THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS AND OTHER LEGISLATION AMENDMENT (FURTHER ELECTION COMMITMENTS AND OTHER MEASURES) BILL 2011

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon Jenny Macklin MP)
This Bill will introduce three further election commitments affecting families, a 2010-11 Budget measure streamlining the notification processes for compensation recipients, and some minor family assistance amendments.

**Family tax benefit advance**

The Bill introduces a further element from the election commitment package titled *Better Access to Family Payments*. This will provide for more flexible advance payments of family tax benefit, to help families meet unexpected costs.

**Health checks for young FTB children**

As one of its election commitments, the Government announced the *Healthy Start for School* measure for family tax benefit (FTB) recipients on income support payments. This measure will make the payment of the FTB Part A supplement for a child turning four in a particular income year conditional on the child undertaking a health check. The measure will commence on 1 July 2011.

**Determinations of adjusted taxable income**

The Bill introduces an election commitment from the Government’s package, *Strengthening Compliance – child support*. The measure modifies the current rules applicable to the Child Support Registrar in determining a person’s adjusted taxable income where a parent’s taxable income has not been formally assessed. A new, more accurate, default income arrangement will be introduced that uses a parent’s previous taxable income, indexed by growth in wages, instead of a lower default income (two-thirds of Male Total Average Weekly Earnings), in cases where they have not lodged a tax return.

**Notice of payments of recompense for personal injuries**

The 2010-11 Budget measure, *Streamline the Notification Processes for Compensation Recipients*, is included in this Bill. The new provisions require payers of compensation, such as insurance companies, to notify Centrelink of proposed payments of compensation. Centrelink will then use this information to determine the social security entitlements of the compensation recipient or their partner. This will reduce the risk of individuals incurring unnecessary debt to the Commonwealth and receiving income support payments to which they or their partner are not entitled.
**Other amendments**

The Bill also makes minor amendments to the family assistance law and child support legislation to clarify technical or drafting matters, and ensure the legislation operates as intended. There are no policy changes from these amendments.

**Financial impact statement**

**Family tax benefit advance**

**Total resourcing**

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* Does not include Centrelink capital costs of $1.6 m in 2010-11 and $1.3 m in 2011-12.

**Health checks for young FTB children**

**Total resourcing**

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* Does not include Centrelink capital costs of $0.8 m in 2010-11 and $0.7 m in 2011-12.

**Determinations of adjusted taxable income**

**Total change in resourcing**

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* Includes impacts for the Department of Human Services and the Department of Families, Housing, Community Services and Indigenous Affairs.

**Notice of payments of recompense for personal injuries**

**Total resourcing**

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**Other amendments**

Nil.
NOTES ON CLAUSES

Abbreviations used in this explanatory memorandum

- ‘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*

Clause 1 sets out how the new Act is to be cited, that is, as the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further Election Commitments and Other Measures) Act 2011*.

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

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.
Schedule 1 – Family tax benefit advance

Summary
This Schedule to the Bill introduces a further element from the election commitment package titled Better Access to Family Payments. This will provide for more flexible advance payments of family tax benefit, to help families meet unexpected expenses.

Background
From 1 July 2011, families will be able to receive a larger and more flexible advance of their family tax benefit entitlements. This will give families more choice and greater scope to choose the size and timing of an advance payment.

This Schedule modifies the current arrangements for family tax benefit (FTB) advance payments in order to make more flexible: first, the rules for determining whether an individual is entitled to an advance and the amount of the advance; second, the rules as to reducing the individual’s rate of FTB Part A to effect repayment of the advance; and, third, the circumstances in which a debt for the unrepaid amount of the FTB advance is raised. The conditions under which regular advances will operate in the context of these more flexible arrangements are also modified.

Entitlement to an FTB advance

Entitlement to an advance will continue to depend, as it does now, upon the individual being entitled to FTB by instalment, having at least one FTB child, and the individual having made a request to the Secretary for the payment of an FTB advance. The individual will need to have an annual Part A rate of FTB, before any reduction for an advance, of at least the base standard rate for an FTB child who has not turned 18.

However, unlike the current approach where a fixed amount of advance applies, the individual will now be able to request a specified amount of advance to suit their needs. The approach is similar to that taken in relation to social security advances, which were amended to be more flexible from 1 July 2010 as the result of the pension reforms (under the Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Act 2009).
The individual is generally excluded from being paid a family tax benefit advance if at the time they make the request, they owe a debt to the Commonwealth. Further, no advance is available if the amount of an advance that the person received more than 12 months ago has not been fully repaid. However, the individual may be paid a further advance while a previous advance is still being repaid, so long as the new advance does not exceed the individual’s remaining maximum advance. This allows an individual to choose to be paid some of their maximum advance at one time, and some at a later time (rather than receiving all of their maximum advance at the one time).

The individual will not be entitled to an advance if they would only be entitled to an advance amount of less than the minimum amount.

To be entitled to an advance, the Secretary must be satisfied that the individual will not suffer financial hardship from the individual’s Part A rate being reduced to repay the advance.

**Amount of FTB advance**

The amount of advance to which an individual may be entitled will be more flexible than the current arrangements. The amount will be subject to an upper and lower limit. Within these limits, the maximum amount payable to any individual will generally vary depending upon their Part A rate, and whether they are still repaying a previous advance. For the 2011-12 year, the maximum advance available will be limited to $1,000. The minimum for 2011-12 for most individuals will be $160.96. For subsequent years, the maximum and minimum limits will be linked to the FTB child rate for one FTB child who is under 13 years of age, which is indexed on 1 July of each year, and will consequently be adjusted annually.

If the individual is repaying a previous advance, then their maximum amount for the new advance will be reduced by the original amount of the previous advance. This will ensure that the reduction in the individual’s rate required to repay the additional advance, when added to reductions already being made, will not place them in a situation of financial hardship. The combined reduction from the two advances is the same reduction that would apply if the individual had chosen to receive one advance equal to the amount of the two advances.

The individual will generally be entitled to the smaller of the amount of advance sought, and the maximum amount of advance payable to the individual. Subject to the ceiling amount noted above ($1000 in 2011-12), the maximum amount is the greater of 7.5 per cent of their Part A rate or 7.5 per cent of the maximum standard rate for a child under 13, less any existing advances. This amount is subject to a remaining discretion to determine that the individual should be entitled to a lesser amount based upon financial hardship criteria. If the decision is that any amount of advance (even the minimum) will place the individual in financial hardship, then the individual is not entitled to receive an advance.
Repayment of advance payment

The current fixed repayment periods of 1 January to 30 June and 1 July to 31 December will no longer apply. Instead, an individual may request an advance on any day, and will have some flexibility as to the period and rate of repayment of the advance.

The default repayment period over which the advance will ordinarily be repaid by reduction of the individual’s FTB Part A instalment rate is 182 days, or 26 weeks. This period may span two financial years. However, a different repayment period may be appropriate, depending upon the individual’s circumstances. An example is where the period for repayment of the advance is known to be shorter than 182 days because the individual’s eligibility for FTB will end at an earlier time because the individual’s only child ceases to be an FTB child due to the child’s age and other circumstances. The repayment period may also be varied from time to time.

If the Secretary determines that an individual is entitled to be paid an advance, it must be repaid, as currently, first by reduction of the individual’s ongoing rate of FTB Part A during the repayment period (if possible), although other means of repayment are available. The repayment period, and reduction of the individual’s Part A rate will generally start from the beginning of the next instalment period after the advance is determined.

The practical effect of the reduction of the annual Part A rate to repay an advance in the ordinary case is that the individual’s daily rate of FTB is reduced by the amount of the advance payment divided by 182.

The individual may seek either a reduction or increase in the number of days in their repayment period. If the individual requests it, the Secretary may determine that the repayment period is shortened if satisfied that the individual would not suffer severe financial hardship. The individual may also request a longer repayment period, producing a lower rate of reduction of their FTB Part A rate. However, this request will only be granted in unanticipated and unusual circumstances, where the individual would suffer severe financial hardship if the request were not granted. In these cases, the Secretary may vary the decision to extend the repayment period where satisfied that the individual would not suffer severe financial hardship as a result, provided that this does not result in the individual’s FTB Part A reduction being greater than the standard reduction (the original advance amount divided by the number of days in the original repayment period is the daily equivalent of the annual standard reduction).
The individual also has the option to seek a suspension of repayment in unforeseen and unusual circumstances. The suspension may be revoked by the Secretary, and adjustment to the repayment period must also be considered at the same time. Similarly, if the individual requests it, and it is satisfactory to the Secretary, the individual may repay all or part of the advance in another way, for example, by cash refund. If so, it would generally be appropriate for the individual to also request a shorter repayment period due to the cash refund.

During the repayment period, the individual’s Part A rate is reduced on each day by a figure representing the annualised amount of the result of dividing the unrepaid amount of the advance (at that time) by the number of days remaining in the repayment period.

It will be possible for an individual to be repaying more than one advance at the same time. Each advance that has been paid will have its own repayment period and daily reduction amount, and the point at which each advance is fully repaid will therefore differ. During the period of overlapping repayment periods, the reduction of the individual’s annual Part A rate will be the sum of the reductions for each advance that is being repaid on that day.

If a retrospective recalculation of an individual’s Part A rate takes place once the advance was thought to be entirely repaid, that is, after the end of the repayment period, and as a result, all or part of the advance is now not repaid, the outstanding amount must still be repaid. This could arise as the result of a change of circumstances during an income year, or due to the reconciliation of FTB after the end of the income year. However, an advance debt will not arise where the individual is, at the time of the recalculation, entitled to FTB by instalment with a Part A rate greater than nil, such that reduction of the FTB Part A rate may be restarted to repay the outstanding amount.

In this case, the device of a new notional advance is used. The Secretary must determine that a new notional advance is taken to have been paid, in the amount of the balance outstanding at that time, triggering a new repayment period. The notional advance is taken to have been paid on the day the Secretary undertakes the recalculation of the previous period. The Secretary will also determine a repayment period for the notional new advance. Once a new repayment period is created, it may be adjusted, or suspended, in the same way as for the original repayment period.

**FTB advance debts**

These more flexible arrangements will result in an individual generally repaying their advance from ongoing reductions of the Part A rate, rather than a debt arising (a debt prevents the individual from seeking further advances should they wish it). A debt will arise if, when an amount of the advance remains outstanding, the individual has a nil ongoing rate of FTB Part A before any reduction for an advance, or loses entitlement to FTB.
A debt will also arise if the individual was not entitled to the advance when it was paid, or was not entitled to the full amount of advance paid.

Additionally, a debt will arise if relevant tax returns are not lodged, and the Secretary determines under section 28 of the Family Assistance Administration Act that the claimant was not entitled to family tax benefit for an income year, and the amount of advance that had been repaid in that year is now not repaid. However, if the relevant tax returns are subsequently lodged, the debt will be extinguished.

**Regular advances**

For individuals who prefer to make a single request to receive advances of the same amount at regular intervals, regular advances will remain available. An individual may request an advance of the minimum amount be paid to them and simultaneously request that similar advances of the minimum amount be paid to them at regular intervals of 182 days. Provided the individual is able to repay each such advance by reduction of their Part A rate within the 182-day interval, then such arrangement may continue indefinitely.

Transitional arrangements will apply to maintain the payment of an advance to families in receipt of continuous advances immediately prior to commencement.

The amendments made by this Schedule commence on 1 July 2011.

**Explanation of the changes**

**Amendments to the Family Assistance Act**

**Items 1 and 3** repeal the definitions of ‘FTB advance rate’ and ‘standard advance period’. These concepts will no longer be required under this system of more flexible advances.

**Item 2** inserts a definition of ‘repayment period’, by reference to new subclause 40(3) of Schedule 1, inserted by item 8, below.

**Item 4** inserts the concept of a ‘standard reduction’ by reference to new clause 41 of Schedule 1, also inserted by item 8, below.
**Item 5** makes a minor amendment to paragraph 21(1)(c), which deals with eligibility for family tax benefit. In most cases, in order to be eligible, an individual must have at least one FTB child (or at least one regular care child and not be an absent overseas recipient), and meet residency requirements. The individual must additionally have a rate of family tax benefit, worked out under Division 1 of Part 4, that is greater than nil. However, where an individual’s Part A rate is being reduced to repay an advance, and they have a nil Part B rate, the reduction may result in their rate of family tax benefit being nil. This amendment results in the individual’s rate, as considered for eligibility purposes, being the rate that disregards any reductions under clause 5 or 25A of Schedule 1 (to repay an advance).

