FAMILY ASSISTANCE AND OTHER LEGISLATION AMENDMENT (SCHOOLKIDS BONUS BUDGET MEASURES) BILL 2012

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Families, Community Services and Indigenous Affairs, Minister for Disability Reform, the Hon Jenny Macklin MP)
FAMILY ASSISTANCE AND OTHER LEGISLATION AMENDMENT
(SCHOOLKIDS BONUS BUDGET MEASURES) BILL 2012

OUTLINE

This Bill will deliver new assistance to families to help with the costs of their child’s education. This new payment – the schoolkids bonus – is a 2012-13 Budget measure that will replace the education tax refund paid through the taxation system.

About 1.3 million families will receive two instalments each year worth $410 for each child in primary school and $820 for each child in high school.

The new schoolkids bonus will be paid to help families meet education expenses for items such as uniforms, books, school excursions, stationery, music lessons and sports registration fees.

The Bill will:

- create a separate, ongoing new payment in the family assistance legislation (called a schoolkids bonus), which would be paid in two instalments in January and July each year from 2013 onwards;
- remove the education tax refund for 2011-12 and after from the taxation legislation;
- create a new payment in the family assistance and veterans’ entitlements legislation (called an ETR payment), which would relate to a family’s circumstances on 8 May 2012 only and replace their education tax refund entitlement for 2011-12.

The schoolkids bonus will be available to families receiving family tax benefit Part A, plus young people in school receiving youth allowance and some other income support and veterans’ payments, on the test dates of 1 January and 30 June each year.

As a transition to the schoolkids bonus, the new ETR payment under the family assistance legislation will replace the education tax refund that would otherwise have been available for 2011-12.

The ETR payment will be paid to all families entitled to family tax benefit Part A on 8 May 2012 for a school aged child, and also to young people in secondary education who are receiving certain student income support payments on 8 May 2012.
The ETR payment will be $409 for a child in primary school and $818 for a secondary school child – the same amounts that would have been available through the taxation system for 2011-12, but paid earlier and with no need to lodge receipts through a tax return.

A similar ETR payment will be provided through amendments to veterans’ entitlements legislation for recipients on 8 May 2012 of payments under the Veterans’ Children Education Scheme or the Military Rehabilitation and Compensation Act Education and Training Scheme.

The Bill will also create an administrative scheme for an ETR payment, which would assist people who may not be able to access an appropriate ETR payment under the family assistance law or veterans’ legislation.

Financial impact statement

The new measure will have an additional cost of $2.1 billion over five years. This is in addition to the $4.3 billion over five years already allocated for the education tax refund.

Fiscal balance (all portfolios)

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STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The statement of compatibility with human rights appears at the end of this explanatory memorandum.
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*
- **Social Security Administration Act** means the *Social Security (Administration) Act 1999*

Clause 1 sets out how the new Act is to be cited, that is, as the *Family Assistance and Other Legislation Amendment (Schoolkids Bonus Measures) Act 2012*.

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 – ETR payment

Summary

The ETR payment will be a one-off transitional payment in respect of 8 May 2012, in substitution for the Education Tax Refund through the taxation system for 2011-12.

Background

The new Schoolkids Bonus will start on 1 January 2013. To make sure that families get immediate assistance to help make ends meet, the Government has also announced transitional arrangements to pay the 2011-12 Education Tax Refund entitlements as a lump-sum payment in June 2012.

Entitlement to the ETR payment will be determined by reference to a family’s circumstances on 8 May 2012 and existing eligibility conditions for the Education Tax Refund will apply.

The rate of payment will be $409 in respect of a primary school student, and $818 in respect of a secondary school student – consistent with the 2011-12 maximum Education Tax Refund claimable.

Where a family’s circumstances on 8 May 2012 do not give rise to entitlement to an ETR payment, but an Education Tax Refund would have been available to the family for the 2011-12 income year, an ETR payment may be made through the administrative scheme established under Part 2 of this Schedule.

The amendments made by this Schedule commence on the day after Royal Assent.

Explanation of the changes

Part 1 – ETR Payment

Amendments to the Family Assistance Act

Item 1 inserts a definition of ETR payment (short for Education Tax Refund payment) into subsection 3(1) by reference to new Part 7A.

Item 2 inserts a new Part 7A into the Family Assistance Act, after Part 7 to provide for entitlement to the ETR payment.

Division 1 – Entitlements in respect of eligible children

When is an individual entitled to an ETR payment in respect of a child?

New section 102A sets out when an individual is entitled to an ETR payment in respect of a child.
**FTB**

In relation to FTB, an individual is an *entitled individual* for ETR payment purposes if, in relation to 8 May 2012, a determination under section 16 (entitled to fortnightly instalments of family tax benefit), section 17 (entitled to family tax benefit for a past period), or section 18 (relating to a claim because of the death of another individual) is in force.

The entitled individual’s rate of family tax benefit Part A must be greater than nil. If the individual’s rate is being reduced by repayment of a family tax benefit advance under clauses 5 or 25A of Schedule 1, this is disregarded so they can receive the ETR payment.

The rate must take into account one or more FTB children who were born on or after 1 January 1993, or on or before 31 July 2007 (that is, aged 5 by 31 July 2012, but no older than 19 by the end of 2012).

If any such FTB child is aged at least 16, the child must also be a ‘senior secondary school child’ on 8 May 2012 in line with the participation requirements for FTB Part A for children aged 16 and over. The concept of a senior secondary school child is defined in section 22B, and captures children of a particular age. Paragraph 22B(1)(b) of the definition sets out the requirement to be in full-time study so as to complete the final year of secondary school or an equivalent level of education, or be exempt from the FTB activity test. The FTB activity test is defined at section 17B, and either requires the child to be undertaking or have completed the final year of secondary school, or be otherwise exempt, for example, the child is unable to study full time due to a medical condition.

**Youth allowance**

In relation to youth allowance, an individual is an *entitled individual* for ETR payment purposes if, in respect of a period that included 8 May 2012, the individual has been paid an instalment of youth allowance, where the youth allowance related to another individual (for example, their child).

