THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FAMILY ASSISTANCE AMENDMENT (FURTHER 2008 BUDGET MEASURES) BILL 2009

EXPLANATORY MEMORANDUM

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

This bill will amend the family assistance law to implement certain 2008 Budget measures and make associated amendments.

*Continuous adjustment of rate of family tax benefit by instalment*

The first measure introduces mandatory continuous adjustment to allow for the reduction of a claimant’s rate of family tax benefit where there is a revised estimate (by the person or the Secretary) to assist in preventing overpayments following reconciliation.

*Non-payment of family tax benefit for non-lodgment of tax returns*

The second measure will cease fortnightly family tax benefit payments, and payment for a past period in the same income year in which a claim is made, for claimants and/or partners who fail to lodge income tax returns.

*Information sharing*

The third measure will include amendments to the tax file number provisions in the family assistance law to ensure accurate information sharing between the Australian Taxation Office and Centrelink for the purpose of reconciliation and debt offsetting.

Financial impact statement

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<th>Total Resourcing</th>
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NOTES ON CLAUSES

Clause 1 sets out how the Act is to be cited, that is, as the Family Assistance Amendment (Further 2008 Budget Measures) Act 2009.

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Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.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; and
Schedule 1 – Continuous adjustment of rate of family tax benefit by instalment

Summary

This Schedule introduces mandatory continuous adjustment to allow for the reduction of a claimant’s rate of family tax benefit where there is a revised estimate (by the person or the Secretary) to assist in preventing overpayments following reconciliation.

Background

Part 4 of the Family Assistance Act sets out how to determine a claimant’s rate of family tax benefit. The rate is calculated in accordance with the rate calculator in Schedule 1 to the Family Assistance Act.

Subsection 20(1) of the Family Assistance Administration Act provides that a claimant’s rate of family tax benefit can be determined on the basis of an estimate of income that the claimant provides. The estimate can only be used if the Secretary considers that it is reasonable.

The estimate that is provided by the claimant can be revised during the income year and, if the revised estimate is reasonable, the Secretary must vary the rate of family tax benefit based on this estimate. This variation occurs under section 31A of the Family Assistance Administration Act. The variation can only apply prospectively and may result in an increase or decrease in a claimant’s rate for their ongoing family tax benefit instalment payments.

Similarly, subsection 20(2A) provides authority for the use of an indexed estimate or indexed actual income to determine the rate of family tax benefit where the customer has been given a notice of the indexed amount and has not provided a reasonable estimate that can be used instead of the indexed estimate or indexed actual income. This variation occurs under either section 31C or 31D of the Family Assistance Administration Act.

If an indexed estimate or an indexed actual income is being used to determine the rate of family tax benefit and the claimant provides a reasonable estimate, then under subsection 20(1) the claimant’s estimate can be used by the Secretary to determine the claimant’s rate of family tax benefit.

Subsection 20(3) of the Family Assistance Administration Act provides authority for the Secretary to determine the individual’s rate of family tax benefit on the basis of an estimate of maintenance income. This variation occurs under section 31B of the Family Assistance Administration Act.
This Schedule inserts a new section 31E into Subdivision C of Division 1 of Part 3 of the Family Assistance Administration Act. This new section will require the Secretary to calculate whether a claimant has a notional overpayment of family tax benefit for the earlier period in an income year because of a revised estimate of income or maintenance income. If there is a notional overpayment, the claimant’s daily rate of family tax benefit for the remainder of the income year will be reduced by a daily amount that equals the notional overpayment for the earlier period divided by the number of days in the remaining period in the year.

The amendments made by this Schedule commence on 1 July 2009.

**Explanation of the changes**

**Item 1** inserts a new section 31E into Subdivision C of Division 1 of Part 3 of the Family Assistance Administration Act.

New subsection 31E(1) sets out when new section 31E will apply. New paragraph 31E(1)(a) provides that a claimant must have a determination in force that they are entitled to be paid family tax benefit by instalment in an income year.

New subparagraphs 31E(1)(b)(i) to (iv) provide that new section 31E applies where there is a variation in a claimant’s rate of family tax benefit because of the application of subsection 31A(1), 31B(1), 31C(1) or 31D(1). These provisions cover variations where the claimant provides a revised estimate of income, where the Secretary makes a revised estimate of maintenance income, or where there is an indexed estimate or indexed actual income.