**Item 6** repeals and replaces clause 5 of Schedule 1. Clause 5 reduces an individual’s Part A rate to effect repayment of an advance, where the individual’s Part A rate is calculated under method 1. Method 1 applies where the individual’s adjusted taxable income does not exceed the higher income free area (currently $94,316 a year, plus $3,796 for each FTB child after the first) or where the individual or their partner is receiving prescribed social security or veterans’ payments.

New subclause 5(1) sets out when the individual’s Part A rate is to be reduced. Reduction of the individual’s Part A rate is required if:

- the individual is entitled to be paid family tax benefit by instalment; and
- the individual is paid a family tax benefit advance; and
- the individual has not repaid the whole of the advance; and
- the amount of unrepaid family tax benefit advance is not an FTB advance debt.

The Part A rate upon which this provision operates is the rate after reduction, if any, under clauses 38J and 38K, which deal with offsetting for duplicate rent assistance. The subclause is subject to new clauses 44 and 49, which deal with suspension of repayments. The reduction to be made is prescribed by new Division 4 of Part 5 of Schedule 1 (see item 8 below).

New subclause 5(2) makes it clear that, if an individual satisfies the paragraphs of subclause 5(1) above for more than one family tax benefit advance, the individual’s Part A rate is to be reduced under subclause (1) for each of those advances.

**Item 7** repeals and replaces clause 25A of Schedule 1. Clause 25A effects reduction of an individual’s Part A rate to effect repayment of an advance, where the individual’s Part A rate is calculated under method 2. Method 2 applies where the individual’s adjusted taxable income exceeds the higher income free area and where neither the individual nor their partner is receiving prescribed social security or veterans’ payments. Clause 25A is identical in effect to new clause 5.
**Item 8** adds a new Division at the end of Part 5 of Schedule 1.

### Division 4 – Reduction for family tax benefit advance

An individual’s annual rate of family tax benefit is calculated in accordance with the rate calculator in Schedule 1, as stated by subsection 58(1). New Division 4 deals with reduction of an individual’s Part A rate to repay an FTB advance.

**New clause 40** prescribes how to work out the reduction of an individual’s Part A rate under new clauses 5 or 25A. It prescribes, at subclause (1), a formula that divides the amount of unrepaid family tax benefit advance by the remaining days in the repayment period, and annualises the result by multiplying by 365. This formula produces an annualised rate of reduction of the Part A rate for each day in the repayment period.

Where the person requesting the advance is a member of a couple in a blended family, and the Secretary has determined a percentage that is the individual’s share of the family tax benefit for the children under section 28, subclause (2) provides for the reduction in the individual’s Part A rate during the repayment period to repay an advance paid to the individual.

Subclause (2) inflates the reduction in the Part A rate produced by subclause (1) by the individual’s section 28 percentage. This is necessary because when the ultimate annual rate of FTB for all children of the individual is calculated under Schedule 1, section 60 provides that the individual’s annual rate of FTB is the section 28 percentage of this rate. When the individual’s rate, including the reduction for repayment of the advance, is reduced under section 60, the earlier inflation by this percentage under this subclause produces the correct reduction.

The ‘repayment period’ is defined in new subclause (3).

The repayment period begins on either the first day of the instalment period after the individual is paid the advance, or if it is not practicable for the reduction to start on that day, the first day on which it is practicable to reduce the individual’s Part A rate.

If the individual has sought regular advances at 182-day intervals under new section 35B of the Family Assistance Administration Act (inserted by **item 13** below), the repayment period begins on the day the determination of entitlement to each successive advance is made. This ensures that the regular advances may be paid at six-monthly intervals.

In some particular situations, the repayment period will start on such other day determined by the Secretary under this Division. For example, new clause 51 provides for the Secretary to determine a repayment period for a notional new advance where the original repayment period has expired.
The repayment period is then a period of either 182 days, or such other period as determined by the Secretary under the Division. Subsequent new clauses 42, 43, 44, 45, 46, 47, 48 and 49 of the Division provide for either a shorter or longer repayment period, or suspension of the repayment period.

**New clause 41** provides for a standard reduction by reference to the original repayment period. Subject to subclause (2), the standard reduction is the original amount of a family tax benefit advance, divided by the number of days in the original repayment period.

The *original repayment period* is defined at subclause (3) as a period of 182 days, unless the Secretary has determined a different period for the advance under clause 42 or 51. This reflects the fact that the default repayment period for repayment of an advance will ordinarily be 26 weeks. However, subclause (3) provides for the original repayment period to be shorter or longer than 182 days under new clauses 42 or 51.

Where an advance is paid to a member of a couple in a blended family, and the Secretary has determined a percentage that is the individual’s share of the family tax benefit for the children under section 28, subclause (2) provides that the standard reduction is the standard reduction under subclause (1) inflated by the individual’s section 28 percentage.

The standard reduction concept will guide the Secretary’s decision-making when applying a different repayment period in order to produce a different repayment rate.

**New clause 42** provides for the Secretary to determine a shorter payment period when determining an individual’s entitlement to an advance. The Secretary may determine that the repayment period for the family tax benefit advance is a period of less than 182 days if the Secretary is satisfied that it is appropriate to determine the shorter repayment period having regard to:

(a) circumstances affecting the individual’s eligibility for family tax benefit; and

(b) circumstances affecting the rate of family tax benefit that the individual is entitled to be paid.

An example is where the period for repayment of the advance is known to be shorter than 182 days because the individual’s eligibility for FTB will end at an earlier time because the individual’s only child ceases to be an FTB child due to the child’s age and other circumstances. This is similar to the existing discretion in subsection 34(4) of the Family Assistance Administration Act.

**New clause 43** adjusts the reduction made under new clause 40 where the individual’s Part A rate is insufficient to cover the calculated reduction, where the individual’s Part A rate is to be reduced to repay only one family tax benefit advance.
It may be that, as a result of a variation reducing an individual’s Part A rate, the Part A rate before reduction is less than the reduction which would result from the relevant formula in new clause 40. In this case, new subclause 43(2) provides that, subject to clause 45, the Secretary must determine that the number of days in the repayment period for the particular unrepaid advance is to be increased so that the individual’s Part A rate is reduced under clause 5 or 25A by an amount that is no more than the individual’s unreduced Part A rate. This will leave the individual with a nil Part A rate after the reduction. Alternatively, the Secretary may exercise the discretion under clause 45 and determine that the amount of unrepaid family tax benefit advance is a debt.

If the individual’s unreduced Part A rate later exceeds the amount by which the individual’s Part A rate would be reduced under clause 40 (this reduction will be lower as a result of the increase in the number of days in the repayment period under subclause 43(2)), then new subclause 43(3) provides that the Secretary may determine that the number of days in the repayment period for the unrepaid advance is decreased.

However, new subclause 43(4) provides that the amount by which the individual’s Part A rate is to be reduced under clause 40 as the result of a determination under subclause 43(3) must be no more than the standard reduction.

A note advises the reader that the individual may also request that the Secretary determine a shorter or longer repayment period under clause 46 or 47.

**New clause 44** adjusts the reduction made under new clause 40 where the individual’s Part A rate is insufficient to cover the calculated reduction, where the individual’s Part A rate is being reduced to repay more than one family tax benefit advance.

A method statement is set out in subclause (2) to guide the amount by which the individual’s Part A rate is to be reduced. The advances are approached one by one, taking the oldest advance first, and working through to the youngest. The reduction is adjusted individually because reductions for older advances may result in a nil Part A rate, such that payment of a younger advance cannot occur at that time. The method statement provides, at step 4, for suspension of the repayment period for such a younger advance.

Subclause (3) authorises the Secretary to vary a previous determination to reduce a repayment rate to the rate of FTB Part A available, and subclause (4) authorises the Secretary to revoke a previous determination to suspend reductions where only a nil rate is available.

Subclause (5) provides that, if the Secretary revokes a determination to suspend a repayment period under step 4, the Secretary must determine the number of days remaining in the repayment period for the advance. However, the Secretary need not adjust the repayment period if the Secretary instead invokes the discretion in new clause 45 to create an FTB advance debt.
Subclause (6) requires that the amount by which the individual’s Part A rate is to be reduced as the result of a decision under subclause (3) or (5) must be no more than the standard reduction.

**New clause 45** provides a discretion for the Secretary to create an FTB advance debt under subsection 71A(7) of the Family Assistance Administration Act. However, the Secretary must not make a determination that an amount of unrepaid family tax benefit is a debt unless the individual’s Part A rate before reduction under clause 5 or 25A is less than the amount that would, under clause 26 be the FTB child rate for an FTB child who had not turned 18 if the individual’s Part A rate were required to be worked out using Part 3 of Schedule 1, and clause 27 of that Schedule did not apply. This is the minimum rate of FTB Part A for an individual to be entitled to an advance.

The discretion in clause 45 would be exercised so as to avoid long periods of repayment for people on higher incomes who are no longer entitled to further advances. Under the current law, all cases where the Part A rate would be reduced to nil by an advance reduction becomes an FTB advance debt. Under the new law, the reduction of the Part A rate will be the general method for repaying an advance, rather than creating a debt. However, it will remain appropriate to create a debt to avoid lengthy repayment periods.

For example:

- The amount of the unrepaid advance is $600.
- The Part A rate before reduction under clause 5 or 25A is $100.
- If the Part A rate reduction method is used, the repayment period would be 6 years, which is not appropriate.

Therefore, the discretion in clause 45 will enable the $600 to become an FTB advance debt. Normal debt recovery methods will enable a more appropriate period to recover the amount.

**New clause 46** deals with decreasing the number of days in a repayment period where an individual requests it. It allows an individual to request the Secretary to shorten their repayment period if they wish to repay their advance more quickly. The Secretary may determine that the number of days in the repayment period is to be decreased if the individual has made a request for the decrease, and the Secretary is satisfied that the individual would not suffer severe financial hardship if the number of days in the repayment period were decreased as determined.

Subclause (2) provides that the request must be made in a form and manner, contain any information, and be accompanied by any documents required by the Secretary.
Subclause (3) allows the individual, if they have previously requested a decrease in the number of repayment days and the Secretary has determined a smaller number of days under subclause (1), to request that the Secretary vary the determination to increase the number of days in the repayment period.

However, subclause (4) limits the variation that the Secretary may make under subclause (3) such that the deduction amount cannot go below the standard reduction.

A note advises the reader that, if, after the variation under subclause (3), the reduction in the individual’s Part A rate under clause 5 or 25A would cause the individual to suffer severe financial hardship, the individual may request a longer repayment period under clause 47.

**New clause 47** allows the Secretary to determine that the number of days in a repayment period is to be increased if the individual requests it, and the Secretary is satisfied that special circumstance relevant to the repayment of the advance exist in relation to the individual that could not reasonably have been foreseen at the time of the individual’s request for a family tax benefit advance. Additionally, the Secretary must be satisfied that the individual would suffer severe financial hardship if the number of days in the repayment period were not increased as determined.

The request must be made in a form and manner, contain any information, and be accompanied by any documents, required by the Secretary (subclause (2)).

Subclause (3) then empowers the Secretary to vary a previous determination made under subclause (1), so as to reduce the number of days in the repayment period (and increase the rate of repayment). However, this can only occur if the Secretary is satisfied that the individual would not suffer severe financial hardship because of the variation. The Secretary may not vary the determination under this subclause such that the variation would result in the amount by which the individual’s Part A rate is to be reduced under clause 5 or 25A being greater than the standard reduction.

**New clause 48** requires the Secretary to increase an individual’s repayment period if there is a recalculation resulting in an increase in the amount of unrepaid family tax benefit advance during the repayment period. The clause applies if, during the repayment period for a family tax benefit advance, the amount of the family tax benefit advance that is unrepaid is increased due to a variation in a determination or a variation or substitution of a decision on review, so that the amount by which the individual’s Part A rate is to be reduced is more than the standard reduction. The Secretary must determine that the number of days in a repayment period is to be increased so that the amount by which the individual’s part A rate is to be reduced is not more than the standard reduction.
New clause 49 empowers the Secretary to determine that the individual’s Part A rate is not to be reduced under clause 5 or 25A while the determination is in force. However, subclause (2) provides that such a determination may only be made if the individual makes a request for the repayment period to be suspended, and the Secretary is satisfied of a number of things. The Secretary must be satisfied that special circumstances relevant to the repayment of the advance exist in relation to the individual that could not reasonably have been foreseen at the time of the individual’s request for a family tax benefit advance. The Secretary must also be satisfied that the individual would suffer severe financial hardship if the individual’s Part A rate were to be reduced for that period.