The other individual (child) must have been born on or after 1 January 1993, and on or before 8 May 1996 (that is, aged at least 16 but no older than 19 by the end of 2012).

The child must, on 8 May 2012, be undertaking full-time study in a secondary course (within the meaning of subsection 543A(2AB) of the Social Security Act).

Youth allowance must be payable to the other individual in respect of 8 May 2012.
The entitled individual must be paid the instalment of youth allowance either because they are the parent of the other individual, who is under 18 years of age, and is not independent (as defined in Part 3.5 of the Social Security Act) under subsection 45(1) of the Social Security Administration Act, or because the entitled individual is the payment nominee of the other individual, under Part 3A of the Social Security Administration Act.

**ABSTUDY**

In relation to ABSTUDY, an individual is an entitled individual for ETR payment purposes if, in respect of a period that included 8 May 2012, the individual (generally a parent) has been paid an instalment under the ABSTUDY scheme that includes an amount identified as living allowance, where the payment related to another individual (for example, their child). The other individual must have been born on or after 1 January 1993, and on or before 8 May 1996 (that is, aged at least 16 but no older than 19 by the end of 2012).

The child must, on 8 May 2012, be undertaking full-time study in respect of a course of education determined, under section 5D of the Student Assistance Act 1973, to be a secondary course for the purposes of that Act.

A living allowance under the ABSTUDY scheme must also be payable in respect of the student on 8 May 2012.

**Disability support pension and pensioner education supplement**

In relation to disability support pension, an individual is an entitled individual if, in respect of a period that included 8 May 2012, an instalment of disability support pension has been paid, along with an instalment of pensioner education supplement. The pensioner education supplement may be paid under part 2.24A of the Social Security Act, or the ABSTUDY scheme. A person may be eligible if entitled to the pensioner education supplement even if they were not actually receiving it. This protects those who may not be accessing their full entitlements from missing out.

The instalments must have been in respect of another individual (their child) who was born on or after 1 January 1993, and on or before 8 May 1996 (that is, aged at least 16 but no older than 19 by the end of 2012).

The child must, on 8 May 2012, have been undertaking study of a nature appropriate to the receipt of the pensioner education supplement. This can include attending a special school.

This means that young people on DSP (youth) in appropriate study can access the ETR payment.

Further, disability support pension and the pensioner education supplement must both be payable to the other individual in respect of 8 May 2012.
Finally, the individual must have been nominated to receive the payments in accordance with Part 3A of the Social Security Administration Act.

**In respect of which children is an ETR payable?**

**New section 102B** outlines the children in respect of whom an ETR payment is payable. Each of these children is referred to as an *eligible child*.

Where an individual is entitled to the ETR payment because of their entitlement to FTB Part A, each FTB child of the individual who satisfies the relevant age and secondary study requirements on 8 May 2012 is an eligible child in relation to the entitled individual.

A child is also eligible for the purposes of the ETR payment because an individual has been paid youth allowance, ABSTUDY or pensioner education supplement in respect of disability support pension on the child’s behalf on 8 May 2012 and the child satisfies the relevant age and secondary study requirements.

**Amount of ETR payment**

**New section 102C** sets out the rules for working out the amount of an ETR payment to an entitled individual.

New subsection 102C(1) provides that the amount of the ETR payment to an individual who is entitled under new section 102A is worked out by adding together the amounts applicable for each eligible child.

As a general rule, the applicable amount for an eligible child who was born on or after 1 August 2000 is $409 (that is, aged less than 12 on 31 July 2012). Otherwise, the amount is $818 for older children.

However, if the individual’s daily rate of FTB Part A in relation to 8 May 2012 in respect of the eligible child takes into account a shared care percentage (under section 59 of the Family Assistance Act), a percentage for a blended family or a percentage relating to a period before a couple separates, then the amount applicable for the eligible child is that percentage of the relevant amount (new subsection 102C(3) refers).

**Division 2 – Other Amendments**

**Subdivision A – Entitlement in Normal circumstances**

**When is an individual entitled to an ETR payment?**

**New section 102D** sets out the circumstances in which a young person or a student is entitled to an ETR payment.

These are the same circumstances as for the ETR.
Youth allowance

In relation to youth allowance, the individual must have been born on or after 1 January 1993, and on or before 8 May 1996 (that is, aged at least 16 but no older than 19 by the end of 2012) and must, on 8 May 2012, be undertaking full-time study in a secondary course (within the meaning of subsection 543A(2AB) of the Social Security Act). Youth allowance must also be payable to the individual in respect of 8 May 2012.

ABSTUDY

In relation to ABSTUDY, the individual must have been born on or after 1 January 1993, and on or before 8 May 1996 (that is, aged at least 16 but no older than 19 by the end of 2012) and must, on 8 May 2012, be undertaking full-time study in respect of a course of education determined, under section 5D of the Student Assistance Act 1973, to be a secondary course for the purposes of that Act. A living allowance under the ABSTUDY scheme must also be payable in respect of the student on 8 May 2012.

Disability support pension and pensioner education supplement

In relation to disability support pension, the individual must have also been born on or after 1 January 1993, and on or before 8 May 1996 (that is, aged at least 16 but no older than 19 by the end of 2012) and must, on 8 May 2012, be undertaking study of a nature appropriate to the receipt of the pensioner education supplement.

If the pensioner education supplement was paid under the Social Security Act, then the individual must have been undertaking qualifying study in respect of a course of education determined, under section 5D of the Student Assistance Act 1973, to be a secondary course for the purposes of that Act.

If the pensioner education supplement was paid under the ABSTUDY scheme, then the individual must have been undertaking study in respect of a course of education or study determined, under section 5D of the Student Assistance Act 1973, to be a secondary course for the purposes of that Act.

Finally, disability support pension and the pensioner education supplement must both be payable to the individual in respect of 8 May 2012.

Amount of the ETR payment

New section 102E provides that the amount of the ETR payment to an individual entitled under new section 102D is $818, as these young people are aged 16 or over so should be paid the secondary school rate.
Subdivision B – Entitlement where death occurs

Entitlement to ETR payment if an individual eligible for FTB dies

An individual can also be entitled to an ETR payment in circumstances where another eligible individual died before being paid. The situation is covered by new section 102F.