New subparagraph 31E(1)(b)(v) provides that new section 31E will also apply to a claimant if they provide a revised estimate, but this does not affect their ongoing rate and, therefore, there is no variation under subsection 31A(1). However, if the claimant has a notional overpayment for the earlier period of the year because of the revised estimate, the application of new section 31E will allow a reduction in their ongoing rate.
For example, Nicole and Robert have two children aged 15 and 19. Nicole is receiving fortnightly payment of family tax benefit, and her rate includes both Part A and Part B. On 7 January, Nicole’s youngest child turns 16 and, as the child is no longer in school, Nicole ceases to be entitled to family tax benefit Part B. Nicole continues to be entitled to family tax benefit Part A at the base rate. On 2 February, Nicole increases her income estimate as she has increased her hours at work. The increased estimate does not affect Nicole’s ongoing Part A rate, which continues to be the base rate. However, based on the new income estimate, Nicole’s Part B rate would have been lower in the earlier period of 1 July to 6 January. Therefore, when Nicole provides the revised estimate, it is calculated that she has a notional overpayment of family tax benefit for the period 1 July to 6 January, which results in her ongoing rate of family tax benefit being reduced to cover this notional overpayment.

New subparagraph 31E(1)(b)(vi) is similar in application to subparagraph 31E(1)(b)(v) except that it applies when the Secretary makes a revised estimate of the claimant’s maintenance income that does not result in a variation of the claimant’s ongoing entitlement determination under subsection 31B(1). However, if the revised maintenance income results in the claimant having a notional overpayment for the earlier period in the income year, their ongoing rate of family tax benefit by instalment will be reduced.

New subparagraphs 31E(1)(b)(i) to (iv) apply to variations that have effect after 1 July in a year and new subparagraph 31E(1)(b)(vi) applies to a Secretary’s revised maintenance income estimate that is made after 1 July in a year. The exclusion of a revised income amount that has effect from 1 July, or a revised maintenance income estimate that is made on 1 July, reflects the fact that there can only be a notional overpayment if there is an earlier period in the income year where the previous estimate had effect. New subparagraph 31E(1)(b)(v) includes a revised income estimate provided on 1 July as it is possible for there to be a period where the previous estimate continues to have effect before the revised estimate is taken into account.

New subsection 31E(2) provides a method statement. This method statement is to be applied to determine if the claimant has a notional overpayment and, if so, provides a method of working out the claimant’s daily overpayment rate based on the notional overpayment.

Under step 1 of the method statement, the amount that the claimant is or was entitled to be paid in the income year before the applicable day is determined (applicable day is defined in new subsection 31E(5)).

For example, Carol and David have two children aged two and six. They provide an income estimate at the beginning of the year of $40,000. This income estimate is used to determine their rate of family tax benefit for the period before the applicable day.
Step 2 of the method statement requires working out the amount that the claimant would have been entitled to if the revised income estimate, revised estimate of maintenance income, indexed estimate or indexed actual income had been used to determine the claimant’s rate of family tax benefit for the period prior to the revised amount being applicable. The revised amount is applied to the claimant’s circumstances as they were for each day in the period before the applicable day.

For example, Carol and David are entitled to instalments of family tax benefit for two children based on an income estimate of $40,000. They notify that they have a new child, born on 1 February. Their rate of family tax benefit is varied due to the change in circumstances. On 6 April, they revise their income estimate to $48,000. The variation under subsection 31A(1) has effect from 6 April, so this is the applicable day. Step 2 requires that the $48,000 is used to determine what would have been the family tax benefit entitlement for the period from 1 July to 31 January, when there were two children in the family, and from 1 February to 5 April, when there were three children. The sum of these amounts is the amount of family tax benefit that Carol and David would have been entitled to if their rate of family tax benefit had been calculated using the revised estimate of $48,000, taking into account their circumstances on each day in the period before the applicable day.

Step 3 of the method statement requires taking the amount determined in step 2 away from the amount in step 1. If this amount is greater than zero, there is a notional overpayment. If the amount is zero or less, there is no notional overpayment and the claimant’s rate of family tax benefit will not be affected by a variation under new section 31E.

Step 4 of the method statement only applies if the amount in step 3 is greater than zero. If the amount in step 3 is greater than zero, then step 4 requires working out how many days are left in the income year starting on the applicable day and ending on the last day of the income year.

For example, Carol and David provide a revised estimate and the applicable day is 6 April. Therefore, there are 86 days remaining in the income year.

Step 5 of the method statement requires dividing the notional overpayment (step 3) by the remaining days in the year (step 4). This will produce the daily overpayment rate.