Subclause (3) provides that the request must be made in a form and manner, contain any information, and be accompanied by any documents, required by the Secretary.

Subclause (4) empowers the Secretary to revoke the suspension at any time, upon the Secretary’s own initiative. However, the Secretary may only do so, in writing, where satisfied that the individual would not suffer severe financial hardship from the individual’s Part A rate being reduced under clause 5 or 25A as a result of the revocation.

Subclause (5) provides that, if the Secretary revokes the determination, the Secretary must determine the number of days remaining in the repayment period such that the amount by which the individual’s Part A rate is to be reduced under clause 5 or 25A would not be greater than the standard reduction.

In practice, the Family Assistance Office will be in contact with the individual to whom the suspension applies, monitoring their financial situation, and assessing whether the suspension is still needed from time to time. Any revocation of the suspension would only occur after the individual is given an opportunity to discuss ongoing arrangements.

New clause 50 provides for repayment of a family tax benefit advance by another method.

Subclause (1) empowers the Secretary to determine that an individual who has requested it, may repay all or part of an unrepaid family tax benefit advance by a method other than by reduction under clause 5 or 25A. For example, the individual may request repayment by an amount in cash. However, a determination that this may occur is dependent upon the method being acceptable to both the individual and the Secretary. In general, it would be expected that the alternative method of repayment would be accepted when the individual also agrees to seek a shorter repayment period for the remaining unrepaid amount of the advance, such that repayment would generally remain at the standard reduction amount.
Subclause (2) provides that the request must be made in a form and manner, contain any information, and be accompanied by any documents, required by the Secretary.

**New clause 51** provides for the recalculation of the amount of unrepaid family tax benefit advance where, in retrospect, the full amount has not been repaid despite the repayment period ending.

Subclause (1) provides that the clause applies if:

- an individual is paid a family tax benefit advance, (‘the old advance’); and
- the individual’s Part A rate has been reduced under clause 5 or 25A to repay the old advance; and
- the repayment period for the old advance has expired; and
- due to a variation in a determination, or a variation or substitution of a decision on review, (other than a variation under subsections 28(2) or (6) of the Family Assistance Administration Act relating to non-lodgement of tax returns) the reduction in the individual’s Part A rate under clause 5 or 25A has not been sufficient to repay the old advance; and
- at the time of the variation of the determination or the variation or substitution of the decision on review, the individual is entitled to be paid family tax benefit by instalment, with a Part A rate greater than nil (before reduction under clause 5 or 25A).

A note alerts the reader that, if a variation or review occurs during the repayment period for a family tax benefit advance, the Secretary may be required to make a determination under clause 48 to increase the number of days in the repayment period.

Subclause (2) provides for a determination that the individual is taken to have been paid a family tax benefit advance equal to the amount of the previous family tax benefit advance left unrepaid on the day on which the Part A rate is recalculated. This is the ‘new advance’.

Subclause (3) provides that in the situation covered by subclause (2), the individual is taken to have repaid the old advance.

Subclause (4) provides that the Secretary must determine the repayment period for the new advance and the day on which the repayment period is to begin.

Subclause (5) provides that the Secretary must not make a determination under subclause (4) that would cause the individual to suffer severe financial hardship.
Subclause (6) empowers the Secretary to vary or revoke a determination made under subclause (2) or (4), if a subsequent variation in the determination or a variation or substitution of the decision on review occurs.

**Amendments to the Family Assistance Administration Act**

**Item 9** inserts a definition of *advance assessment day*, in relation to a family tax benefit advance, as having the meaning given by subsection 35A(3), and in relation to regular advances, by paragraph 35B(3)(b).

**Item 10** inserts a definition of ‘FTB advance debt’, as having the meaning given by section 71A.

**Item 11** inserts a definition of ‘maximum amount’ in relation to family tax benefit advance, and provides that it has the meaning given by section 35D.

**Item 12** inserts a definition of *minimum amount*, in relation to a family tax benefit advance, as meaning either:

- 3.75 per cent of the FTB child rate worked out under clause 7 of Schedule 1 to the Family Assistance Act for one child aged under 13 years (disregarding clauses 8 to 11 of that Schedule); or

- if the Secretary determines under section 28 a percentage of the family tax benefit for FTB children of the individual, that percentage of the above amount; or

- if the amount that would be the minimum amount under either of the above is not a number of whole cents – the amount rounded down to the nearest cent.

**Payment of family tax benefit advances**

**Item 13** repeals and substitutes Division 2 of Part 3. The Division is now broken into subdivisions.

**Division 2 – Payment of family tax benefit advances**

**Subdivision A – Request for family tax benefit advance**

New section 33 enables an individual to request a family tax benefit advance.
Subsection (2) provides that, if an individual makes a request for a family tax benefit advance, this request may be accompanied by a request under new section 35B for further advances at regular intervals. The individual may also request that entitlement to the first advance be determined on a specified future day. This gives flexibility for the individual to nominate the start date of their regular advance sequence. Item 19 provides that a request under subsection (2) for a family tax benefit advance to be paid on a specified future day may only be made on or after 1 January 2012.

New section 34 provides for the form of such a request. To be effective, a request must:

- be made in a form and manner, contain any information, and be accompanied by any documents required by the Secretary;
- specify the amount of family tax benefit advance sought; and
- the amount of family tax benefit advance sought must be at least the minimum amount.

If an effective request is made, the Secretary must determine the request in accordance with Division 2. If a request is not effective, it is taken never to have been made. However, the individual making the request may seek review of the decision that the request is not effective.

New section 35 provides that an individual may withdraw or vary a request before the request is determined. The individual may only do so in a manner determined by the Secretary. However, if the individual does so, the request is taken never to have been made.

Subdivision B – Entitlement to family tax benefit advance

New section 35A provides that the Secretary must determine that an individual is entitled to be paid a family tax benefit advance if a number of conditions are met. The conditions are generally assessed by reference to the advance assessment day, defined at subsection (3) as the day the Secretary determines the individual’s entitlement to be paid a family tax benefit advance. The conditions are:

- on the advance assessment day, the individual is entitled to be paid family tax benefit by instalment; and
- the individual has made an effective request under section 34 for a family tax benefit advance; and
on the advance assessment day, the individual’s Part A rate, disregarding clause 5 and 25A of Schedule 1 (dealing with reduction of an individual’s Part A rate to repay an advance) is equal to or exceeds the amount that would, under clause 26 of that Schedule, be the FTB child rate for an FTB child who had not turned 18 if the individual’s Part A rate were required to be worked out using Part 3 of that Schedule, and clause 27 of that Schedule did not apply; and

on the advance assessment day, the individual has at least one FTB child; and

on the advance assessment day, the amount of advance that the individual would be entitled to is at least the minimum amount; and

the Secretary considers, on the basis of information available to the Secretary on the advance assessment day, that the individual will not suffer financial hardship from the individual’s Part A rate being reduced as a result of being paid the advance; and

on the advance assessment day, the individual is not excluded from being paid a family tax benefit advance under subsection (2).

Subsection (2) excludes an individual from being paid a family tax benefit advance if:

- an amount of family tax benefit advance paid to the individual more than 12 months before the advance assessment day has not been fully repaid; or

- an amount of family tax benefit advance paid to the individual more than 12 months before the advance assessment day is being repaid as a new advance due to a determination under clause 51 of Schedule 1 to the Family Assistance Act; or

- the individual owes a debt to the Commonwealth (whether arising under this Act or not) that is recoverable under Part 4 by means of deductions from the individual’s instalments of family tax benefit under section 84 (unless that debt has been written off because of subsection 95(4A) or (4B)) or is being recovered by deductions from the individual’s instalments of family tax benefit under section 227; or

- on the advance assessment day, the Secretary is prohibited from making a payment of family tax benefit to the individual under section 32AA or 32AD (non-payment for non-lodgment of tax returns).

Subsection (4) provides that, if the individual is not entitled to be paid a family tax benefit advance, the Secretary must determine that the individual is not entitled to the family tax benefit advance.
Subdivision C – Regular family tax benefit advances

New section 35B enables an individual to request regular family tax benefit advances. Subsection (1) provides that an individual who makes a request in accordance with section 34 for a family tax benefit advance of the minimum amount, when making the request, may also request that a family tax benefit advance of the minimum amount be paid to the individual at regular intervals of 182 days.

Subsection (2) provides that, for the request for payment of family tax benefit advance at regular intervals to be effective, the request must be made in a form and manner, contain any information, and be accompanied by any documents, required by the Secretary.

Subsection (3) provides that, if the individual makes an effective request for family tax benefit advance at regular intervals under this section, the Secretary must make a determination under section 35A, in relation to the individual’s eligibility for a family tax benefit advance of the minimum amount, at intervals that would best facilitate payment in accordance with the request.

For this particular case, the ‘advance assessment day’ is either:

- if the individual has not previously been paid a family tax benefit advance requested under this section—the day that falls immediately after the end of an interval of 182 days that began on the day the first advance was paid; or

- if the individual has previously been paid a family tax benefit advance requested under this section—the day that falls immediately after the end of the last of the intervals of 182 days, the first of which began on the day the first advance was paid

Subsection (4) provides that the Secretary must, in making the determination under section 35A, treat paragraph 35A(1)(b) (requirement to make an effective request) as having been satisfied if:

- the individual has made an effective request under this section; and

- the request has not been withdrawn before the determination is made; and

- the individual has not failed to repay the last family tax benefit advance to which the request relates within 182 days.
Subsection (5) makes it clear that a request under subsection (1) ceases to be effective if the Secretary, in making a determination referred to in subsection (3), determines that the individual is not entitled to a family tax benefit advance, or if the individual withdraws the request under subsection (6). This does not affect the effectiveness of the request in relation to regular advances already paid, but removes the requirement for the Secretary to consider further regular advances.

Subsection (6) makes it clear that the individual may, in a manner determined by the Secretary, withdraw the request at any time. This will similarly remove the requirement for the Secretary to consider further regular advances.

**Subdivision D – Amount of family tax benefit advance**

**New section 35C** provides for the amount of family tax benefit advance. The amount is the smaller of the amount of advance sought, and the maximum amount of advance payable to the individual on the advance assessment day worked out under new section 35D, less the original amount of each family tax benefit advance paid to the individual that is unrepaid on that day.

In working out the original amount of each family tax benefit advance unrepaid on a day, subsection (2) provides for clause 51 of Schedule 1 to the Family Assistance Act to be disregarded. In other words, where a new notional advance is created in response to a retrospective recalculation resulting in an advance not having been fully repaid during its repayment period, the Secretary must take into account the amount of payment of the original advance for this purpose, rather than the amount of payment of the new notional advance.

Additionally, the Secretary may determine, under subsection (3) that the amount of family tax benefit advance payable to an individual is a lower amount than the amount under subsection (1), if the Secretary is satisfied that the individual would suffer financial hardship if the individual’s Part A rate were reduced as a result of being paid that amount.

**New section 35D** provides for the maximum amount of family tax benefit advance payable.

Subsection (1) provides that the maximum amount that may be an individual’s FTB advance on any particular day is calculated by reference to their Part A rate (excluding the FTB Part A Supplement). If 7.5 per cent of the individual’s adjusted Part A rate is greater than or equal to 23.3 per cent of the standard rate for a child under 13 (which will be $1,000 for 2011-12 due to item 18), the individual’s maximum is 23.3 per cent of the standard rate for a child under 13. The standard rate for a child under 13 is linked to the FTB child rate for one FTB child who is under 13 years of age, which is indexed on 1 July of each year, and will consequently increase annually. The terms ‘adjusted Part A rate’ and ‘standard rate for a child under 13’ are both defined in subsection (4).
The individual's maximum amount is 7.5 per cent of their adjusted Part A rate if that amount is less than 23.3 per cent and greater than 7.5 per cent of the standard rate for a child under 13. For 2011-12, 7.5 per cent of the standard rate for a child under 13 will be $321.93.