An individual would be entitled to an ETR payment under this new provision if, in relation to 8 May 2012, the individual has a determination under section 18 of the Family Assistance Administration Act because the Secretary is satisfied that the individual is eligible for FTB under section 33 of the Family Assistance Act because of the death of another individual and either:

- the deceased individual was entitled to an amount of ETR payment but died before it was paid; or
- the Secretary is satisfied that the deceased individual would have become entitled to an amount of ETR payment if they had not died.

If an individual is entitled to an ETR payment because of the death of another individual, then no-one else can be entitled to an ETR payment because of that same death.

Amount of the ETR payment

The amount of the ETR payment to an entitled individual upon the death of another individual is the amount of ETR payment that the deceased individual was, or would have been entitled to.

Division 3 – General

Where there is more than one entitlement

New section 102H prevents duplication of payment for the same child.

New subsection 102H(1) ensures that an ETR payment cannot be paid to an eligible child if an ETR payment in relation to the eligible child has been paid to an individual (parent).

New subsection 102H(2) ensures that an individual (parent) can only be paid one ETR payment in relation to an eligible child.

Under new subsection 102H(3), if an individual (recipient) is paid an ETR payment, then an ETR payment cannot be paid to another individual in relation to the recipient. Under new subsection 102H(4) an individual cannot get more than one ETR payment under Subdivision A of Division 2.

New subsection 102H(5) excludes duplicate ETR payments in relation to a child as between the Veterans Entitlements’ Act and the Family Assistance Act.
Amendments to the Family Assistance Administration Act

Payment

Part 3 of the Family Assistance Administration Act provides the rules for payment of the various family assistance payments available under the family assistance law.

Item 3 inserts a new Division 4CA and new section 65HA into Part 3 of the Family Assistance Administration Act. New section 65HA outlines the new payment arrangements for the ETR payment. The ETR payment is to be paid as a single lump sum on the date that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be made and in such manner that the Secretary considers appropriate.

The exception is where section 32AA or 32AD prevents FTB from being paid to an individual or their partner (for failure to lodge the relevant tax returns), in relation to 8 May 2012. In these circumstances, new subsection 65HA(2) provides that the Secretary cannot pay the ETR earlier than the day on which the individual or their partner is paid their FTB for 8 May.

No claim will be required for an individual to become entitled to the ETR payment. A note at the end of new subsection 65HA(1) makes this clear for the reader.

Inalienability

Section 66 of the Family Assistance Administration Act lists the family assistance payments that are inalienable. The ETR payment is included in the list as new paragraph 66(1)(k) by item 4.

Debts

Item 6 inserts new section 71M into the Family Assistance Administration Act. This new provision applies in relation to an individual who has been paid an ETR payment and sets out when an ETR payment is a debt. In broad terms, a debt would only arise where some or all of the payment was incorrectly paid because a relevant individual knowingly made a false or misleading statement or knowingly provided false information.

Review of decisions

Subsection 106(3) provides for notice of review decisions to be given. Notice of a decision relating to an ETR payment should similarly be given. Item 10 makes the relevant amendment.

Section 109D sets out time limits applicable to review of certain decisions. The exceptions in subsection 109D(4) to the general time limit, such as where the Commissioner of Taxation reviews and changes a person’s taxable income, should also apply to the ETR payment. Items 11 and 12 make the relevant amendments to subsection 109D(4) and paragraph 109D(5)(a).
Nominees

**Item 13** inserts a reference to the ETR payment at the end of the definition of relevant benefit in section 219TA of the Family Assistance Administration Act. This would enable the Secretary to appoint a payment nominee who would be paid the ETR payment on behalf of the entitled individual.

**Amendments to the Social Security Act**

Section 8 of the Social Security Act contains general income definitions. Subsection 8(8) excludes specified amounts from the definition of income.

**Item 14 and 15** amends subsection 8(8) by excluding ETR payments under the Social Security Act and the *Veterans’ Entitlements Act 1986* (Veterans’ Entitlements Act) from income.

**Amendment to the Social Security Administration Act**

Part 3B of the Social Security Administration Act sets up an income management regime for recipients of certain social welfare payments.

**Item 18** inserts a **new Subdivision DF** into Division 5 of Part 3B and a **new section 123XPK**.

New section 123XPA applies where a person is subject to the income management regime and an ETR income-managed payment is payable to the person. In this situation, the Secretary must deduct 100 per cent of the person’s ETR income-managed payment and credit an amount equal to that amount into both the Income Management Record and into the person’s income management account. This is consistent with other lump-sum payments.

**Item 17** amends section 123TC to include a definition of ETR income-managed payment, meaning an ETR payment under the Family Assistance Act or an ETR payment under the Veterans’ Entitlement Act.

**Amendments to the Veterans’ Entitlements Act**

**Item 19** inserts the term ‘Military Rehabilitation and Compensation Act Education and Training Scheme’ into the index of definitions in section 5.

**Item 19A** amends paragraph 5H(paa) to include a reference to the new ETR payment. This will mean that an ETR payment made under the Family Assistance Act is not counted as income for the purposes of the veterans’ entitlements income test.

**Item 19B** inserts into subsection 5H(8) new paragraph 5H(8)(zzai), which refers to the new ETR payment under Part VIIH. This will mean that an ETR payment made under Part VIIH of the Veterans’ Entitlements Act will not be counted as income for the purposes of the veterans’ entitlements income test.
Item 19C inserts into subsection 5H(8) new paragraph 5H(8)(zzh), which refers to a payment under the scheme determined under Part 2 of Schedule 1 to the *Family Assistance and Other Legislation Amendment (Schoolkids Bonus Budget Measures) Act 2012*. This will mean that an ETR payment made under that scheme will not be counted as income for the purposes of the veterans’ entitlements income test.

Item 20 inserts into subsection 5Q(1) a definition of the ‘Military Rehabilitation and Compensation Act Education and Training Scheme’.

Item 21 inserts new Part VIIH after Part VIIG of the Veterans’ Entitlements Act to provide for the new ETR payment.