New subsection 31E(3) provides that, if step 5 of the method statement results in a daily overpayment rate, the Secretary must reduce the claimant’s daily rate of family tax benefit by the daily overpayment rate. This reduction will occur for the remainder of the income year, unless a new application of section 31E occurs due to a subsequent revised estimate. It is intended that the reduction will assist in preventing the claimant having a family tax benefit debt on reconciliation.
For example, Mary provides an income estimate on 1 July of $40,000. She revises the estimate on 6 April to $48,000. The revision of the income estimate results in a notional overpayment for the period 1 July to 5 April. This is the first relevant variation for the year, and new subparagraph 31E(1)(b)(i) applies. On 11 May, Mary notifies of a revised income estimate of $46,000. This is a decrease in her estimate from 6 April and will result in an increase in her rate of family tax benefit. This is a subsequent variation and new subparagraph 31E(1)(b)(i) applies. If there is a remaining notional overpayment, Mary’s daily rate of family tax benefit will be reduced under new subsection 31E(3), although by a lower daily overpayment rate due to the lower revised estimate. Where there is no remaining notional overpayment, the determination of Mary’s ongoing rate of family tax benefit will be varied under section 31A, resulting in an increase, and there will be no reduction of her daily rate under new subsection 31E(3).

A claimant’s daily rate of family tax benefit can be reduced to nil under new subsection 31E(3). If the daily rate is reduced to nil, the claimant’s instalment entitlement determination continues in force and the claimant remains entitled to instalments of family tax benefit at a nil rate. A claimant’s daily rate of family tax benefit cannot be reduced below nil.

If a revised estimate results in an increase in the rate of family tax benefit, the new ongoing rate will be increased according to the relevant rules in section 31A or 31B. New section 31E cannot operate to increase a claimant’s rate of family tax benefit. For example, if a claimant provides a reduced income estimate and there is no notional overpayment, their rate of family tax benefit may be increased prospectively under section 31A, based on the new estimate. Any top-up amount for the earlier period in the income year is determined at reconciliation after the end of the income year, when the claimant’s actual income is known.

New subsection 31E(4) provides that section 31E may have more than one application for a claimant in an income year. New section 31E will be applied each time one of subparagraphs 31E(1)(b)(i) to (vi) applies.

New subsection 31E(5) defines applicable day for the purpose of new section 31E. For new subparagraphs 31E(1)(b)(i), (ii), (iii) and (iv), the applicable day is the day on which the variation under the relevant section referred to in each of those subparagraphs has effect. For new subparagraphs 31E(1)(b)(v) and (vi), the applicable day is the first day in the instalment period in which the relevant application of the method statement in subsection 31E(2) is applied.
Application

New subparagraphs 31E(1)(b)(i) to (iv) will apply to variations under subsections 31A(1), 31B(1), 31C(1) and 31D(1) that are made on or after the commencement of item 2 (1 July 2009). This is regardless of whether the instalment entitlement determination in force was made before, on or after that commencement (subitem 2(1) refers).

Similarly, if the claimant provides a revised estimate of income or the Secretary makes a revised estimate of maintenance income, new subparagraphs 31E(1)(b)(v) and (vi) will apply to revised estimates provided or made on or after the commencement of item 2. This is regardless of whether the instalment entitlement determination in force was made before, on or after that commencement (subitem 2(2) refers).
Schedule 2 – Non-payment of family tax benefit for non-lodgment of tax returns

Summary

This Schedule will cease fortnightly family tax benefit payments, and payment for a past period in the same income year in which a claim is made, for claimants and/or partners who fail to lodge income tax returns.

Background

Family tax benefit can be paid based on an estimate of an individual’s adjusted taxable income. To ensure that claimants are paid their correct entitlement, the amount of family tax benefit paid based on the estimate is compared with the family tax benefit entitlement based on actual adjusted taxable income when this is known. This process is known as reconciliation. Where a claimant or partner (if any) is required to lodge an income tax return, the Commissioner of Taxation can provide details about their adjusted taxable income (Schedule 3 to the Family Assistance Act refers) after making an assessment of taxable income.

A non-lodger debt can occur where a claimant or their partner has not lodged an income tax return within the prescribed time.

Subsection 28(2) of the Family Assistance Administration Act provides for a variation of a claimant’s entitlement determination under section 16 or 17 where relevant income tax returns are required to be lodged and this has not occurred within a specific timeframe. Where these conditions are met, the Secretary must vary the claimant’s entitlement determination such that the claimant is not, and never was, entitled to family tax benefit for the entitlement year.

A variation under subsection 28(2) may result in a debt being owed to the Commonwealth, which arises under section 71 of the Family Assistance Administration Act. The debt raised, known as a non-lodger debt, is for the entire amount of family tax benefit that the claimant received for the entitlement year in respect of which they or their partner have not lodged a tax return.