If 7.5 per cent of the individual’s adjusted Part A rate is less than or equal to 7.5 per cent of the standard rate for a child under 13, then their maximum amount of family tax benefit advance is 7.5 per cent of the standard rate for a child under 13.

However, if the individual has a section 28 percentage as the result of being a member of a couple treated as a blended family, then for the purposes of section 35D, their maximum amount of family tax benefit advance payable to the individual is the section 28 percentage of the amount worked out for the individual under subsection (1).

Subsection (3) provides for rounding of all the required amounts to the nearest cent (rounding 0.5 cents upwards).

Subdivision E – Payment of family tax benefit advance

**New section 35E** provides for the payment of an advance.

Subsection (1) provides that, if an individual is entitled to be paid a family tax benefit advance, the Secretary must, at such time and in such manner as the Secretary considers appropriate, pay the individual the advance.

Subsection (2) provides that this section is subject to Part 4 (dealing with overpayment and debt recovery), Division 3 of Part 8B (dealing with nominees) and sections 225 and 226 (dealing with payments to the Commissioner of Taxation).

**Item 14** repeals and substitutes section 71A.

Subsections (1) and (2) mirror the terms of section 71 for the purposes of family tax benefit advances. As a result, where a family tax benefit advance has been paid to an individual and either the individual was not entitled to the advance, or the received amount is greater than the amount of family tax benefit advance that should have been paid to the individual, the difference is a debt due to the Commonwealth by the individual.

Subsection (3) deals with debts arising during the repayment period for a family tax benefit advance. If:

- an individual is paid a family tax benefit advance; and
- the repayment period for the advance has not expired; and
either the individual ceases to be entitled to be paid family tax benefit by instalment, or the individual’s Part A rate becomes nil (before reduction under clause 5 or 25A of Schedule 1 to the Family Assistance Act);

then the amount of unrepaid family tax benefit advance becomes a debt due to the Commonwealth by the individual.

Subsection (4) deals with debts arising due to a variation or review after the repayment period for a family tax benefit advance has expired. If:

- an individual is paid a family tax benefit advance; and
- the individual’s Part A rate has been reduced under clause 5 or 25A of Schedule 1 to the Family Assistance Act to repay the advance; and
- the repayment period for the advance has expired; and
- due to a variation in a determination, or a variation or substitution of a decision on review (other than a variation under subsection 28(2) or (6)), the reduction in the individual’s Part A rate under clause 5 or 25A of Schedule 1 to the Family Assistance Act has not been sufficient to repay the advance; and
- at the time of the variation of the determination, or the variation or substitution of the decision on review, the individual is not entitled to be paid family tax benefit by instalment, or the individual’s Part A rate is nil (before reduction under clause 5 or 25A of Schedule 1 to the Family Assistance Act);

then the amount of the family tax benefit advance left unrepaid as a result of the variation of the determination, or the variation or substitution of the decision on review, becomes a debt due to the Commonwealth by the individual.

A note alerts the reader to the fact that, if the individual is entitled to be paid family tax benefit by instalment and has a Part A rate greater than nil, the unrepaid amount of the advance is to be repaid by reductions in the individual’s Part A rate (see clause 51 of Schedule 1 to the Family Assistance Act).

Subsection (5) deals with debts where relevant tax returns have not been lodged, and the Secretary varies a determination under section 28 of the Family Assistance Administration Act so that the claimant was not entitled to family tax benefit for an income year, and the amount of advance that had been repaid in that year is now not repaid. The outstanding amount as a result of the variation of the determination will become a debt regardless as to whether the individual is at that time entitled to FTB by instalment and has a Part A rate greater than nil.
However, subsection (6) then provides that, if the relevant tax returns are subsequently lodged, and the Secretary varies (reverses) the prior determination under section 28, the debt is taken never to have been created.

A note alerts the reader to the fact that, if, after the variation, the individual’s Part A rate was not sufficient to repay the advance, the unrepaid amount of the advance is to be repaid either by reductions in the individual’s Part A rate (see clause 48 and 51 of Schedule 1 to the Family Assistance Act) or as a debt under subsection (3) or (4).

Subsection (7) provides that, if the Secretary determines under clause 45 of Schedule 1 to the Family Assistance Act that the amount of the advance that is unrepaid is to be a debt, then the outstanding amount becomes a debt due to the Commonwealth by the individual.

Subsection (8) provides for the meaning of ‘FTB advance debt’, as a debt due to the Commonwealth under subsection (1), (2), (3), (4), (5) or (7).

**Items 15 and 16** make consequential amendments to paragraph 111(2)(a) to exclude from review by the SSAT the new powers to determine the form and manner of requests under subsection 34(1) and subsection 35B(2) of the Family Assistance Administration Act, and subclause 46(2), 47(2), 49(3) or 50(2) of Schedule 1 to the Family Assistance Act.

**Part 2 – Application and transitional**

**Item 17** deals with application of these amendments, and provides that the amendments apply to family tax benefit advances requested on or after the commencement of Part 1.

**Item 18** provides that, for the purposes of subsection 35D(1) of the Family Assistance Administration Act as inserted by this Schedule, 23.3 per cent of the standard rate for a child under 13 is taken to be $1,000 for the 2011-12 financial year.

**Item 19** provides that a request under subsection 33(2) of the Family Assistance Administration Act (as inserted by this Schedule) for a family tax benefit advance to be determined on a specified future day may only be made on or after 1 January 2012.

**Part 3 – Transitional advance payment**

**Item 20** provides for a transitional advance payment, to maintain the payment of an advance to families who currently receive continuous advances.

The item applies if the individual was paid a family tax benefit advance for the family tax benefit advance period that ended on 30 June 2011, and:
• under paragraph 33(3)(b) of the Family Assistance Administration Act as in effect immediately before the commencement of this Schedule, the request for the advance operated for a particular standard advance period and all subsequent standard advance periods; and

• the individual had not withdrawn the request before 30 June 2011; and

• under clause 5 or 25A of Schedule 1 to the Family Assistance Act as in force immediately before the commencement of this Schedule, the individual’s Part A rate was reduced for the period by the FTB advance rate.

If the item applies on 1 July 2011, the individual is taken to have made an effective request for a single family tax benefit advance under section 34 of the Family Assistance Administration Act as inserted by this Schedule (subitem (2)), the individual’s advance assessment day is taken to be 1 July 2011 (subitem (3)), and the amount of the family tax benefit advance is the smaller of:

• $333.06 (which is the daily equivalent of the current FTB advance rate ($1.83) multiplied by 182 days);

• the maximum amount of advance payable to the individual on the advance assessment day worked out under section 35D of the Family Assistance Administration Act as inserted by this Schedule;

• the amount determined by the Secretary under subsection 35C(3) of the Family Assistance Administration Act as inserted by this Schedule.

Further, clauses 47 and 49 of Schedule 1 to the Family Assistance Act as inserted by this Schedule do not apply to the advance. That is, the individual may neither request a longer period for repayment of the advance, nor seek suspension of the repayment period.
Schedule 2 – Health checks for young FTB children

Summary

As one of its election commitments, the Government announced the Healthy Start for School measure for family tax benefit (FTB) recipients on income support payments. This measure will make the payment of the FTB Part A supplement for a child turning four in a particular income year conditional on the child having received a basic health assessment. The measure will commence on 1 July 2011.

Background

The objective of the Healthy Start for School measure is to encourage parents and carers on income support payments to organise a health check for their child before the child starts school. The intention is that children have a basic health check to see if they are healthy, fit and ready to learn when they start school.

Health checks may detect developmental delays and conditions, such as problems affecting hearing and vision, which are problems that make it more difficult for children to learn when they start school. These checks will allow for early identification of health issues and intervention strategies before the child starts school.

To this end, this measure would ensure that the payment of the FTB Part A supplement for a particular child for the income year in which the child turns four, would be conditional on the child having such a health check. The new requirements apply to families where either member of a couple has received income support for any part of the year.

Current legislative framework for payment of the FTB Part A supplement

An individual’s rate of FTB is calculated in accordance with the relevant provisions in Schedule 1 to the Family Assistance Act. Where an individual’s Part A rate is worked out under Method 1 or 2, the individual’s maximum rate includes the individual’s FTB Part A supplement under clause 38A of Schedule 1. The relevant method statements are set out in clauses 3 and 25 of Schedule 1.

Clause 38A of Schedule 1 to the Family Assistance Act sets the rate of the FTB Part A supplement. The amount of an individual’s FTB Part A supplement is the applicable supplement amount for each FTB child of the individual. The applicable supplement amount is the FTB gross supplement amount (currently $726.35) or a percentage of that amount if there is a shared care percentage for the child.
However, section 32A of the Family Assistance Administration Act currently requires the Secretary to disregard the FTB Part A supplement in calculating an individual’s Part A rate unless and until the individual satisfies all relevant FTB reconciliation conditions (as set out in section 32B). When this occurs, the Secretary must review the individual’s entitlement under section 105 of the Family Assistance Administration Act.

The FTB Part A supplement can be included in an individual’s rate so long as any required tax returns are lodged before the end of two years after the relevant income year. If the FTB reconciliation conditions are not satisfied within this timeframe, the FTB Part A supplement cannot be paid.

In broad terms, the Healthy Start for School measure involves adding another condition, the health check requirement, to the payment of the FTB Part A supplement for a particular child for families who have received an income support payment in that year. The relevant rules are included in new section 61A in Part 4 of Division 1 of the Family Assistance Act (which sets out the rate rules for FTB). Consequential and related amendments are also made to the Family Assistance Act and the Family Assistance Administration Act.

**Explanation of the changes**

**Amendments to the Family Assistance Act**

Division 1 of Part 4 of the Family Assistance Act directs the reader to Schedule 1 to that Act to calculate an individual’s annual rate of FTB and sets out some of the circumstances that may affect or modify that rate calculation process.

**Item 3** inserts new section 61A into Division 1 of Part 4. New section 61A sets out the situations in which the health check requirement applies to an individual and how this requirement affects payment of the FTB Part A supplement to an individual in respect of a particular FTB child.

There are two situations in which the health check requirement will apply. These are described in new subsections 61A(1) and (2).

New subsection 61A(1) sets out how the new health check requirement applies to an individual who is a parent of an FTB child who turns four in a particular income year or who is partnered to a parent of the child. (Under section 27 of the Family Assistance Act, if two individuals are members of the same couple and one or both have a child from another relationship, then an FTB child of the parent is also an FTB child of their partner. This enables the non-parent partner to be paid FTB for that child.)
If an individual has an FTB child who turned four in an income year and, for one or more days in that income year, the individual or their partner is a parent of the FTB child and is receiving a social security pension, a social security benefit, a service pension or an income support supplement, then the FTB Part A supplement is not to be included in calculating the individual’s Part A rate for the child for those days unless certain conditions relating to the health check requirement are met. To this end, clause 38A of Schedule 1 to the Family Assistance Act, which provides for the amount of the FTB Part A supplement to be added in working out an individual’s maximum Part A rate, is disregarded for the relevant days if the relevant conditions are not met.

New subsection 61A(2) deals with non-parent carers such as foster or kinship care. This subsection relates to the situation where an individual has an FTB child who turned four in a particular income year and, for one or more days in that income year on which the child is an FTB child of the individual, neither the individual nor their partner is a parent of the child and the individual or their partner is receiving a social security pension, a social security benefit, a service pension or an income support supplement.

If the number of days in the income year that the child is both an FTB child of the individual, and the individual or their partner is receiving the relevant social security or veterans’ payment, totals at least 182 days (26 weeks), and if the child is an FTB child of the individual on the last day of that year, then the health check requirement applies in relation to the child and can affect payment of the FTB Part A supplement to the individual for those days. If the health check requirement is not met, the FTB Part A supplement is disregarded in calculating the individual’s Part A rate for the child for those days.

These conditions for non-parent carers ensure that there has been a sufficient period of ongoing care by the carer for it to be reasonable to expect the carer to have organised a health check for the child. In addition, if the child is no longer an FTB child of the non-parent carer at the end of the income year in which the child turned four, they would have no continuing legal responsibility in respect of the child and would therefore be unable to play a role in ensuring that the child undertakes a health check within the subsequent two years (the maximum period for meeting the relevant conditions if they apply). In these circumstances, it is unreasonable to withhold the FTB Part A supplement.

