streams’, the Secretary is to determine the asset value of those income streams for asset-testing purposes. In making such a determination, the Secretary must comply with any decision-making principles that he or she has made for this purpose.

Item 47 inserts new subsection 1121(3B). This new subsection provides that a partially asset test-exempt income stream (defined in section 1118 of the Social Security Act) will not be subject to the general rule that, where a customer’s asset is subject to a charge or encumbrance, then the value of that asset, for social security purposes, will be reduced by the value of the charge or encumbrance.

Item 48 provides for the application of the amendments made in Part 2 of Schedule 8.
Schedule 9 – Income streams (veterans)

**Summary**

These veterans’ entitlements changes extend the term of market-linked income streams and life expectancy income streams. They will also allow annual market-linked income stream payments to vary between plus or minus 10 per cent of a default amount.

**Background**

The Government announced in the 2004-05 Budget various integrity measures to tighten the administration of small superannuation funds, that is, those with fewer than 50 members. From 11 May 2004, these funds were not allowed to offer ‘guaranteed’ lifetime and life expectancy income streams to members unless:

- the fund was established before 11 May 2004;
- the fund had governing rules at 11 May 2004 that allowed for the provision of these income streams; and
- the retiree commences to draw the income stream before 1 July 2005. This deadline was subsequently extended to 31 December 2005.

These changes were introduced by the Treasury into the SIS Regulations and did not necessitate changes to either the Social Security Act or the Veterans’ Entitlements Act. Following the introduction of these changes, members of small superannuation funds, who were affected by the changes, voiced concerns that the changes did not allow enough flexibility.

As a result of these concerns, the Government announced that the Treasury would undertake a review of the integrity measures that had been introduced. The Treasury review found that there remained a strong need to address tax, social security and prudential concerns regarding income streams sourced from small superannuation funds. However, it also found that more flexibility was needed to allow these funds to offer income streams that better address the risk that individuals will outlive the income stream payments.

In its submission to the Government, the Treasury recommended, inter alia, that the integrity measures introduced in the 2004-05 Budget be retained but that there be further changes to income streams rules to:

- extend the maximum allowable term over which life expectancy and market-linked income streams can be paid; and
- allow the payments from a market-linked income stream to be varied between 90 per cent and 110 per cent of the standard amount that can
be withdrawn during a financial year by individuals who currently own
one of these products.

These changes extend the opportunities available to members of
superannuation funds, particularly members of small superannuation funds,
to:

• reduce the risk they will outlive the payments from their income stream;
  and

• mitigate the impact of variations in annual payments that otherwise
  would result from large fluctuations in the value of the assets backing
  the income stream.

These recommendations were accepted by the Government and necessitated
subsequent amendment of the SIS Regulations in December 2005. The
recommendations also necessitate amendment of the Veterans’ Entitlements
Act to allow the means test to be applied more beneficially to those income
streams that have the characteristics specified above. These beneficial
amendments are to have effect from 1 January 2006 (see explanation of
item 14 below).

Explanation of the Changes

Item 1 amends note 4 to subsection 5J(1C) of the Veterans’ Entitlements Act
to take into account new section 46VA.

Item 2 replaces paragraph 5JB(2B)(c) of the Veterans’ Entitlements Act,
changing the allowable term for a life expectancy income stream. This new
paragraph sets the maximum allowable term for a life expectancy income
stream, where there is one primary beneficiary only, to the greater of:

• the primary beneficiary’s life expectancy at the commencement of the
  income stream, calculated as if the primary beneficiary were five years
  younger than his or her actual age at that point; and

• the number of years between the commencement of the income stream
  and when the primary beneficiary turns 100 years old.

These maximum allowable terms are to be rounded up, if not a whole number
to the next whole number. As well as extending the allowable term, these
new rules allow customers who are very close to turning 100 years old, or are
already older, to purchase these products and receive the same means test
concessions as younger customers.

Item 3 repeals the formula for working out the allowable term for a life
expectancy income stream found in paragraph 5JB(2C)(c) and replaces it with
a referral to the new formula in new subsection 5JB(2D).
Item 4 inserts a new subsection 5JB(2D), which provides for the maximum allowable term of a life expectancy income stream where there is a primary beneficiary and a reversionary partner. The maximum allowable term is the greater of the maximum allowable terms specified in new paragraphs 5JB(2D)(a) and (b). New paragraph 5JB(2D)(a) provides that the maximum allowable term is the greater of:

- the primary beneficiary’s life expectancy at an age five years younger;
  and

- the reversionary partner’s life expectancy at an age five years younger.

New paragraph 5JB(2D)(b) provides that the maximum allowable term is equal to the greater of the number of years between the commencement of the income stream and when the primary beneficiary, or the reversionary partner, turns 100 years old. These maximum allowable terms are to be rounded up, if not a whole number, to the next whole number. As well as extending the maximum allowable term, these new rules allow customers who are very close to turning 100 years old, or already have turned 100, to purchase these products and receive the same means test concessions as younger customers.

Item 5 replaces paragraph 5JBA(3)(c) of the Veterans’ Entitlements Act, changing the allowable term for a market-linked income stream. This new paragraph sets the maximum allowable term for a market-linked income stream, where there is one primary beneficiary only, to the greater of:

- the primary beneficiary’s life expectancy at the commencement of the income stream, calculated as if the primary beneficiary were five years younger than his or her actual age at that point; and

- the number of years between the commencement of the income stream and when the primary beneficiary turns 100 years old.

These maximum allowable terms are to be rounded up, if not a whole number, to the next whole number. As well as extending the allowable term, these new rules allow customers who are very close to turning 100 years old, or already have turned 100, to purchase these products and receive the same means test concessions as younger customers.