Currently, a claimant can continue to receive payment of family tax benefit for the current income year (instalments or payment for a past period) based on an estimate, even if a subsection 28(2) or 28(6) variation has been made for a previous income year, resulting in a non-lodger debt for that previous year. There are further provisions in section 28 that enable subsequent variations of the determination in prescribed circumstances, with the result that a non-lodger debt can cease to exist (for example, due to a couple separating), or a non-lodger debt can be reinstated (for example, due to the couple reconciling). Such subsequent variations do not alter the fact that an initial variation of the determination was made under subsection 28(2).
This Schedule inserts a new Subdivision CA into Division 1 of Part 3 of the Family Assistance Administration Act to prohibit payment of family tax benefit by instalments, or payment for a past period in the same income year in which a claim is made, if the payment would be based on an estimate. The prohibition will be applied where there has been a variation of an entitlement determination under subsection 28(2) because the claimant for the income year the variation relates to (the non-lodger debt year), or the claimant's partner (who was a partner in that year) has not lodged a relevant tax return for that year. The prohibition will apply to the claimant and the partner. The prohibition will not apply to the claimant or the partner due to the partner not lodging a tax return if the couple separate, but the prohibition would resume if they become a couple again and the partner has still not lodged the outstanding tax return. The prohibition will also be applied to a new partner of the claimant, if the claimant remains prohibited because the claimant has not lodged a relevant tax return, while they remain a couple.

While a prohibition applies, this does not prevent payment in respect of a period in a previous income year if the person's family tax benefit for that period is not determined on the basis of an estimate. Payment can still be made at reconciliation for a particular income year, as payment would not be based on an estimate for that year.

In similar circumstances to those outlined above for prohibition of payment, if there have been three variations under subsection 28(2), and all outstanding tax returns have not been lodged for each relevant year, the claimant and partner will not be entitled to payment of family tax benefit if the payment would be based on an estimate. However, payment can still be made at reconciliation for a particular income year, as payment would not be based on an estimate for that year.

Items 1, 2, 3 and 7 of this Schedule will commence on 1 July 2009. Items 4, 5, 6 and 8 will commence on 1 July 2010.

**Explanation of the changes**

**Item 1** makes a consequential amendment to subsection 23(6) as a result of the insertion of new Subdivision CA.

**Item 2** makes a consequential amendment to subsection 24(4) as a result of the insertion of new Subdivision CA.

**Item 3** inserts new Subdivision CA into Division 1 of Part 3 of the Family Assistance Administration Act.
New section 32AA provides that, if a claimant’s entitlement determination is varied under subsection 28(2) of the Family Assistance Administration Act, then the claimant and their partner, within the meaning of subparagraph 28(1)(b)(iii) (relevant partner), may be subject to a prohibition of their family tax benefit payments that are made based on an estimate of adjusted taxable income, an indexed estimate, an indexed actual income or an estimate of maintenance income. Section 32AA also applies where a claimant has a variation of their determination under subsection 28(2) and a subsequent variation under subsection 28(6).

There can be more than one subsection 28(2) variation for a claimant at any one time. Therefore, the prohibited period for a claimant and/or their partner can be in place as a result of more than one subsection 28(2) variation. As a consequence, before an individual can again receive payment of family tax benefit based on an estimate, the requirements for ending the prohibited period must be met in respect of each subsection 28(2) variation that had occurred. This means that, if the claimant and/or their partner were required to lodge tax returns for more than one cancellation income year, all outstanding tax returns must be lodged before the prohibited period can end.

The prohibition also applies to the relevant partner to prevent the partner from claiming and being paid family tax benefit by instalments when the claimant still has a prohibition in place. If the partner were able to claim, then the application of Subdivision CA to the claimant would not have any consequence for the claimant.

The prohibition only applies to past periods occurring in the income year in which the claim is made. The prohibition does not prevent a claimant from being paid for a past period in a previous income year.

For example, Terry was paid family tax benefit by instalments in the 2007-08 income year. By November 2009, Terry had not lodged his tax return for 2007-08 and a subsection 28(2) variation was made. In January 2010, a prohibition was applied to Terry and he ceased to be paid family tax benefit by instalments. Terry notified that he no longer wanted to receive his family tax benefit by instalment and his entitlement determination ceased to be in force (section 21 of the Family Assistance Administration Act refers). In June 2010, Terry makes a new claim for family tax benefit by instalments and this claim is accompanied by a past period claim for the period January to June. Both of these claims are effective and section 16 and 17 entitlement determinations are made. However, because of the prohibited period, it is determined that Terry’s rate of family tax benefit is nil. As a consequence, he cannot be paid for the past period or ongoing instalments of family tax benefit for the prohibited period in the 2009-10 income year because his family tax benefit rate in both of these situations is determined on the basis of an estimate. He may be entitled to an amount of family tax benefit at the end of the 2009-10 income year following reconciliation.
The prohibited periods are set out in new sections 32AB (for the claimant) and 32AC (for the relevant partner). There is also a prohibited period for a new partner of the claimant, which is set out in new section 32AD.