In comparison, a parent who has lost care is more likely to have an ongoing connection with the child and could be expected to play a role in ensuring that the health check requirement is met. Therefore, it is appropriate for the health check requirement to apply to a parent who ceases to have care of the child before the end of the income year.

Subsection 3(1) of the Family Assistance Act currently defines social security pension, social security benefit, service pension and income support supplement by reference to the Social Security Act.
**Item 1** makes a consequential change to the definition of *receiving* in subsection 3(1) by inserting a reference to new section 61A into paragraph (b) of the definition. Paragraphs (a) and (c) of the definition of receiving will also apply without the need for amendment. The general effect is to incorporate the social security concept of receiving in relation to social security payments and to ensure that an individual is taken to be receiving a social security pension or benefit in certain circumstances where the pension or benefit is not being paid (such as where the application of a compliance period results in cessation of payment). This is consistent with the approach taken in other provisions in the family assistance law which refer to an individual receiving a social security pension, social security benefit, service pension or an income support supplement (for example, in relation to the application of the income test for FTB Part A).

**Item 2** makes a technical correction to the definition of receiving.

New subsection 61A(9) defines *parent* as including an adoptive parent and a relationship parent. A *relationship parent* is currently defined in subsection 3(1) of the Family Assistance Act by reference to the Social Security Act.

In the two situations described above where the health check requirement applies, the FTB Part A supplement is disregarded in the FTB rate calculation process for the relevant days in the income year in which the FTB child turned four unless two things happen.

The first is that, at any time before the end of the second income year after the one in which the child turned four, the Secretary becomes aware of information suggesting that:

- the child meets the health check requirement; or
- the child is in a class exempted from the requirement by a determination of the Minister; or
- the child is in a class that is taken to have met the requirement by a determination of the Minister; or
- there are special circumstances relating to the individual or their partner that make it inappropriate for them to arrange for a health check for the child.

The second is that the Secretary is satisfied at any time (including after the two-year timeframe) that one of these conditions is met within the required two-year timeframe.
These rules enable the health check requirement to be met within two income years after the income year in which the relevant FTB child turned four. However, they also cover situations where information suggesting that the health check requirement has been met is provided within the two-year timeframe but is not considered until after that time.

While ‘special circumstances’ is not defined, it is a concept that is well understood due to its use in various provisions in family assistance, social security and child support legislation and decisions by courts and tribunals on its meaning. In *Re Beadle and Director-General of Social Security (1984)*, the AAT (Toohey J presiding) said:

> An expression such as ‘special circumstances’ is by its very nature incapable of precise or exhaustive definition. The qualifying adjective looks to circumstances that are unusual, uncommon or exceptional. Whether circumstances answer any of these descriptions must depend upon the context in which they occur. For it is the context which allows one to say that the circumstances in one case are markedly different from the usual run of cases. This is not to say that the circumstances must be unique but they must have a particular quality of unusualness that permits them to be described as special.

New subsection 61A(3) provides that the health check requirement does not apply in relation to a child who dies before the end of the second income year after the income year in which the child turned four.

New subsection 61A(4) provides that the health check requirement for a child is that he or she must meet the requirements specified in a legislative instrument made by the Minister under new subsection 61A(5) for this purpose.

New subsection 61A(6) enables the Minister, by legislative instrument, to exempt children included in a specified class from the health check requirement, while new subsection 61A(7) enables the Minister, by legislative instrument, to determine that children in a specified class are taken to meet the health check requirement. There are similar instrument-making powers relating to the immunisation requirement for maternity immunisation allowance.

An example of a situation in which an exemption may be considered appropriate is where the child has a severe disability or a terminal illness which would make it unreasonable to expect them to undergo the required health check. A child may be taken to meet the health check requirement in certain circumstances, for example, where a comparable health check has been undertaken in an overseas country, by a qualified health practitioner.
New subsection 61A(8) makes it clear that new section 61A does not limit the application of current section 32A of the Family Assistance Administration Act (which requires the FTB Part A supplement to be disregarded from the FTB rate calculation process unless and until the relevant FTB reconciliation conditions are satisfied). This means that, if the health check requirement is satisfied in relation to an individual and FTB child but the individual does not satisfy the relevant FTB reconciliation conditions, the FTB Part A supplement cannot be included in the individual’s rate of FTB.

Conversely, if an individual satisfies the FTB reconciliation conditions but has not met the health check requirement in relation to a relevant child, then the individual’s FTB entitlement for the relevant income year would still be reviewed under section 105 of the Family Assistance Administration Act, but the FTB Part A supplement would be disregarded for the period or periods in the relevant income year that the individual is subject to the health check requirement in relation to the relevant child. At this time, the relevant child could attract still an FTB Part B supplement, and the FTB Part A supplement for any part of the relevant income year that the health check requirement does not apply to the individual because, for example, an income support payment was not being received. If the health check requirement is met at a later time and within two years after the end of the income year in which the relevant child turned four, then the individual’s FTB entitlement can again be reviewed and the FTB Part A supplement for the relevant child included in the individual’s rate of FTB as appropriate for the relevant income year.

Example
Mum and Dad have two FTB children, Jan and Tom. Mum receives FTB by instalment for the two children. Jan turns four in 2012-13. During 2012-13, Mum receives parenting payment from July to October 2012 and then Dad starts receiving disability support pension from March 2013. In November 2013, reconciliation for 2012-13 occurs as Mum has met the FTB reconciliation conditions and adjusted taxable income (ATI) for Mum and Dad is known. However, Jan has not had a health check at this time. In reviewing Mum’s entitlement to FTB for the 2012-13 income year, Mum’s rate of FTB would be recalculated using actual ATI and would include the FTB Part A supplement for Tom for the whole income year and, for Jan, for the period or periods in the income year when Mum and Dad were not receiving an income support payment (that is, from November 2012 to February 2013). If Jan has a health check which meets the requirements in the Minister’s determination before 1 July 2015 (within two years after the end of the relevant income year), then Mum’s FTB can again be reviewed and her rate of FTB for the relevant periods in 2012-13 recalculated to include the FTB Part A supplement for Jan.

Item 4 provides that the amendment made by item 3 applies in relation to the 2011-2012 income year and subsequent income years.
Amendments to the Family Assistance Administration Act

Section 105 of the Family Assistance Administration Act enables the Secretary to review certain decisions (as specified in section 104) on the Secretary’s own initiative.

Where the Secretary reviews a decision relating to the payment of FTB by instalment and makes a favourable decision more than 52 weeks after the person concerned was given notice of the original decision, section 107 provides that the date of effect of the review decision cannot be earlier than the first day of the income year before the income year in which the review decision was made. There are exceptions where these date of effect rules do not limit the availability of arrears of FTB. One example is reconciliation, where the review is undertaken by the Secretary because an assessment of taxable income has been made by the Commissioner for Taxation on the basis of a relevant tax return lodged within two years after the end of the relevant income year.

Item 6 provides for further exceptions where these date of effect rules do not limit the availability of arrears of FTB.

Under new subsection 107(3A), the date of effect of a review decision relating to payment of FTB by instalment is not limited where two conditions are met. The first condition is that the FTB Part A supplement was disregarded under new section 61A of the Family Assistance Act in relation to an individual, an FTB child and a day (in the income year in which the child turned four). The second is that the review was undertaken because the Secretary had information before the end of the second income year after the income year in which the relevant FTB child turned four suggesting that the FTB Part A supplement should not have been disregarded and the Secretary is satisfied that the FTB Part A supplement should not be disregarded.

Under new subsection 107(3B), the date of effect of a review decision relating to payment of FTB by instalment is not limited where the FTB Part A supplement should not be disregarded because the relevant FTB child has died within two years after the year in which the child turned four (that is, the rule in new subsection 61A(3) of the Family Assistance Act applies).

A person can also seek internal review of a decision under section 109A of the Family Assistance Administration Act. As a general rule, an application for review of a decision other than an excepted decision must be made no later than 52 weeks after the applicant was notified of the decision. An excepted decision includes a decision relating to the payment of FTB by instalment (the relevant definition is in subsection 109D(6)). In addition, there are specified exceptions to the general time limit rule.

Item 7 provides for further exceptions to the 52-week time limit on applying for internal review.
Under new paragraph 109D(4)(d), an application for review of a decision relating to the payment of FTB (other than an excepted decision) can be made more than 52 weeks after the decision was notified where the FTB Part A supplement was disregarded, the application is made because the applicant considers that section 61A of the Family Assistance Act did not prevent the FTB Part A supplement being included in the applicant’s rate of FTB, and the application is made before the end of the second income year after the income year in which the relevant FTB child turned four.

Under new paragraph 109D(4)(e), the 52-week timeframe for seeking review does not apply if the application for review is made because the FTB Part A supplement should not be disregarded because the relevant child died within two years after the income year in which the child turned four (that is, the rule in new subsection 61A(3) of the Family Assistance Act applies).

Where a person applies for internal review of a decision, relating to the payment of FTB by instalment, more than 52 weeks after the person concerned was given notice of the original decision, and where the Secretary or an authorised review officer makes a favourable review decision, section 109E provides that the date of effect of the review decision cannot be earlier than the first day of the income year before the income year in which the application was made. There are specified exceptions to the general date of effect rule.

**Item 8** provides for further exceptions where these date of effect rules do not limit the availability of arrears of FTB.

Under new paragraph 109E(3)(d), the date of effect of a review decision relating to payment of FTB by instalment is not limited where the FTB Part A supplement was disregarded, the application is made because the applicant considers that section 61A of the Family Assistance Act did not prevent the FTB Part A supplement being included in the applicant’s rate of FTB, and the application is made before the end of the second income year after the income year in which the relevant FTB child turned four.

Under new paragraph 109E(3)(e), the date of effect of a review decision is not limited if the application for review is made because the FTB Part A supplement should not be disregarded because the relevant child died within two years after the income year in which the child turned four (that is, the rule in new subsection 61A(3) of the Family Assistance Act applies).
Schedule 3 – Determinations of adjusted taxable income

Summary

This Schedule introduces an election commitment from the Government’s package, Strengthening Compliance – child support. The measure modifies the current rules applicable to the Child Support Registrar in determining a person’s adjusted taxable income where a parent’s taxable income has not been formally assessed. This new, more accurate, default income arrangement will use a parent’s previous taxable income, indexed by growth in wages, instead of a lower default income (two-thirds of Male Total Average Weekly Earnings), in cases where they have not lodged a tax return.

Background

The child support income of both parents is used to calculate their child support assessment for a child support period. A parent’s child support income is worked out by deducting specified amounts and allowances from their adjusted taxable income (ATI) (section 41 of the Child Support (Assessment) Act 1989 (Child Support Assessment Act) refers). A component of a parent’s ATI is their taxable income for the last relevant year of income, as assessed under the Income Tax Assessment Act 1936 or the Income Tax Assessment Act 1997 (subsection 43(1) of the Child Support Assessment Act refers).

In situations where a parent has not lodged a tax return for the last relevant year of income, current section 58 of the Child Support Assessment Act sets out circumstances when the Registrar may determine the amount of the parent’s ATI for the purposes of making a child support assessment.

Currently, where a parent has not lodged a tax return for the two previous years, and the Registrar or the Commissioner of Taxation does not have information that allows a parent’s ATI to be worked out, the Registrar may determine that the parent’s ATI is at least two-thirds of the annualised Male Total Average Weekly Earnings (MTAWE) figure for the relevant September quarter. This can understate a parent’s capacity to pay child support. This leads to less money being transferred for the benefit of children.

These amendments replace the current rules for determining a parent’s ATI with new rules that will more accurately reflect a parent’s income and ensure better support for children. The amendments are also expected to provide a greater incentive for parents to lodge their tax returns on time.

The amendments made by this Schedule commence on 1 July 2011.
Explanation of the changes

Amendments to the Child Support Assessment Act

Item 1 inserts the term **ATI indexation factor** into the list of definitions in subsection 5(1). This term will have the meaning given by new subsection 58AA(1).

Item 2 adds subsection (5) to the end of section 5A, which provides the definition of **annualised MTAWE figure**. New subsection (5) provides that, where the Australian Statistician publishes a later MTAWE figure for a relevant September quarter, in substitution for a MTAWE figure that was previously published, the later figure is to be disregarded for the purposes of the Child Support Assessment Act.