Part VIIH – ETR payment

Division 1 – Eligibility in respect of eligible children

New subsection 118ZZVA(1) provides that a person is eligible for an ETR payment if:

- the person is paid the whole or part of an education allowance under section 3.2, 3.3, 3.4, 3.6 or 3.6A of the Veterans’ Children Education Scheme, prepared under section 117 of the Veterans’ Entitlements Act, in respect of a student; or
- the person is paid the whole or part of an education allowance under section 3.2, 3.3, 3.4 or 3.6 of the Military Rehabilitation and Compensation Act Education and Training Scheme, prepared under section 258 of the Military Rehabilitation and Compensation Scheme, in respect of a student;

and all of the following circumstances are met:

- the education allowance is payable in respect of a period that included 8 May 2012 and the allowance is payable in respect of the student in respect of 8 May 2012; and
- the student was born on or after 1 January 1993 – that is, the student is 19 years of age or younger; and
- on 8 May 2012, the student was undertaking primary or secondary education; and
- the person is not, for the purposes of the relevant scheme, an institution or person providing board to the student.

New subsection 118ZZVA(2) provides that a person (the *eligible person*) is eligible for an ETR payment if:
• the whole or part of an education allowance under section 3.4 of the Veterans’ Children Education Scheme is paid to an institution or person providing board to the student; or

• the whole or part of an education allowance under section 3.4 of the Military Rehabilitation and Compensation Act Education and Training Scheme is paid to an institution or person providing board to the student;

and all of the following circumstances are met:

• the education allowance is payable in respect of a period that included 8 May 2012 and the allowance is payable in respect of the student in respect of 8 May 2012; and

• the student was born on or after 1 January 1993; and

• on 8 May 2012, the student was undertaking secondary education; and

• the Repatriation Commission determines that the entitled person is the most appropriate person to be entitled to the ETR payment under this section in respect of the student.

Under the Veterans’ Children Education Scheme and Military Rehabilitation and Compensation Act Education and Training Scheme, the whole or part of an education allowance for secondary students living away from home may be paid directly to an institution providing board to the student or to a person providing board to the student.

In these circumstances, the Repatriation Commission will be able to determine that the whole or part of the ETR payment will be made to another person – the ‘eligible person’. It is expected that the ‘eligible person’ will generally be a parent or guardian of the student.

**New section 118ZZVB** sets out who is an ‘eligible child’ for the purposes of an ETR payment.

If the person is eligible under subsection 118ZZVA(1), the person is eligible for an ETR payment in respect of a student or each student for whom the whole or part of an education allowance is payable to the person, where the student or each student is 19 years of age or younger and undertaking primary or secondary education, and where the allowance is payable in respect of the student in respect of 8 May 2012.
If the person is eligible under subsection 118ZZVA(2), because the person has been determined by the Repatriation Commission to be the ‘entitled person’, the person is eligible for an ETR payment in respect of a student or each student for whom the whole or part of an education allowance is payable to an institution or person providing board to the student, where the student or each student is 19 years of age or younger and undertaking secondary education, and where the allowance is payable in respect of the student in respect of 8 May 2012.

New section 118ZZVC provides the method for calculating the amount of a person’s ETR payment.

New subsection 118ZZVC(1) directs that the amount of the ETR payment for a person eligible under section 118ZZVA is worked out by adding together the amounts applicable under this section for each eligible child.

New subsection 118ZZVC(2) states that, subject to this section, the amount applicable for each eligible child is:

- if the eligible child is undertaking primary education on 8 May 2012, then the amount is $409; and
- if the eligible child is undertaking secondary education on 8 May 2012, then the amount is $818.

New subsection 118ZZVC(3) provides a formula for calculating the amount of ETR payment that a person is to receive, where that person received only part of the education allowance payable in respect of the eligible child.

The formula in new subsection 118ZZVC(3) provides that, where:

- a person received part (the applicable part) of the education allowance concerned in relation to an eligible child; and
- that person or another person was paid another part of the education allowance concerned in relation to the eligible child;

the amount applicable to the person for the eligible child is worked out as follows:

$$\frac{\text{Amount of applicable part}}{\text{Amount of allowance concerned}} \times \text{Relevant amount}$$

For the purposes of the subsection, relevant amount means:

- for an eligible child undertaking primary education on 8 May 2012 – an amount of $409; and
- for an eligible child undertaking secondary education on 8 May 2012 – an amount of $818.
For the purposes of paragraph 118ZZVC(3)(b) of the formula, the reference to ‘that person or another person’ is required to cater for the situation that may occur in relation to an education allowance payable under the Veterans’ Children Education Scheme or the Military Rehabilitation and Compensation Act Education and Training Scheme where that part of an education allowance that is payable to an institution or person providing board to a student is redirected by the Repatriation Commission to an ‘eligible person’. The ‘eligible person’ may already be receiving part of the education allowance in respect of that child.

Division 2 – Other eligibility for ETR payment

New section 118ZZVD provides that a person is eligible for an ETR payment if:

- the person is the student who was paid education allowance under section 3.2, 3.3, 3.4, 3.6 or 3.6A of the Veterans’ Children Education Scheme, prepared under section 117 of the Veterans’ Entitlements Act; or

- the person is the student who was paid education allowance under section 3.2, 3.3, 3.4 or 3.6 of the Military Rehabilitation and Compensation Act Education and Training Scheme, prepared under section 258 of the Military Rehabilitation and Compensation Scheme;

and all of the following circumstances are met:

- the education allowance is payable in respect of the student in respect of 8 May 2012; and

- the student was born on or after 1 January 1993 – that is, the student is 19 years of age or younger; and

- on 8 May 2012, the student was undertaking secondary education.

New section 118ZZVE provides that the amount of ETR payment for a person who is eligible under section 118ZZVD is $818.

Division 3 – General

The purpose of new section 118ZZVF is to prevent duplicate payments of the ETR payment.

New subsection 118ZZVF(1) provides that, if a person receives an ETR payment under Division 1 of Part VIIH in relation to an eligible child, then no ETR payment under Division 2 can be paid to the eligible child as a student.
New subsection 118ZZVF(2) provides that, if a person receives an ETR payment under Division 1 of Part VIIH in relation to an eligible child, then no further ETR payment under Division 1 can be paid to that person in relation to that eligible child.