New section 32AB provides when the claimant has a prohibited period.

First kind of prohibited period

New subsection 32AB(1) provides that, if the claimant or the relevant partner is required to lodge income tax returns for the cancellation income year and either has not lodged, then, following the grace period, there must be a prohibited period for the claimant. For new section 32AB, the grace period is defined in new subsection 32AB(8).

New subsection 32AB(2) provides the circumstances when the prohibited period begins and ends for the claimant if the first kind of prohibited period applies.

New subsections 32AB(3) and (4) provide two circumstances in which the first kind of prohibited period ends (new subsection 32AB(2) refers). New subsection 32AB(3) provides that the prohibited period ends if the claimant and/or the relevant partner lodges an income tax return for the cancellation income year. New subsection 32AB(4) provides that the prohibited period will end if the claimant and the relevant partner separate after the end of the grace period, provided that the claimant has lodged a tax return for the cancellation income year. The first kind of prohibited period can also end if new subsection 32AB(7) applies.

Second kind of prohibited period

New subsection 32AB(5) applies if the claimant and the relevant partner separate on or after the day of the subsection 28(2) variation, they are still separated at the end of the grace period but become members of the same couple again on an applicable day after the end of the grace period, and the partner was required to lodge an income tax return and has not done so.

New subsection 32AB(6) provides the circumstances when the second kind of prohibited period as set out in subsection 32AB(5) begins and ends for the claimant.

New paragraph 32AB(6)(a) provides that the second kind of prohibited period begins on a day determined by the Secretary which must be after the day on which the couple re-partner.

New paragraph 32AB(6)(b) provides that the second kind of prohibited period ends when the relevant partner lodges an income tax return, the claimant and the relevant partner cease to be members of the same couple or subsection 32AB(7) applies.
Prohibited period may end in special circumstances

New subsection 32AB(7) provides that the Secretary can end the prohibited period if there are special circumstances that justify this occurring. Examples of special circumstances could include domestic violence, severe illness or severe financial hardship.

Grace period

New subsection 32AB(8) defines *grace period* for the purpose of new section 32AB. New paragraph 32AB(8)(a) provides that the grace period is to be a minimum of 75 days from the day that the subsection 28(2) variation occurs. The Secretary could determine a longer period under subsection 32AB(9).

New paragraph 32AB(8)(b) defines the grace period where subsection 32AB(7) applies. This grace period is a period of 14 days or a longer period as determined by the Secretary under new subsection 32AB(9), beginning on the day on which the variation in subsection 32AB(7) is made. The note to subsection 32AB(8) explains that the effect of paragraph (b) is that another prohibited period can be applied to the claimant under subsection (1). It is intended that, once the grace period ends and subsection (7) no longer applies, there can be another prohibited period for the claimant.

New subsection 32AB(9) provides that, if there are special circumstances, the Secretary may, in writing, vary the grace period.

New subsection 32AB(10) provides that a determination made under new paragraph 32AB(6)(a), subsection 32AB(7) or 32AB(9) is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*. This subsection is declaratory of the law because a determination under paragraph 32AB(6)(a), subsection 32AB(7) or subsection 32AB(9) is applied to individuals on a case-by-case basis. Therefore, this is not an exemption from the *Legislative Instruments Act 2003*.

New section 32AC provides when the relevant partner has a prohibited period.

First kind of prohibited period

New subsection 32AC(1) provides that, if the claimant or the relevant partner are still members of the same couple at the end of the grace period and either or both are required to lodge income tax returns for the cancellation income year and have not done so, then, following the grace period there must be a prohibited period for the relevant partner. For new section 32AC, the grace period is defined in new subsection 32AC(10).
New subsection 32AC(2) provides the circumstances when the prohibited period begins and ends for the relevant partner if the first kind of prohibited period applies.

New subsections 32AC(3) and (4) provide two circumstances when the first kind of prohibited period under new section 31AC ends. New subsection 32AC(3) provides that, if the claimant and/or the relevant partner are required to lodge income returns for the cancellation income year and relevant income tax returns are lodged, the prohibited period ends. New subsection 32AC(4) provides that the prohibited period for the relevant partner will end if the claimant and the relevant partner separate after the end of the grace period. The first kind of prohibited period can also end if new subsection 32AC(9) applies.