Item 3 amends section 55J, which contains a simplified outline of Division 7 of the Child Support Assessment Act. The change in the simplified outline reflects a minor change to the trigger for when the Registrar may determine a parent’s ATI under section 58. That is, it was previously when a parent had not lodged a tax return, and it will now be when the parent’s taxable income has not been assessed.

Item 4 repeals the heading to Subdivision B of Division 7 of Part 5 and substitutes it with a new heading, ‘Adjusted taxable income determined by reference to taxable income etc.’.

Item 5 repeals existing section 58 and replaces it with new sections 58 and 58AA.

New subsection 58(1) provides that section 58 applies if a parent is to be assessed for child support in relation to a child support period, and either:

- the parent’s taxable income for the last relevant year of income has not been assessed by the Australian Taxation Office; or

- the Registrar is unable to ascertain whether or not the parent’s taxable income has been so assessed.

Information or document in the possession of the Registrar etc.

New subsection 58(2) provides a discretion for the Registrar to make a determination of a parent’s ATI based on information or a document that is in the possession of the Registrar or the Commissioner of Taxation. The Registrar may exercise this discretion only if an amount is specified in that information or document to be the parent’s ATI for the last relevant year of income, or if the information or document allows the amount of the parent’s ATI for the last relevant year of income to be worked out.
Further, the Registrar must also be satisfied that the specified amount, or the amount so worked out, is a reasonable approximation of the parent’s ATI for that year. The following are examples of when the Registrar may or may not be satisfied that the amount specified or worked out is a reasonable approximation of the parent’s ATI for the last relevant year of income.

**Example 1:** A parent has not yet lodged their tax return for the last relevant year of income, but has advised the Registrar of their ATI for the last relevant year of income. The Registrar may be satisfied that the amount advised by the parent is a reasonable approximation because that amount was similar to the amount of ATI for the previous year, in which a tax assessment has been made. Where a parent’s taxable income has not been assessed by the Australian Taxation Office for a number of years, the Registrar may not be satisfied that the ATI as advised is a reasonable approximation of the parent’s actual ATI. In such a case, the Registrar may decide not to determine the parent’s ATI to be the amount advised by the parent.

**Example 2:** A parent’s tax return for a previous year of income may show that their ATI comprises only income from salary from a single employer. In such a case, the Registrar may be satisfied that the salary amount recorded on a PAYG payment summary provided by an employer to the Australian Taxation Office is a reasonable approximation. However, where a parent’s tax return for a previous year of income shows that the parent has derived significant amounts of investment income or foreign income, the Registrar may not be satisfied that the salary amount alone contained in the PAYG payment summary is a reasonable approximation of the parent’s actual ATI. (This is because section 43 provides that the ATI comprises a parent’s taxable income, foreign income and total net investment loss, amongst other things.)

**Parent’s taxable income assessed for the previous year of income**

New subsection 58(3) provides that, if the parent’s taxable income has been assessed for the year of income before the last relevant year of income, the Registrar may determine the parent’s ATI to be the amount worked out by multiplying the parent’s ATI from the previous year by the ATI indexation factor. The ATI indexation factor is derived from a formula in subsection 58AA(1).

**Parent’s taxable income assessed for an earlier year of income**

New subsection 58(4) provides that, if a parent’s taxable income has not been assessed for the previous year, but has been assessed for an earlier year of income, then the Registrar may determine that the parent’s ATI for the last relevant year of income is the greater of the following amounts:
• the amount worked out by multiplying the parent’s ATI for the earlier year of income by the ATI indexation factor (defined in subsection 58AA(1));

• two-thirds of the annualised MTAWE figure (defined in subsection 5A(1)) for the relevant September quarter in relation to the child support period.

This rule will ensure that, if a parent’s income has not been assessed for two or more consecutive years, their last known income, indexed in line with average wage growth, is used if it is higher than two-thirds of the annualised MTAWE figure. This rule will remove the unintended incentive for parents, on higher incomes, to benefit from a lower child support assessment based on two-thirds of annualised MTAWE by failing to lodge a tax return to have their current income assessed by the Australian Taxation Office.

Other circumstances

New subsection 58(5) provides that, if subsections 58(2), (3), and (4) do not apply in relation to the parent, or if the Registrar decides not to make a determination in relation to the parent under one of those subsections, the Registrar may determine that the parent’s ATI is an amount that is at least two-thirds of the annualised MTAWE figure. This is intended to cover circumstances such as where a parent has never lodged a tax return, or where the Registrar is unable to ascertain a person’s tax file number.

If the ATI determined under section 58 results in the parent being assessed based on an income that is higher than their actual income, the parent may choose to lodge their tax return so their assessment would be amended to reflect their actual ATI. However, the new assessment can only take effect with retrospective effect in a limited range of situations (see subsection 58A(2)).

ATI indexation factor

New subsection 58AA(1) provides the formula for calculating the ATI indexation factor, as the term is used in subsection 58(3) and 58(4). The ATI indexation factor is:

\[
\frac{\text{AWE amount for the September quarter of the last relevant year of income}}{\text{AWE amount for the September quarter of the tax return year}}
\]

This replaces the ‘factor’ referred to in current subsection 58(3A), which is described in regulation 7A of the Child Support (Assessment) Regulations 1989. The ATI indexation factor, as applied in subsection 58(3), is a reflection of the growth in average weekly wages in Australia between the last relevant year of income and the year prior to that.
**Example 1:** This example assumes that the Registrar was assessing a parent in relation to the child support period 1 January 2011 to 30 March 2012. The parent’s last relevant year of income (that is, 2009-10) has not been assessed, but their income for 2008-09 has been assessed. The ‘AWE amount for the September quarter of the last relevant year of income’ (that is, the AWE amount for August 2009) is $934.70. The ‘AWE amount for the September quarter of the tax return year’ (that is, the AWE amount for August 2008) is $897.90. The ATI indexation factor is therefore calculated to be $934.70 ÷ $897.90 = 1.041 (calculated to three decimal places, in accordance with subsection 58AA(2)). That is, the 2008-09 ATI figure is indexed by 4.1 per cent to ascertain the parent’s ATI for 2009-10.

Assuming the ATI for 2008-09 is $50,000, the Registrar would determine, under subsection 58(3), the parent’s ATI for the child support period 1 January 2011 to 30 March 2012 to be $50,000 × 1.041 = $52,050.

**Example 2:** This example assumes the Registrar was also assessing a parent in relation to the child support period 1 January 2011 to 30 March 2012, but that the most recent year in which the parent’s income has been assessed is the 2005-06 financial year. The ‘AWE amount for the September quarter of the last relevant year of income’ is $934.70 (see above). The ‘AWE amount for the September quarter of the tax return year’ (that is, the AWE amount for August 2005) is $805.40. The ATI indexation factor is $934.70 ÷ $805.40 = 1.161. That is, the ATI figure for 2005-06 would be indexed by 16.1 per cent to ascertain the parent’s ATI for 2009-10. Assuming the ATI for 2005-06 was $50,000, the Registrar would determine, under subsection 58(4), the parent’s ATI for the child support period 1 January 2011 to 30 March 2012 to be $50,000 × 1.161 = $58,050.

**Item 6** repeals section 150C. Subsection 150C currently provides that, if the Registrar asks a person for their tax file number, and the person does not comply, section 58 applies to the person as if the request for the tax file number were a request under 58(2)(c) and the person had refused to comply as per paragraph 58(2)(d). Under the amended section 58, if a parent fails to comply with a request for their tax file number, the Registrar could determine the parent’s ATI under subsection 58(2) if the Registrar had information or a document, or otherwise under subsection 58(5). The operation of section 150C is redundant following the changes made by this Bill.
Item 7 inserts new subsection 155(2A), which provides that the Secretary must publish in the Gazette, before the end of each calendar year, the AWE amount for the quarter ending on 30 September of that year. This mirrors the current requirement for the Secretary to publish the MTAWE figure. Item 8 amends subsection 155(3) to make it clear that the instrument published under subsection 155(2A) is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act 2003. This provision is merely declaratory of the law, and not an actual exemption from the Legislative Instruments Act 2003.

Application provisions

Item 9 provides that new subsection 5A(5) applies in relation to the MTAWE figure that is published before or after the commencement of the item. This would not have an adverse effect on anyone.

Item 10 provides that new subsection 58AA(3) applies in relation to an AWE amount that is published before or after the commencement of this item. This would not have an adverse effect on anyone.

Saving provision

Item 11 provides that determinations made under the current section 58 before the commencement of this item would have effect, after that commencement, as if they had been made under new section 58. This saving provision would aid in the interpretation of other provisions in the Child Support Assessment Act (such as section 58A) that refer to section 58.
Schedule 4 – Notice of payments of recompense for personal injuries

Summary

The 2010-11 Budget measure, Streamline the Notification Processes for Compensation Recipients, is introduced by this Schedule. The new provisions require payers of compensation, such as insurance companies, to notify Centrelink of proposed payments of compensation. Centrelink will then use this information to determine the social security entitlements of the compensation recipient or their partner. This will reduce the risk of individuals incurring unnecessary debt to the Commonwealth and receiving income support payments to which they or their partner are not entitled.

Background

The social security law provides that people who receive compensation do not also receive income support from the Australian Government for the same period of time. The principle is that, if a person is compensated for an injury, they should use those resources to meet their daily expenses rather than rely on taxpayer-funded payments.

Currently, social security recipients are required to notify Centrelink when they or their partner are to receive a compensation payment. The new provisions will streamline the notification process for compensation payments to social security recipients or their partners, to ensure they receive their correct entitlements.

Organisations that pay compensation, such as insurance companies or statutory authorities, will now need to advise Centrelink directly before a compensation payment is made to a social security recipient or partner. The new requirement applies to lump sum payments as well as ongoing periodic payments.

This change helps ensure that the responsibility for the provision of income for injured people is not shifted from the insurance and compensation sector to the Commonwealth through the social security system.

The amendments made by this Schedule commence on the day on which the Bill receives Royal Assent, and apply from whichever is the later of 1 October 2011 and the Royal Assent date of commencement.

Explanation of the changes

The measure seeks to amend the social security law to make it a legal requirement that compensation payers (for example, insurance companies) and statutory authorities notify Centrelink before compensation payments are made to individuals.
Amendments to the Social Security Act

Item 1 amends subsection 17(1) of the Social Security Act by adding *recompense* to the list of terms defined in section 17.

Item 2 inserts the words ‘Division 4 of’ into subsection 17(6) of the Social Security Act to provide a more precise description of the part of the Act affected by that subsection.

Item 3 inserts new subsections 17(7), (7A), (7B) and (7C) after subsection 17(6). New subsection 17(7) inserts a comprehensive definition of the term recompense to ensure that as many types of payment as possible fall within the scope of the definition. The definition covers payments made for personal injury in the form of: a payment of damages; a payment under a Commonwealth, State or Territory scheme of insurance or compensation, including a payment under a contract entered into under such a scheme; a payment in settlement of a damages claim or a claim under such an insurance scheme; and any other compensation or damages claim. The payments can be either lump sum or a series of payments, and made within or outside Australia.

New subsection 17(7A) provides that new paragraph 17(7)(d) does not apply if the recipient had contributed towards the payment through, for example, insurance premiums.

New subsection (7B) provides that a payment for compensation for personal injury suffered as a result of the commission of an offence is not within the definition of recompense in the Social Security Act.

New subsection (7C) is to avoid any doubt that the definition of compensation appearing elsewhere in the section does not apply to new subsection (7), (7A) or (7B).

Headings in the section are also amended to assist readers.


Item 5 inserts new subsection 1160(1A) before subsection 1160(1), which provides for notice to be given to the Secretary before payments of recompense are made, changed or stopped.


New section 1167A makes provision for notice of payment of recompense by a payer.
New subsection 1167A(1) provides that a notice of payment must be made to the Secretary, in a form approved by the Secretary, at least 14 days before a payment is made, being a lump sum payment of recompense for a personal injury; or the first payment of a number of periodic payments; or arrears of periodic payments. The note draws attention to the consequences of failing to provide a notice of a payment.

New subsection 1167A(2) provides for a notice to be provided for a change of periodic payments at least 14 days before the changed payment is made. The note draws attention to the consequences of failing to provide notice of a payment.

New subsection 1167A(3) provides for a notice of final payment to be made at least 14 days before that payment is made. The note draws attention to the consequences of failing to provide notice of a payment.