New subsection 118ZZVF(3) provides that, if a person (the recipient) receives an ETR payment under Division 2 of Part VIIH in relation to an eligible child, then no ETR payment under Division 1 can be paid to another person in relation to the recipient.

New subsection 118ZZVF(4) provides that, if a student receives an ETR payment under Division 2 of Part VIIH, then no further payment under that Division can be paid to the student.

New subsection 118ZZVF(5) provides that, if a person receives an ETR payment under Division 1 of Part 7A of the Family Assistance Act in relation to a child, then no ETR payment under Part VIIH of the Veterans’ Entitlements Act can be paid to the person in relation to the same child or to the child him or herself.

New section 118ZZVG states that a claim is not required for an ETR payment under new Part VIIH.

New section 118ZZFVH provides that the Repatriation Commission will make the ETR payment to eligible persons in a single lump sum on a date that the Repatriation Commission considers to be the earliest reasonably practicable date and in such a manner as the Repatriation Commission considers appropriate.

New section 118ZZVI provides the circumstances under which a debt may arise in respect of an ETR payment.

New subsection 118ZZVI(1) provides that section 118ZZVI applies to an individual who has been paid an ETR payment (the relevant payment) under Part VIIH of the Veterans’ Entitlements Act.

New subsection 118ZZVI(2) provides that, if the individual was eligible for an ETR payment because of subparagraph 118ZZVA(1)(a)(i) or (2)(a)(i) or 118ZZVD(a)(i), a ‘relevant determination’ is a determination made under paragraph 8.1 of the Veterans’ Children Education Scheme.

New subsection 118ZZVI(3) provides that, if the individual was eligible for an ETR payment because of subparagraph 118ZZVA(1)(a)(ii) or (2)(a)(ii) or 118ZZVD(a)(ii), a ‘relevant determination’ is a determination made under paragraph 8.1 of the Military Rehabilitation and Compensation Act Education and Training Scheme.

New subsection 118ZZVI(4) provides that, if the following circumstances apply, the amount of the ETR payment is a debt due to the Commonwealth by the person:
• after the ETR payment was made to the person, a relevant determination in relation to the person, at least so far as it relates to 8 May 2012, is or was (however described) changed, revoked, set aside or superseded by another determination; and

• the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the person knowingly made a false or misleading statement, or knowingly provided false information; and

• had the change, revocation, setting aside or superseding occurred on or before the date the ETR payment was paid, the ETR payment would not have been made.

New subsection 118ZZVI(5) provides that, if the following circumstances apply, the amount by which the ETR payment would have been reduced, is a debt due to the Commonwealth by the person:

• after the ETR payment was made to the person, a relevant determination in relation to the person, at least so far as it relates to 8 May 2012, is or was (however described) changed, revoked, set aside or superseded by another determination; and

• the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the person knowingly made a false or misleading statement, or knowingly provided false information; and

• had the change, revocation, setting aside or superseding occurred on or before the date the ETR payment was paid, the ETR payment would have been reduced.

New subsection 118ZZVI(6) provides that the other provisions of the Veterans’ Entitlements Act under which debts arise do not apply in relation to ETR payments.

New subsection 118ZZVI(7) provides that a debt that arises under this section is a ‘recoverable amount’ within the meaning of subsection 205(8).

Part 2 – Administrative Scheme for ETR payments

This Part provides for the creation of an administrative scheme for ETR payments. This will make sure that no family misses out on assistance they would have otherwise have been entitled to under the Education Tax Refund.

Item 1 enables the Minister to determine, by legislative instrument, an administrative scheme under which ETR payments can be made to persons in specified circumstances. The Minister would be able to revoke or vary the scheme by legislative instrument.
**Item 2** sets out some parameters for the administrative scheme. The scheme may only provide for payments in circumstances in which the Minister considers the statutory ETR scheme does not produce appropriate results and that occur in the 2011-12 financial year.

**Item 3** sets out the matters that can be dealt with by the administrative scheme. These include the person’s whom payments can be made and the circumstances in which payments can be made, the amount of payment, review of decisions, administrative and other matters.

**Item 4** provides that payments under the scheme are to be appropriated out of the Consolidate Revenue Fund, which is appropriated accordingly.

**Item 5** ensures that an approved care organisation can be provided for by the administrative scheme.

**Part 3 – Other amendments**

**Amendment to the Family Assistance Administration Act**

**Item 50** makes a consequential change to new section 65HA(2). The change is technical and picks up the new definition of estimated income basis that is inserted into subsection 3(1) of the Family Assistance Administration Act by item 3 of Schedule 3 to the Family Assistance and Other Legislation Amendment Bill 2012.
Schedule 2 – Schoolkids bonus

Summary

The Schoolkids bonus will be a new family assistance payment paid to eligible families to help with the costs of education.

Background

Eligibility for the schoolkids bonus will be determined by reference to a family’s circumstances on each 1 January and 30 June, starting on 1 January 2013.

Families entitled to family tax benefit Part A for a school aged child in respect of 1 January or 30 June each year will be eligible. Eligibility will also arise for families who, for 1 January or 30 June, are paid youth allowance, ABSTUDY living allowance or disability support pension together with a pensioner education supplement (either under the social security law or under the ABSTUDY scheme), in respect of a young person, and to families paid education allowance under the Veterans’ Children Education Scheme or the Military Rehabilitation and Compensation Act Education and Training Scheme in respect of a student. The young person must be in either primary or secondary study to be eligible.

If a child for whom the above conditions are met on 1 January or 30 June, undertook study in the six-month period prior to the test date, they become an eligible child for that test date. A family’s entitlement to schoolkid bonus will include an amount for each eligible child.

The rate of payment will initially be $205 for a six month period in respect of a primary school student, and $410 for a six month period in respect of a secondary school student. Only a proportion of the full Schoolkids bonus may be paid where a parent receives only a part of the family tax benefit, or of the education allowance paid under the Veterans’ Children Education scheme, or the Military Rehabilitation and Compensation Act Education and Training Scheme for the child.