Second kind of prohibited period

The second kind of prohibited period applies in circumstances where the claimant and relevant partner separate and become members of the same couple again. New subsection 32AC(5) applies if the claimant meets the following: the claimant and the relevant partner separate on or after the day of the subsection 28(2) variation; they are still separated at the end of the grace period; they are members of the same couple again on an applicable day after the end of the grace period, as defined in paragraph 32AC(10)(a); the partner and/or the claimant was required to lodge an income tax return for the cancellation income year; and either or both has not done so by the day on which they become members of the same couple again.

New subsection 32AC(6) provides the circumstances when the second kind of prohibited period as set out in subsection 32AC(5) begins and ends for the claimant.

New paragraph 32AC(6)(a) provides that the second kind of prohibited period begins on a day determined by the Secretary, which must be after the day that the couple re-partner.

New paragraph 32AC(6)(b) provides that the second kind of prohibited period ends when either new subsection 32A7(7), (8) or (9) applies.

New subsection 32AC(7) provides that new section 32AC ends for the relevant partner if the partner or the claimant was required to lodge an income tax return for the cancellation income year and does so.

New subsection 32A7(8) provides that section 32AC ends for the relevant partner if the claimant and the relevant partner cease to be members of the same couple again.
Prohibited period may end in special circumstances

New subsection 32AC(9) provides that the Secretary can end the prohibited period if there are special circumstances that justify this occurring. Examples of special circumstances could include domestic violence, severe illness or severe financial hardship.

Grace period

New subsection 32AC(10) defines grace period for the purpose of new section 32AC. New paragraph 32AC(10)(a) provides that the grace period is to be a minimum of 75 days from the day on which the subsection 28(2) variation occurs. The Secretary could determine a longer period under subsection 32AC(11).

New paragraph 32AC(10)(b) defines the grace period where subsection 32AC(9) applies. This grace period is a period of 14 days or a longer period as determined by the Secretary under new subsection 32AC(11), beginning on the day the variation in subsection 32AC(9) is made.

New subsection 32AC(11) provides that, if there are special circumstances, the Secretary may, in writing, vary the grace period.

New subsection 32AC(12) provides that a determination made under new paragraph 32AC(6)(a), subsection 32AC(9) or subsection 32AC(11) is not a legislative instrument within the meaning of the Legislative Instruments Act 2003. This subsection is declaratory of the law because a determination under paragraph 32AC(6)(a), subsection 32AB(9) or subsection 32AB(11) is applied to individuals on a case-by-case basis. Therefore, this is not an exemption from the Legislative Instruments Act 2003.

New subsection 32AD deals with the situation where the claimant partners with a new partner who was not the claimant’s partner during the cancellation income year. A prohibited period only applies to the new partner if the claimant is subject to a prohibited period and, during that period, the claimant and the partner are members of the same couple. If new section 32AD applies to the new partner, they will be subject to a prohibition of their family tax benefit payments that are made based on an estimate of adjusted taxable income, an indexed estimate, an indexed actual income or an estimate of maintenance income. New section 32AD will end for the new partner if they separate from the claimant or the claimant lodges an income tax return for the cancellation income year.

Application of the prohibited period to the claimant’s new partner while they remain a couple prevents avoidance of the prohibition on instalments, which could occur if the new partner were to claim family tax benefit by instalments.

Item 4 makes a consequential amendment to new section 32AA.
**Item 5** inserts a new subsection 32AA(2) that makes new section 32AA subject to new section 32AE. This amendment will commence on 1 July 2010 and ensures that, where new section 32AE applies to an individual, this will take precedence over any application of new section 32AA.

**Item 5** inserts a new section 32AE into the Family Assistance Administration Act.

New subsection 32AE(1) provides that new section 32AE applies if there have been three subsection 28(2) variations in relation to a claimant.

New subsection 32AE(2) provides that, if new section 32AE applies, then the claimant will cease to be entitled to family tax benefit payments that are made based on an estimate of adjusted taxable income, an indexed estimate, an indexed actual income or an estimate of maintenance income.

New subsection 32AE(2) will apply if the claimant is required to lodge an income tax return for one or more of the cancellation income years and has not so lodged; and, if the claimant is a member of a couple and the partner is also the relevant partner for one or more of the cancellation income years concerned, the partner has not lodged for each of the cancellation income years.

New subsection 32AE(3) provides similar rules to new subsection 32AE(2) for the claimant’s current partner.