New subsection 1167A(4) provides for an alternative operation of new subsections 1167A(1), (2) and (3), in the circumstances outlined in the table, to ensure that the exercise of power is within the limits of the Constitution of Australia. New subsection 1167A(5) provides that new subsection 1167A(4) does not limit the effect of new subsections 1167A(1), (2) and (3).

New subsections 1167A(6) and (7) provide that new section 1167A does not apply to State insurance within the area of State insurance protected by paragraph 51(xiv) of the Constitution.

New section 1167B provides for a notice of the proposed payment of recompense by an insurer, who is liable under a contract of insurance to indemnify a payer, to be made to the Secretary. New subsections 1167B(1), (2) and (3) provide a similar scheme to that provided in new subsections 1167A(1), (2) and (3). New subsections 1167B(4) and (5) replicate new subsections 1167A(6) and (7).

New section 1167C provides for the content of notices. New subsection 1167C(1) provides that the Secretary may approve a form of notice of a proposed recompense payment. The notices will require the provision of personal information about the person who has suffered the injury or any person who is acting on behalf of the injured person. The personal information required about a person who is acting on behalf of the injured person is not expected, in the majority of cases, to be as comprehensive as the personal information required from, or in relation to, an injured person. New subsection 1167C(2) permits different forms of notice for different kinds of proposed recompense payment. New subsection 1167C(3) provides that forms of notice for periodic payments may require information about other periodic payments.

New section 1167D provides that duplicate notices of payment are not required. If the indemnifying insurer has given notice, then the payer is not required to give notice. In addition, the reverse applies.
Item 7 inserts new sections 1184EA and 1184EB before section 1184F.

New section 1184EA provides that, if: a person fails to give notice as required under new section 1167A or 1167B; one or more of the compensation affected payments are made; and the total amount of the payments exceeds the amount of compensation affected payments which it is reasonable to suppose would have been payable if the required notice had been given; then there is a debt due to the Commonwealth by the person required to give notice. The note to the section provides information on the sections of the Social Security Act dealing with debt.

New subsection 1184EB(1) provides that payment of a debt due by a person under new section 1184EA also discharges a debt due by another person under new section 1184EA in relation to the same compensation affected payments. A debt due by a debtor under new section 1184EA or another person under this Division or Part 5.2 of the Social Security Act in relation to the same compensation affected payments is also discharged. New subsection 1184EB(2) provides that other payments may provide for the recovery of the full amount of a debt under this Division except in relation to new section 1184EA.

Item 8 provides for the application of new Division 2A of Part 3.14, and new sections 1184EA and 1184EB, of the Social Security Act. The application provisions make sure that the new requirements, which will potentially have an adverse effect on some customers, do not apply retrospectively to payments of recompense made before commencement of these changes.

Subitem 8(1) provides that the provisions inserted by this Schedule apply in relation to payments of recompense made on or after the commencing day (‘post-commencement payments’) irrespective of whether the liability, or the decision, to make the payments was incurred or made before, on or after the commencing day.

Subitem 8(5) provides that the commencing day is the later of 1 October 2011 or the day this Schedule commences (which is the day of Royal Assent).

Subitem 8(2) provides that subitems 8(3) and (4) apply if one or more periodic payments of recompense for a personal injury are made before the commencing day (‘pre-commencement payments’) and one or more post-commencement payments are to be made in relation to the personal injury.

Subitem 8(3) provides that new paragraphs 1167A(1)(b) and 1167B(1)(b) apply as if the first of the post-commencement payments is the first payment in a number of periodic payments of recompense for the injury.
Subitem 8(4) provides that, if the first of the post-commencement payments is either: of a different amount to the amount of the last pre-commencement payment that was made before the commencing day (the ‘final pre-commencement payment’); or is for a longer or shorter period than the period for which the final pre-commencement payment was made; then new subsections 1167A(2) and 1167B(2) apply to the first post-commencement payment as if the final pre-commencement payment had been the subject of a notice under new Division 2A of Part 3.14 of the Social Security Act.

Item 9 adds the words ‘or recompense’ to subsection 1184K(1) so that the Secretary will have the same discretion in relation to payments of recompense as is provided in relation payments for compensation.

Items 10 and 11 add new paragraph 1222(1)(baa), which will include debts under new section 1184EA in Chapter 5 – Overpayments and debt recovery of the Social Security Act, and specify those debts in the recovery methods table in subsection 1222(2).

Item 12 adds new section 1184EA to the overseas application list of provisions in section 1230B.

Item 13 adds new subsection 1230(3A) and provides that debts under new section 1184EA are recoverable by legal proceedings or garnishee.
Schedule 5 – Other amendments

Summary

This Schedule makes minor clarifications to several family assistance and child support provisions. These clarifications do not change policy. The Schedule includes: clarifying the primary carer concept for baby bonus; simplifying the method statement for calculation of an individual’s rate of family tax benefit (FTB) Part A when their income exceeds the higher income free area (known as method 2); putting beyond doubt the application of mandatory continuous adjustment to a claimant’s rate of fortnightly FTB payments where there has been a break in entitlement; maintaining the treatment of pharmaceutical allowance before the pension reforms by excluding the tax-exempt pension supplement from adjusted taxable income; and a number of other technical amendments.

Background

Baby bonus and primary carer

The Paid Parental Leave (Consequential Amendments) Act 2010 included amendments to the Family Assistance Act, making it a condition of eligibility for baby bonus that an individual, or the individual’s partner, is the primary carer of the child, for whom baby bonus is being claimed, at some time during the relevant eligibility period (for example, for a parent, the period of 26 weeks from the child’s birth).

Where it is the individual’s partner who is the primary carer of the child at the relevant time, and that circumstance would give rise to the eligibility of the individual, these amendments clarify that the individual and their partner must have been a couple at that time. In other words, where the partner was the primary carer of the child at a prior time, but the individual and their partner were not a couple at that time, becoming a couple later will not give rise to eligibility for baby bonus for the individual. In this case, the partner alone is eligible for baby bonus.

A claimant’s adjusted taxable income is relevant to their eligibility for baby bonus. These amendments clarify that the relevant income is that relating to the six months commencing when the claimant both meets the existing eligibility criteria and is the primary carer of the child.

For example, in the case of the birth of a child, it would generally be expected that the parent would become the primary carer of the child at birth, such that the relevant period for calculation of their income for eligibility purposes would commence upon birth. However, in rare instances, the date upon which the parent becomes the child’s primary carer may occur later than the date of birth. In this case, the period of income which is relevant should start upon the date the parent becomes the child’s primary carer.
A provision made obsolete by the amendments is also removed.

**Method statement for FTB Part A method 2**

If an individual with an FTB child has adjusted taxable income that exceeds the higher income free area (currently $94,316 plus $3,796 for each FTB child after the first) and the individual or partner does not receive an income support payment, the method statement for calculating the individual's FTB Part A rate is set out in clause 25 of Schedule 1 to the Family Assistance Act. This is known as Method 2.

The Method 2 statement is being clarified to make it clear that it involves paying the higher of two differently calculated amounts. The two amounts are:

- the base rate reduced by an income test that has a higher income free area (currently $94,316 plus $3,796 for each FTB child after the first) and an income taper of 30 per cent; and

- the maximum rate reduced by the income test and maintenance income test that applies under Method 1. The income test has an income free area (currently $45,114) and an income taper of 20 per cent.

This amendment will not affect the FTB Part A rate produced by the method statement.

To improve further the clarity of the method statement, the term ‘maximum rate’ currently used at step 1, is replaced with the more accurate term ‘Method 2 base rate’.

**Enabling a past income year entitlement for rent assistance without also needing to claim fortnightly instalments when instalments cannot be paid**

From 1 July 2010, if an FTB recipient has had an ‘FTB non-lodger debt’ raised due to failing to lodge required income tax returns in respect of three or more financial years, they or their partner are not entitled to be paid FTB as fortnightly instalments based on estimated income, until the outstanding income tax returns for the relevant years are lodged (‘the non-lodger provisions’). However, these people are able to claim FTB as a lump sum for a previous financial year, and be paid FTB based on their actual income.

The current provisions provide that an individual can only be eligible for rent assistance as part of an FTB lump sum claim for a previous financial year if the individual also claims fortnightly payments of FTB at the same time. However, as a claim for fortnightly payments cannot be granted to an individual who is affected by the non-lodger provisions, it is anomalous in these cases to require lodgement of an instalment claim that cannot be granted, solely to be eligible for rent assistance as part of an FTB lump sum claim for a previous financial year.
To resolve this anomaly, it is proposed that a person who is affected by the non-lodger provisions may be eligible for rent assistance as part of an FTB lump sum claim for a previous financial year without needing to lodge an accompanying instalment claim. This would avoid the administrative anomaly described above.

Maintaining the scope of tax free pensions or benefits for adjusted taxable income since introduction of the pension supplement

Adjusted taxable income for family assistance includes specified 'tax free pensions or benefits' such as disability support pension or invalidity service pension, but excludes specified components such as pharmaceutical allowance. The relevant provision is clause 7 of Schedule 3 to the Family Assistance Act.

Under the pension reforms effective from 20 September 2009, pharmaceutical allowance for most pensions was replaced by the pension supplement, and other amounts (for example, telephone allowance, utilities allowance and 'GST supplement') were also rolled into the pension supplement, to which an increase was applied.

Pharmaceutical allowance continues for some payments, and will continue to be excluded from adjusted taxable income for family assistance. For example, pharmaceutical allowance continues for disability support pension for a person aged under 21 without a child.

To maintain the treatment of pharmaceutical allowance before the pension reforms, the only amount of the new pension supplement in a 'tax free pension or benefit' that will be included as adjusted taxable income will be the 'pension supplement basic amount' (the former 'GST supplement').

To achieve this outcome, the amount of pension supplement that will be excluded as adjusted taxable income is a payment by way of 'tax-exempt pension supplement'.

Adjusted taxable income for child support purposes has closely mirrored income for family assistance purposes since 1 July 2008. An identical amendment to the definition of tax free pension or benefit is also made to the Child Support Assessment Act.

Mandatory continuous adjustment and a break in entitlement

From 1 July 2009, mandatory continuous adjustment has applied to provide for the reduction of a claimant’s rate of FTB where there is a revised estimate (of income or maintenance income) to assist in preventing overpayments following reconciliation.
The majority of FTB claimants are paid on the basis of estimated income for a financial year. If a claimant revises an estimate during the financial year, the Family Assistance Office will vary their FTB based on the new income estimate. The variation can only apply prospectively, and may result in an increase or decrease in a claimant’s rate of fortnightly FTB payments.

Where a claimant’s income estimate increases during the financial year and this results in a notional overpayment of FTB for the earlier period in the financial year because of the revised estimate, the Family Assistance Office is able to deduct an extra amount during the later part of the year to help in preventing an overpayment when the FTB reconciliation occurs. The deduction, called the daily overpayment rate, is calculated by dividing the notional overpayment for the earlier period by the number of days remaining in the financial year. Where the deduction is greater than the claimant’s FTB entitlement before the deduction, the claimant’s entitlement will be reduced to nil for the remainder of the financial year.

These amendments provide for mandatory continuous adjustment of a claimant’s rate of fortnightly FTB payments even where there has been a break in the claimant’s entitlement during the income year. Whether the claimant subsequently reclaims either a past period amount or ongoing instalment payments or both during the same income year, their entitlement may still be adjusted by a daily overpayment rate.

Additionally, no provision was made in the mandatory continuous adjustment provisions for the rounding of the daily overpayment rate. These amendments provide for such rounding.

The amendments made by this Schedule commence on 1 July 2011.

**Explanation of the changes**

**Amendments to the Family Assistance Act**

**Baby bonus and primary carer**

**Item 1** amends paragraph 36(2)(ab), which provides for the eligibility for baby bonus of a parent of a child. New subparagraph 36(2)(ab)(i) now deals with the situation in which it is the individual claiming who is the primary carer of the child within the period of 26 weeks starting on the day of the child’s birth. New subparagraph (ii) then deals with the situation in which it is the partner of the individual claiming who is the primary carer of the child within the period of 26 weeks starting on the day of the child’s birth, and makes it clear that, for this to render the individual eligible for baby bonus, the individual must be a member of a couple with the partner at that time.
Item 3 repeals paragraph 36(3)(c) because this paragraph is now redundant as the result of the insertion of paragraph 36(3)(cb) by the Paid Parental Leave (Consequential Amendments) Act 2010 on 1 January 2011. The requirement in paragraph 36(3)(cb) that the individual, or the individual’s partner, continue, or be likely to continue, to be the primary carer of the child for not less than 26 weeks includes the requirement that the child continue in the care of the individual or their partner for not less than 26 weeks. (Primary carer is defined in subsection 36(8) and includes the requirement that the individual have care of the child.)