Young persons paid youth allowance, ABSTUDY living allowance or disability support pension together with a pensioner education supplement (either under the social security law or under the ABSTUDY scheme) will be entitled to a Schoolkids bonus in their own right.

The amendments made by this Schedule commence on the day after Royal Assent.
Explanation of the changes

Amendments of the Family Assistance Act

Item 1 amends subsection 3(1) to provide for the definition of bonus test day. This means 1 January 2013, 30 June 2013 and each subsequent 1 January and each subsequent 30 June.

Item 2 amends the definition of ‘family assistance’ to include schoolkids bonus.

Item 3 amends the definition of FTB child to insert new paragraph (ba) in relation to schoolkids bonus, as having the meaning given in subdivision A of Division 1 of Part 3 (which is the same meaning as for family tax benefit).

Item 4 inserts a definition of previous education period: which, for a bonus test day that is a 1 January—means the period beginning on the previous 1 July and ending on the day before the bonus test day; and for a bonus test day that is a 30 June—means the period beginning on the previous 1 January and ending on the bonus test day.

Item 5 inserts a definition of primary school amount of schoolkids bonus, as having the meaning given by section 35UB.

Item 6 inserts a definition of relevant schoolkids bonus child as having the meaning given by section 35UB.

Item 7 inserts a definition of schoolkids bonus as meaning the payment for which an individual is eligible under Division 1A of Part 3. This new division is inserted by item 6 below.

Item 8 inserts a definition of secondary school amount as having the meaning given by new subsection 65AA(2), inserted by item 7 below.

Item 9 inserts new division 1A after division1 of Part 3, dealing with eligibility for schoolkids bonus.

Division 1A – Eligibility for schoolkids bonus

New Subdivision A sets out when an individual is entitled to a schoolkids bonus in respect of a child. Eligibility of an individual, for example, a student, in their own right, is dealt with in new Subdivision B.
FTB

New section 35UA provides for when an individual is eligible for schoolkids bonus in respect of a child. In relation to FTB, new subsection (1) provides that an individual is eligible for schoolkids bonus on a bonus test day if, in relation to the bonus test day a determination under section 16 (entitled to fortnightly instalments of family tax benefit), section 17 (entitled to family tax benefit for a past period), or section 18 (relating to a claim because of the death of another individual) is in force. The individual must have made the claim for family tax benefit which gave rise to the determination.

The individual’s rate of family tax benefit Part A must be greater than nil. If the individual’s rate is being reduced by repayment of a family tax benefit advance under clauses 5 or 25A of Schedule 1, this is disregarded so they can receive the schoolkids bonus.

The rate must take into account one or more FTB children of the individual who are relevant schoolkids bonus children of the individual for the bonus test day.

A note alerts the reader that relevant schoolkids bonus child is defined at new section 35UB.

Youth allowance

In relation to youth allowance, new subsection (2) provides that an individual is eligible for schoolkids bonus on a bonus test day if, in respect of a period that included the bonus test day, the individual has been paid an instalment of youth allowance, where the youth allowance related to another individual (for example, their child). The other individual must have, on the bonus test day, turned 16 but no older than 19 by the end of the calendar year in which the bonus test day occurs.

The other individual (child) must be, on the bonus test day, undertaking full-time study in respect of a secondary course (within the meaning of subsection 543A(2AB) of the Social Security Act).

Youth allowance must have been payable to the other individual for the bonus test day. If youth allowance is found not to be payable, any instalment paid in respect of the bonus test day would generally be required to be repaid, and eligibility for schoolkids bonus would also be lost.

The eligible individual must be paid the instalment of youth allowance either because they are the parent of the other individual, who is under 18 years of age, and is not independent (as defined in Part 3.5 of the Social Security Act) under subsection 45(1) of the Social Security Administration Act, or because the eligible individual is the payment nominee of the other individual, under Part 3A of the Social Security Administration Act.
ABSTUDY

In relation to ABSTUDY, new subsection (3) provides that an individual is eligible for schoolkids bonus on a bonus test day if, in respect of a period that included the bonus test day, the individual (generally, a parent) has been paid an instalment under the ABSTUDY scheme that includes an amount identified as living allowance, where the payment related to another individual (for example, their child). The other individual must, on the bonus test day, have turned 16 but no older than 19 by the end of the calendar year in which the bonus test day occurs.

The child to whom the instalment relates must be undertaking full-time study in respect of a course of education determined, under section 5D of the Student Assistance Act 1973, to be a secondary course for the purposes of that Act).

The living allowance must have been payable in respect of the student for the bonus test day. If the living allowance is found not to be payable, any instalment paid in respect of the bonus test day would generally be required to be repaid, and eligibility for schoolkids bonus would also be lost.

Disability support pension and pensioner education supplement

In relation to disability support pension, new subsection (4) provides that an individual is an eligible individual in respect of a bonus test day if, in respect of a period that included the bonus test day, an instalment of disability support pension has been paid, along with an instalment of pensioner education supplement. The pensioner education supplement may be paid under Part 2.24A of the Social Security Act, or under the ABSTUDY scheme, and may or may not have been paid to the entitled individual.

The other individual to whom the instalment relates (their child), must have, on the bonus test day, turned 16 but no older than 19 by the end of the calendar year in which the bonus test day occurs.

The child must have been undertaking study of a nature appropriate to the receipt of the pensioner education supplement. This can include attending a special school. This means that young people on DSP (youth) in appropriate study can access the schoolkids bonus.

Both disability support pension and pensioner education supplement must have been payable to the other individual for the bonus test day. If either payment is later found not to be payable, any instalment paid in respect of the bonus test day would generally be required to be repaid, and eligibility for schoolkids bonus would also be lost.

Finally, the individual must have been nominated to receive the payments in accordance with Part 3A of the Social Security Administration Act.
**Education allowance**

In relation to education allowance, new subsection (5) provides that an individual (generally, a parent) is eligible for schoolkids bonus on a bonus test day if, in respect of a period that included the bonus test day, the whole or part of an education allowance under section 3.2, 3.3, 3.4 or 3.6A of the Veterans’ Children Education Scheme, or under section 3.2, 3.3 or 3.4 of the Military Rehabilitation and Compensation Act Education and Training Scheme was paid in respect of a student.