**Application**

**Item 7** provides the application provisions for amendments that are starting on 1 July 2009. The amendment made under **item 3** applies in relation to a subsection 28(2) variation that is made before, on or after 1 July 2009. This is regardless of whether the determination being varied was made before, on or after 1 July 2009 (**subitem 7(1)** refers).

**Subitem 7(2)** provides that, if there has been a subsection 28(2) variation before 1 July 2009 but all relevant tax returns have been lodged for the cancellation income year, then **subitem (7)1** will not apply.

**Subitem 7(3)** provides that, if the subsection 28(2) variation mentioned in new section 32AA occurs before the commencement of **item 3**, being 1 July 2009, the grace period in new subsection 32AB(8) or 32AC(10) is taken to begin on 1 July 2009.

**Subitem 8(1)** provides that new section 32AE will apply to variations occurring before, on or after commencement of **item 6**, which is 1 July 2010.

**Subitem 8(2)** provides that any entitlement to be paid family tax benefit before the commencement of **item 6** (1 July 2010) will not be affected by the amendments made by **item 6**.
Subitem 8(3) provides that, if there have been more than three variations made before the commencement of this item in 1 July 2010, then new section 32AE will apply in relation to all of those variations.

Subitem 8(4) provides that, if there have been three or more subsection 28(2) variations before 1 July 2010, but relevant tax returns have been lodged for one or more of the cancellation income years, then subitems 8(1) and (2) will not apply in relation to those variations.

The application of the amendments to variations which have occurred before commencement is intended to address existing non-lodger debt relating to earlier income years, and to ensure that claimants receive their correct family tax benefit entitlement, which is determined after reconciliation conditions are met.
Schedule 3 – Information sharing

Summary

This Schedule will include amendments to the tax file number provisions in the family assistance law to ensure accurate information sharing between the Australian Taxation Office and Centrelink for the purpose of reconciliation and debt offsetting.

Background

Section 154A of the Family Assistance Administration Act relates to the use of tax file numbers that have been provided to the Secretary under a provision of the family assistance law. Under section 154A, the Secretary may provide an individual’s tax file number to the Commissioner of Taxation for the purpose of being informed of the individual’s taxable income for a particular income year. In return, the Commissioner may provide the Secretary with particulars of the individual’s taxable income, which is a component of adjusted taxable income under Schedule 3 to the Family Assistance Act. The Commissioner can only keep the record of the tax file number for a period of three years after the end of the particular income year, at which time the Commissioner must destroy the record of the tax file number provided for that income year.

The rate of payment of family tax benefit by instalments is worked out using an estimate of adjusted taxable income. Past period claims may also be worked out on the basis of an estimate where the past period is in the same year in which the claim is made.

Under section 154A, the Commissioner of Taxation may provide the Secretary with the individual’s particulars of income for the income year. When the individual’s particulars of income are known, reconciliation can occur. The process of reconciliation involves reviewing the individual’s rate of family tax benefit for the relevant income year based on an estimate and comparing it with the rate recalculated on the basis of actual income. This is a Secretary-initiated review under section 105 of the Family Assistance Administration Act.
The amended section 154A will extend the period of time for which the Commissioner of Taxation may use an individual's tax file number record, provided by the Secretary for a specified income year, to provide the Secretary with the individual's income details for that year. The Commissioner will keep the record for a minimum period of three years after the end of that income year, or such longer period that the Commissioner needs to be able to provide the individual's income details to the Secretary. Amendments will also specify that the Commissioner may provide the Secretary with other components of the individual's adjusted taxable income for the year (which are relevant for reconciliation purposes), in addition to taxable income. Amendments will further specify that a record of an individual's tax file number can be provided to the Commissioner for the purpose of debt offsetting, along with information about an individual’s family assistance entitlement or debt.

The amendments made by this Schedule commence on 1 July 2009.

**Explanation of the changes**

**Item 1** repeals subsection 154A(2), (3) and (4) and substitutes new subsections 154A(2), (3), (4), (5), (6) and (7).

Under new subsection 154A(2), the Secretary may provide to the Commissioner of Taxation a record of an individual's tax file number. This record is provided for the purpose of the Secretary being informed of the amounts included in the individual's adjusted taxable income that the Commissioner has determined for the specified income year. The specified income year is the year for which the tax file number record is provided.

New subsection 154A(3) provides for the Secretary to give notice to the Commissioner of Taxation if the Secretary understands that an individual is not required to lodge an income tax return for that year. For example, this may occur if the individual has notified the Secretary that the individual is not required to lodge a tax return for that year.