Item 3 additionally repeals paragraph 36(3)(b) and substitutes new paragraphs 36(3)(b) and (c). New paragraph 36(3)(b) clarifies the requirement, which is either: that the child was entrusted to the care of the individual within the period of 26 weeks starting on the day of the child’s birth; or that the individual is a member of a couple at any time within the period of 26 weeks starting on the day of the child’s birth and that the child is entrusted to the care of the individual’s partner at that time. New paragraph 36(3)(c) then makes clear the timing of the dual requirements of the individual’s partner being the primary carer of the child, and the individual being a member of a couple with the partner, to the same effect as item 1.

A note to this item alters the heading to subsection 36(3) by adding at the end ‘or individual’s partner’.

Item 5 repeals and substitutes paragraph 36(5)(bc) for adoptions, to the same effect as item 1.

Item 2 amends subsection 36(2), which provides for the eligibility for baby bonus of a parent of a child. Paragraph 36(2)(d) requires that the claim for payment of baby bonus contain an estimate of the individual’s income and, if the individual is a member of a couple, the income of the individual’s partner. The period for which the income estimate must be provided is currently the period of six months beginning on the day of the child’s birth. However, item 2 omits reference to the child’s birth and substitutes reference to the first day on which paragraph (ab) applies. Paragraph 36(2)(ab), being substituted by item 1, will refer to the day on which the individual, or the individual’s partner, is the primary carer of the child.

Item 4 makes a similar amendment to item 2, in respect of situations where eligibility for baby bonus arises because the child has been entrusted to the care of an individual. Item 4 amends paragraph 36(3)(e) to provide that the relevant period for which the individual and the individual’s partner must estimate their income starts on the first day that paragraph 36(3)(c) (being substituted by item 3) applies – that is, the first day that the individual, or the individual’s partner, is the primary carer of the child.
**Item 6** makes a similar amendment to that made by **item 2**, in respect of situations where eligibility for baby bonus arises because, as part of the process for the adoption of a child by an individual, the child has been entrusted to the care of the individual. **Item 6** amends paragraph 36(5)(d) to provide that the relevant period for which the individual and the individual’s partner must estimate their income starts on the first day on which paragraph (bc) (being substituted by **item 5**) applies – that is, the first day that the individual, or the individual’s partner, is the primary carer of the child.

**Item 7** provides an application provision for **items 1 to 6**, providing that the amendments apply to claims for payment of baby bonus that are made on or after the commencement of those items.

**Method statement for FTB Part A method 2**

Step 3 of the method statement in clause 25 for the method 2 calculation of the Part A rate of FTB currently does two things. First, it requires the calculation for comparison purposes of the rate that would be the individual’s income and maintenance tested rate under step 3 of the method statement in clause 3 (known as method 1) if the individual’s Part A rate were to be calculated using Part 2 (but disregarding the method of calculating an individual’s maintenance income ceiling for method 1). Second, it requires the comparison of this rate with the rate calculated under step 2 of method 2, known as the ‘provisional Part A rate’. It then provides that the individual’s Part A rate is the higher of the two. (In instances where the two rates are the same, the ‘provisional Part A rate’ is notionally preferred.)

**Item 12** repeals step 3 and substitutes new steps 3 and 4. This separates out the two actions previously performed under step 3 alone, but produces the same outcome. New step 3 calculates the method 1 rate mentioned above, by reference to step 3 of the method 1 rate calculation. This result is labelled the ‘Method 2 income and maintenance tested rate’. New step 4 provides for the comparison of this rate with the provisional Part A rate calculated under steps 1 and 2, and provides for the individual’s Part A rate to be the higher of the two (or the provisional Part A rate if the two rates are the same).

**Item 9** is consequential to **item 12** above, substituting reference to step 4 for the existing reference to step 3.

**Item 10** substitutes the more accurate label ‘Method 2 base rate’ for the current label ‘maximum rate’ in step 1 of the method statement. **Item 11** is consequential to **item 10**, replacing the current reference in step 2 to ‘maximum rate’ with the new term ‘Method 2 base rate’.

**Items 8, 13, 14 and 15** are consequential to **item 10**. They substitute reference to ‘an individual’s Method 2 base rate under clause 25’ for references to the maximum rate under clause 25.
Enabling a past income year entitlement for rent assistance without also needing to claim fortnightly instalments when instalments cannot be paid

**Item 16** adds a new subclause to clause 38C of Schedule 1 dealing with eligibility for rent assistance. Paragraph 38C(1)(b) provides that rent assistance may be added in working out an individual’s maximum rate if the claim is not a claim to which subclause 38C(2) applies. Paragraph 38C(2)(c) requires a claim for FTB for a past period that occurs in the first or second income year before the one in which the claim is made to be accompanied by a claim for FTB by instalment.

Section 32AE of the Family Assistance Administration Act applies if three variations under subsection 28(2) of that Act have been made for a claimant. A variation under subsection 28(2) may result in a debt under section 71 of that Act. The debt, known as a non-lodger debt, is for the entire amount of FTB that the claimant received for the ‘cancellation income year’ for which they or their partner have not lodged a tax return. A cancellation income year is an income year in which the individual was previously entitled to family tax benefit for a period, and a required tax return for that year was not lodged by the end of 12 months after the end of that year.

Subsection 32AE(2) or (5) of the Family Assistance Administration Act applies in relation to a cancellation income year if the claimant or the claimant’s partner was required to lodge an income tax return for that year, and has not done so, a debt under section 71 arose as a result of that cancellation, and part of the debt is outstanding.

New subclause 38C(3), inserted by **item 16**, provides that paragraph 38C(2)(c), which would otherwise prevent the individual from being eligible for rent assistance for the period in the previous income year that FTB is being claimed because no instalment claim has also been made, does not apply if, at the time the claim for payment of FTB for a past period is made, subsection 32AE(2) of the Family Assistance Administration Act applies in respect of the individual, or subsection 32AE(5) of that Act applies in respect of the individual’s partner. That is, the individual may be eligible for rent assistance for the past period, without also needing to make an instalment claim, if such a claim cannot be granted due to non-lodgement of tax returns.

**Item 17** is an application provision for the amendments made by **item 16**, providing for the amendment to apply in relation to claims for payment of FTB for a past period that are made on or after the commencement of that item.
Maintaining the scope of tax free pensions or benefits for adjusted taxable income since introduction of the pension supplement

**Item 18** adds two new paragraphs to the end of clause 7 of Schedule 3, which defines the term *tax free pension or benefit*, in order to exclude tax-exempt pension supplement from being a tax free pension or benefit. This exclusion will prevent the tax-exempt pension supplement from forming part of an individual’s adjusted taxable income. If the payment is a payment under the Social Security Act, new paragraph 7(k) provides that the term does not include a tax-exempt pension supplement (within the meaning of subsection 20A(6) of that Act). If the payment is a payment under the *Veterans’ Entitlements Act 1986*, new paragraph 7(l) provides that the term does not include a tax-exempt pension supplement (within the meaning of subsection 5GA(5) of that Act).

The references to tax-exempt pension supplement in new paragraphs 7(k) and (l) are specified in detail, unlike the existing components referred to in paragraph (j) of clause 7, because they are only recently inserted terms, and there are many similar terms now used in the Social Security Act and *Veterans’ Entitlements Act 1986* as a result of the pension reforms.

**Amendments to the Family Assistance Administration Act**

Mandatory continuous adjustment and a break in entitlement

**Items 20, 21, 22, 23, 24 and 25** make the necessary amendments to section 31E to allow for the mandatory continuous adjustment of a new determination of entitlement which is made in an income year during which the claimant had a prior entitlement.

Paragraph 31E(1)(a) provides that the section applies where a determination is in force in an income year under which a claimant is entitled to be paid FTB by instalment. Paragraph 31E(1)(b) sets out additional alternative conditions which must be met for the section to apply. **Item 20** adds a condition to this paragraph, which applies if the determination (the instalment determination mentioned in paragraph 31E(1)(a)) ceases to be in force in the income year and another determination comes into force in that income year. The other determination may be one under which the claimant is entitled to be paid FTB either by instalment, or for a past period falling wholly within that income year.

A note provides that the heading to section 31E is altered by omitting ‘payable by instalment’, to reflect the broader scope of the section resulting from these amendments.
If the section applies, subsection 31E(2) provides a method statement that the Secretary must apply to work out if there is a daily overpayment rate. Critical to the calculation is the identification of the ‘applicable day’. Item 25 provides that, for the situation of another determination arising in the same income year as a prior determination, the applicable day is the first day in the income year for which the claimant’s entitlement to be paid FTB arose under the other (later) determination.

Step 1 of the method statement requires the Secretary to work out the total amount of FTB the claimant is or was entitled to be paid during the period beginning at the start of the income year and ending at the end of the day before the applicable day. In this case, this will be the period during which FTB was paid as a result of the prior determination.

Step 2 is then amended by item 21 to require the Secretary to work out the total amount of FTB the claimant would have been entitled to be paid during that period if the claimant’s rate of FTB were calculated using both the estimate of the claimant’s adjusted taxable income for the income year, and the estimate of the claimant’s maintenance income in that income year, that were used in determining the claimant’s rate of FTB under the other (later) determination.

Steps 3, 4 and 5 of the method statement apply unchanged, to compare the amount the claimant was entitled to be paid during the previous period with the notional entitlement for that period calculated at step 2, to work out any daily overpayment rate. Where the amount previously paid identified at step 1 is greater than the notional entitlement calculated at step 2, then the amount of the comparison will be greater than zero, and there will be a daily overpayment rate.

Subsection 31E(3) then requires the Secretary, if there is a daily overpayment rate, to vary the determination so that the claimant’s daily rate of FTB for the period beginning on the applicable day and ending on the last day of the income year is reduced (but not below nil) by that daily overpayment rate. Item 23 amends subsection 31E(3) to make it clear that it is the applicable determination which must be varied. Item 24 then inserts new subsection 31E(3A) to provide a definition of the ‘applicable determination’. For situations where the variation of an existing determination during the income year has triggered a daily overpayment rate, the applicable determination will be that determination. For situations where another determination has triggered a daily overpayment rate, the applicable determination will be the later determination referred to in new subparagraph 31E(1)(b)(vii), added by item 20.
Minor technical amendments

Item 19 is a technical amendment to substitute, in subsection 10(5), the current reference to subsection 32AE(3) with the correct reference to subsection 32AE(5), and to make clear that subsection 32AE(2) applies in respect of the claimant, and subsection 32AE(5) in respect of the claimant’s partner.

Items 26 and 27 are similarly technical amendments to make clear that the references to section 36 and subsection 36A(3) in paragraph 39(1A)(a) are to provisions in the Family Assistance Act.

Paragraph 66(2)(a) of the Family Assistance Administration Act provides an exception to the absolute inalienability of various payments where payment of a person’s family assistance to someone else on behalf of the person is to occur, referring to subsections 23(4), 56(3) and 56A(3). However, subsection 23(4) no longer exists, (having been repealed by the Family and Community Services Legislation Amendment (Budget Initiatives and Other Measures) Act 2002 (see item 1 of Schedule 2). Item 28 omits the reference to subsection 23(4). However, this then results in paragraph 66(2)(a) dealing only with child care benefit-related provisions. Item 29 makes it clear that paragraph 66(2)(a) covers only the payment of child care benefit in a different way. Item 30 then inserts a new paragraph after paragraph 66(2)(cc), to include reference to Division 3 of Part 8B, dealing with payments to a payment nominee, previously covered by subsection 23(4).

Item 31 repeals section 103, which effectively became inoperative when section 78A and accompanying provisions were inserted into the Family Assistance Administration Act. All powers of the Secretary set out in section 103 are maintained in section 78A.

Amendments to the Child Support Assessment Act

Item 32 amends the definition of tax free pension or benefit for child support purposes. This will match the amendment made at item 18 above for family assistance purposes, to maintain the current close alignment between these definitions.