The student to whom the allowance relates, must, on the bonus test day, be aged no older than 19 by the end of the calendar year in which the bonus test day occurs. On the bonus test day, the student must have been undertaking either primary education, or full-time study in respect of a secondary course (within the meaning of subsection 543A(2AB) of the Social Security Act).

Education allowance must have been payable in respect of the student for the bonus test day. If education allowance is found not to be payable, any instalment paid in respect of the bonus test day would generally be required to be repaid, and eligibility for schoolkids bonus would also be lost.

*Relevant schoolkids bonus child* is defined in new section 35UB, for the purposes of new subsection 35UA(1). This concept will determine whether such a child will give rise to eligibility for a bonus test day. However, whether or not the child will attract a payment of schoolkid bonus for a bonus test day will still depend upon additional factors set out in new section 35UC below.

This section deals with the school attendance requirement for eligibility for a particular bonus test day, particularly where the Secretary is not otherwise aware of whether the child is attending school.

For an FTB child who has not yet been a relevant schoolkids bonus child (because they had not yet started school), they will become a relevant schoolkids bonus child if they are aged under 16, and at any time before the end of the second income year after the income year in which the bonus test day occurs, the Secretary is notified or otherwise becomes aware that:

- the FTB child participated, or will participate in a course of primary education on at least one day during the six-month period beginning on the bonus test day; or

- the FTB child undertook, or will undertake, full-time study in respect of a secondary course (within the meaning of subsection 543A(2AB) of the Social Security Act) on at least one day during the six-month period beginning on the bonus test day; or

- the FTB child undertook, or will undertake, an eligible activity on at least one day during the six-month period beginning on the bonus test day.
These arrangements ensure that children starting school eligible for a ‘start-up’ Schoolkids Bonus instalment to be paid at the start of the six-month period in which the child commences primary education.

No particular form of notification to the Secretary is required.

New subsection 35UB(4) allows the Minister to prescribe in a legislative instrument, study, education or an activity which will give rise to eligibility under this category.

For continuity, where an FTB child of an individual aged under 16 is a relevant schoolkids bonus child of the individual for the most recent bonus test day, then they remain a relevant schoolkids bonus child of the individual for subsequent bonus test days, provided they are still aged under 16.

Where the FTB child is aged 16 or over, the child is a relevant schoolkids bonus child of the individual if, on the bonus test day, the FTB child is a senior secondary school child.

The concept of a senior secondary school child is defined in section 22B, and captures children of a particular age. Paragraph 22B(1)(b) of the definition sets out the requirement to be in full-time study so as to complete the final year of secondary school or an equivalent level of education, or be exempt from the FTB activity test. The FTB activity test is defined at section 17B, and either requires the child to be undertaking or have completed the final year of secondary school, or be otherwise exempt, for example, because no suitable courses are locally accessible.

New section 35UC enables the Minister to determine that in prescribed circumstances, an individual is eligible for the schoolkids bonus on a bonus test day in relation to a child. This determination is a legislative instrument.

The circumstances prescribed in the Minister’s determination must relate to circumstances in which the child has, in the previous education period for the bonus test day, completed his or her secondary education.

However, the Minister cannot determine that an individual is eligible in respect of a child who was not undertaking primary or secondary education on at least one day in 2012.

Similar to ‘start-up’ assistance delivered to children starting school in 2012, the purpose of this provision is to allow ‘finishing’ payments to be made at the conclusion of studies for children who were in school in 2012 or earlier. These arrangements make sure that no family is worse off under the new schoolkids bonus.

New section 35UD provides for the children in respect of whom schoolkids bonus is payable.
For FTB children, if an individual is eligible under subsection 35UA(1) for schoolkids bonus on a bonus test day, each child who is covered by paragraph 35UA(1)(c) in relation to the individual for the bonus test day (that is, is an FTB child of the individual who is a relevant schoolkids bonus child) may be an eligible child in respect of the bonus test day if other conditions are met. The other conditions are that on at least one day in the previous education period for the bonus test day, the child:

- participated in a course of primary education; or
- undertook full time study in respect of a secondary course (within the meaning of subsection 543A(2AB) of the Social Security Act); or
- undertook an eligible activity within the meaning of subsection 35UB(4), under any instrument made by the Minister.

Alternatively, the child may be an eligible child if they first participated in a course of primary education on a day in the six-month period beginning on the bonus test day.

For youth allowance, ABSTUDY, disability support pension and education allowance recipients, an eligible child in respect of the bonus test day is identified by age and the schooling requirements they are meeting. All such recipients must have been undertaking the relevant type of education which was required in order to render the individual eligible under section 35UA for the particular payment type, in respect of at least one day in the previous education period.

Special provision is made for school leavers. New section 35UC provides for the Minister to make a legislative instrument prescribing circumstances in which an individual is eligible for schoolkids bonus on a bonus test day in relation to a child who is completing secondary education. Each child in relation to whom the individual is eligible under the instrument made under that section is an eligible child for the bonus test day.

New Subdivision B deals with eligibility for schoolkids bonus of the student themselves.

New section 35UE deals with an individual who is eligible for school bonus.

Youth allowance

For youth allowance, new subsection (1) provides that an individual who has been paid an instalment of youth allowance relating to them in respect of a period that included the bonus test day, and who has, on the bonus test day, turned 16 but no more than 19 by the end of the calendar year in which the bonus test day occurs, is eligible if they are, on the bonus test day, undertaking full-time study in respect of a secondary course (within the meaning of subsection 543A(2AB) of the Social Security Act).
Youth allowance must be payable to the individual in respect of the bonus test day. If youth allowance is found not to be payable, any instalment paid in respect of the bonus test day would generally be required to be repaid, and eligibility for schoolkids bonus would also be lost.

Eligibility arises in relation to a bonus test day if they also undertook such full-time study on at least one day in the previous education period.

**ABSTUDY**

In relation to ABSTUDY, new subsection (2) provides that an individual is eligible for schoolkids bonus if, in respect of a period that included the bonus test day, the individual has been paid an instalment under the ABSTUDY scheme that includes an amount identified as living allowance, and on the bonus test day, has turned 16 but no more than 19 by the end of the calendar year in which the bonus test day occurs.