New subsection 154A(4) provides that a notice given under subsection 154A(3) may include a record of the individual's tax file number to assist the Commissioner to identify the claimant. This record must be destroyed by the Commissioner when it is no longer needed. This record is no longer needed when the Commissioner has matched the notice given under subsection 154A(3) with the tax file number record provided under subsection 154A(2).
Under new subsection 154A(5), the Commissioner of Taxation may provide to the Secretary amounts included in an individual's adjusted taxable income, together with the individual's tax file number. The components of adjusted taxable income are set out in Schedule 3 to the Family Assistance Act. The amounts that the Commissioner determines and can provide are taxable income, reportable fringe benefits total, tax exempt foreign employment income (for 2008-09 and later income years), net rental property loss (for 2008-09 and earlier income years), and total net investment loss and reportable superannuation contributions (for 2009-10 and later income years). The individual's tax file number assists in the identification of the claimant to whom the income amounts for the specified year apply.

New subsection 154A(6) provides, as a general rule, that the Commissioner of Taxation must destroy the record of the tax file number three years after the end of the income year for which it was provided. The exception to this general rule is where the Commissioner has not disclosed to the Secretary the particulars of the individual's adjusted taxable income, and the Commissioner has not received a notice from the Secretary under new subsection 154A(3). The tax file number record should only be destroyed if the exception to the destruction of the record does not apply.

New subsection 154A(7) provides that the Commissioner of Taxation must destroy the record of the tax file number once the Commissioner provides to the Secretary particulars of the individual's adjusted taxable income for the specified income year or the Commissioner receives notice under subsection 154A(3) that the Secretary understands that the individual is not required to lodge a tax return for the income year.

**Item 3** inserts a new section 154B. New section 154B will allow for the Secretary to provide the Commissioner of Taxation with an individual's tax file number to assist in debt recovery.

Under new subsection 154B(1), the Secretary may provide the Commissioner of Taxation with the tax file number of an individual or their partner, along with details of their entitlement or non-entitlement to family assistance, for a debt offsetting purpose stated in new subsection 154B(2).

New subsection 154B(2) sets out the relevant debt offsetting purposes for the Secretary providing the Commissioner with information about an individual's entitlement or non-entitlement to family assistance. This information is provided for the purpose of enabling the Commissioner either to apply a tax refund to a family assistance debt under section 87 or 93 of the Family Assistance Administration Act, or to assist the payment of deductions from family assistance (other than child care benefit) to the Commissioner under section 225 of the Family Assistance Administration Act, or to set off an entitlement to family assistance (other than child care benefit) against a tax liability under section 226 of the Family Assistance Administration Act.
New subsection 154B(3) provides that the Commissioner must destroy the tax file number record when the tax file number is no longer required for the purpose of assisting in debt recovery.

Application

Section 154A of the Family Assistance Administration Act, as amended by item 1, applies in relation to tax file number records that have been provided by the Secretary to the Commissioner of Taxation in the period beginning on 1 July 2006 and ending immediately before the commencement of this Schedule (pre-commencement period). If a tax file number record is provided during the pre-commencement period, the record provided is the designated TFN record, for the purpose of the application of the amended section 154A to that record. The amended section 154A also applies to tax file number records provided on or after the commencement of this Schedule (the application provision in item 3 refers).

Transitional

Item 4 provides the transitional arrangements for the provision of tax file number records if an individual’s tax file number record had previously been provided by the Secretary to the Commissioner and was destroyed by the Commissioner because of the application of section 154A prior to the amendments in this Schedule.

Subitem 4(1) provides the criteria that must be met in order for the transitional arrangements to be applied. The transitional arrangements will apply if the Secretary has previously provided an individual’s tax file number record to the Commissioner of Taxation for an income year and this has been destroyed by the Commissioner because of the application of section 154A prior to the amendments in this Schedule. If the record has been destroyed and the Commissioner did not provide the Secretary with the particulars of the individual’s taxable income for that income year before the commencement of this Schedule, item 4 applies.

Subitem 4(2) provides that the Secretary may provide to the Commissioner a record of the individual’s tax file number for the purpose of determining the particulars of the actual adjusted taxable income for the individual for the specified year. This provision of the tax file number record under subitem 4(2) only occurs where the Commissioner destroyed the individual’s original tax file number record as required under section 154A prior to the amendments in this Schedule.

Subitem 4(3) provides that the Commissioner must destroy the record provided in subitem 4(2) when the Commissioner has disclosed particular’s of the individual’s adjusted taxable income to the Secretary or when the Commissioner receives a notice under subsection 154A(3) that the Secretary understands that the individual is not required to lodge a tax return for the income year.