Item 6 repeals the formula for working out the allowable term for a market-linked income stream currently found in paragraph 5JBA(4)(c) and replaces it with a referral to the new formula in new subsection 5JBA(4A).

Item 7 inserts new subsection 5JBA(4A), which provides for the maximum allowable term of a market-linked income stream where there is a primary beneficiary and a reversionary partner. The maximum allowable term for the term of the income stream is the greater of the periods specified in new paragraphs 5JBA(4A)(a) and (b). New paragraph 5JBA(4A)(a) provides that the maximum allowable term is the greater of:
• the primary beneficiary’s life expectancy at an age five years younger; and

• the reversionary partner’s life expectancy at an age five years younger.

New paragraph 5JBA(4A)(b) provides that the maximum allowable term is equal to the greater of the number of years between the commencement of the income stream and when the primary beneficiary, or the reversionary partner, turns 100 years old. These maximum allowable terms are to be rounded up, if not a whole number, to the next whole number. As well as extending the maximum allowable term, these new rules allow customers who are very close to turning 100 years old, or already have turned 100, to purchase these products and receive the same means test concessions as younger customers.

Item 8 amends subsection 5JBA(5). Currently, a market-linked income stream is required to provide the customer with a set amount of income each year, calculated in accordance with the formula in this provision. With this change, the customer will now have the option of drawing down an amount in the range between 90 and 110 per cent of the amount calculated under the formula in this provision.

Items 9 and 10 are technical amendments to the wording of subsection 5JBA(6) and paragraph 5JBA(8)(a) to take account of the changes to subsection 5JBA(5), for example, the ability of a customer to choose now an amount in a range of amounts that will be drawn down from their market-linked income stream each year.

Item 11 is a technical amendment to section 46T, changing the current provision to subsection 46T(1) to allow for the insertion of new subsection 46T(2) (Item 12).

Item 12 inserts new subsection 46T(2). Currently, section 46T provides that any asset test-exempt income stream will be taken to provide an amount of income to the person each year as calculated under section 46U or 46V. This new provision provides that sections 46U and 46V no longer apply to an income stream that is a market-linked income stream (for example, meets the requirements of subsection 5JBA(1)) or would have been a market-linked income stream at its commencement, but has since lost the capacity to meet the requirements under subsection 5JBA(1) (for example, it must have been capable of meeting the requirements of subsection 5JBA(1) at its commencement if the primary beneficiary had been a service pensioner or income support supplement recipient at that point).
**Item 13** inserts new section 46VA. Section 46VA applies to a market-linked income stream (for example, meets the requirements of subsection 5JBA(1)) or would have been a market-linked income stream at its commencement, but has since lost the capacity to meet the requirements under subsection 5JBA(1) (for example, it must have been capable of meeting the requirements of subsection 5JBA(1) at its commencement if the primary beneficiary had been a service pensioner or income support supplement recipient at that point). Section 46VA calculates the amount of income that a person is taken to receive from one of these income streams for the payment period, for the purposes of the Veterans’ Entitlements Act.

The payment period refers to a whole financial year, or where the income stream is purchased during that financial year, the period from the income stream's commencement date to the end of that financial year.

New subsection 46VA(2) provides that, where a person has made an election with their income stream provider, which must be in the range specified in subsection 5JBA(5), then the annual rate of ordinary income that the person is taken to receive from the income stream, on a particular day in the relevant financial year, will be calculated in accordance with the formula provided.

New subsection 46VA(3) provides that, where a person has not made an election with their income stream provider, then they will be taken, for the purposes of the Veterans’ Entitlements Act, to have received an amount from that income stream equal to the amount worked out under the formula in this new provision. This formula relies on a concept of a ‘default amount’, which is 100 per cent of the amount worked out by the formula in subsection 5JBA(5). Under subsection 46VA(4), the ‘default amount’ will be reduced on a pro-rata basis, where the income stream commences after the beginning of the financial year.

New subsection 46VA(5), in effect, provides that new section 46VA will not apply to an income stream purchased in June of any year (for example, the last month of the financial year) for the balance of that financial year, if no payment is to be made from the income stream until the following financial year. This means that a person purchasing a market-linked income stream in June who does not receive a payment for June would not be assessed with any income from the income stream until the following financial year (for example, the person would not be assessed as receiving any income from the income stream during the month of June in which the income stream is purchased).

**Example 1**

Fred Wallace, who turned 60 on 5 September 2005, invests $200,000 in a market-linked income stream on 1 June 2006. While the commencement day of the income stream is 1 June 2006, the date of the first payment to Mr Wallace is 1 July 2006. Consequently, the payment period is the 12-month period from 1 July 2006 to 30 June 2007. No income is assessed from the income stream for June 2006.
Example 2

John Smith, who turns 60 on 1 July 2006, commences a market-linked income stream from that date based on an initial account balance of $200,000 and a term of 40 years.

In the first year, the default annual payment amount is worked out using the formula in subsection 5JBA(5). In this case the amount is:

\[= \frac{200,000}{21.36} \text{ (rounded to the nearest $10)}\]
\[= \$9,360\]

Mr Smith fails to notify the specific amount that he is planning to withdraw during the first financial year when the income stream is paid.

In this case, the default amount of $9,360, calculated under subsection 46VA(3) of the Veterans’ Entitlements Act, is the amount of income that will be assessed against Mr Smith.

Under the formula in 46VA(3), the annual rate of income assessed is

\[= \left(\frac{9,360}{365} - \frac{200,000}{21.66 \times 365}\right) \times 365\]
\[= \$126.38\]

**Item 14** provides for the application of the amendments made in Schedule 9. The amendments take effect from 1 January 2006. These amendments are beneficial, and no service pensioner or income support supplement recipient will be adversely affected by the retrospective effect of the amendments.