They must, on the bonus test day, be undertaking full-time study in respect of a course of education determined, under section 5D of the *Student Assistance Act 1973* to be a secondary course for the purposes of that Act. They must additionally have undertaken such study on at least one day in the previous education period.

Living allowance must be payable to the individual in respect of the bonus test day. If living allowance is found not to be payable, any instalment paid in respect of the bonus test day would generally be required to be repaid, and eligibility for schoolkids bonus would also be lost.

**Disability support pension and pensioner education supplement**

In relation to disability support pension, new subsection (3) provides that an individual is eligible in respect of a period that included the bonus test day, if an instalment of disability support pension has been paid to the individual, along with an instalment of pensioner education supplement. The pensioner education supplement may be paid under part 2.24A of the Social Security Act, or under the ABSTUDY scheme, and may or may not have been paid to the entitled individual.

The individual must have, on the bonus test day, turned 16 but no older than 19 by the end of the calendar year in which the bonus test day occurs.

The individual must also have been undertaking study of a nature appropriate to the receipt of the pensioner education supplement. If the pensioner education supplement was paid under the Social Security Act, then the individual must have been undertaking qualifying study in respect of a course of education determined, under section 5D of the *Student Assistance Act 1973*, to be a secondary course for the purposes of that Act. If the pensioner education supplement was paid under the ABSTUDY scheme, then the individual must have been undertaking study in respect of a course of education or study.
Additionally, the individual must have been undertaking such study on at least one day in the previous education period for the bonus test day.

Both disability support pension and pensioner education supplement must be payable to the individual in respect of the bonus test day. If the pension or the supplement is found not to be payable, any instalment paid in respect of the bonus test day would generally be required to be repaid, and eligibility for schoolkids bonus would also be lost.

**Education allowance – generally**

In relation to education allowance in ordinary circumstances, new subsection (4) provides that an individual is eligible for schoolkids bonus if, in respect of a period that included the bonus test day, the whole or part of an education allowance under section 3.3, 3.4, 3.6 or 3.6A of the Veterans’ Children Education Scheme, or under section 3.3, 3.4 or 3.6 of the Military Rehabilitation and Compensation Act Education and Training Scheme was paid to them as a student.

The student must, on the bonus test day, have turned 16 but be aged no older than 19 by the end of the calendar year in which the bonus test day occurs. On the bonus test day, the student must have been undertaking full-time study in respect of a secondary course (within the meaning of subsection 543A(2AB) of the Social Security Act). Additionally, the student must have undertaken equivalent study in relation to at least one day in the previous education period for the bonus test day.

The allowance must also be payable in respect of the individual in respect of the bonus test day. If the allowance is found not to be payable, any instalment paid in respect of the bonus test day would generally be required to be repaid, and eligibility for schoolkids bonus would also be lost.

**Education allowance – homeless students**

In relation to education allowance in circumstances where the student has no fixed place or persons with whom they live, new subsection (5) provides that they are eligible for schoolkids bonus if, in respect of a period that included the bonus test day, the whole or part of an education allowance under section 3.6 of the Veterans’ Children Education Scheme, or under section 3.6 of the Military Rehabilitation and Compensation Act Education and Training Scheme was paid in respect of them.

The student must, on the bonus test day, have turned 16 but be aged no older than 19 by the end of the calendar year in which the bonus test day occurs. On the bonus test day, the student must have been undertaking full-time study in respect of a secondary course (within the meaning of subsection 543A(2AB) of the Social Security Act). Additionally, the eligible individual must have, on at least one day in the previous education period for the bonus test day, undertaken such study.
The allowance must be payable in respect of the eligible individual in respect of the bonus test day. If the allowance is found not to be payable, any instalment paid in respect of the bonus test day would generally be required to be repaid, and eligibility for schoolkids bonus would also be lost.

The allowance must have been paid to an appropriate individual within the meaning of the applicable Scheme, but such person is not a parent or guardian of the eligible individual. In such case, it is likely that the Secretary will appoint the appropriate individual as a payment nominee for the student, under Part 8B of the Family Assistance Administration Act, such that the schoolkids bonus will also go to the appropriate individual.

New section 35UF enables the Minister to determine that in prescribed circumstances, an individual is eligible for the schoolkids bonus on a bonus payday. This determination is a legislative instrument.

The circumstances prescribed in the Minister’s determination must relate to circumstances in which the individual has, in the previous education period for the bonus test day, completed his or her secondary education.

However, the Minister cannot determine that an individual is eligible unless the individual satisfies certain conditions. The individual must have turned 16 but be aged under 20 on the bonus test day for the bonus test period and, if the individual is under 19 on that day, he or she turned 19 during the calendar year in which the bonus test day occurs. Further the individual must have been undertaking primary or secondary education on at least one day in 2012.

This instrument making power gives capacity for the Minister to provide additional payments to individuals who will not have received the full benefit of the schoolkids bonus during their schooling because they commenced school prior to the scheme coming into force.

New section 35UG provides for eligibility if death occurs, where an individual would otherwise have been eligible for schoolkids bonus because of receipt of family tax benefit Part A. If, in relation to the bonus test day, a determination under section 18 of the Family Assistance Administration Act (determination of bereavement entitlement claim) is in force in respect of the individual because the Secretary is satisfied that the individual is eligible for family tax benefit under section 33 of the Family Assistance Act because of the death of another individual, and either:

- the other individual was eligible for an amount of schoolkids bonus on the bonus test day but died before the amount was paid, or
- the Secretary is satisfied that the other individual would have become eligible for an amount of schoolkids bonus on the bonus test day if the other individual had not died.
A note alerts the reader that the amount of schoolkids bonus for an individual eligible under this section is worked out under section 65C.

If the Secretary makes a determination under this provision, no-one else is, or can become, entitled to schoolkids bonus because of the death of the other individual.

**Subdivision C – General rules**

These general rules ensure that no duplication of payment of schoolkids bonus occurs. **New section 35UH** sets out these rules. If schoolkids bonus in relation to an eligible child and a bonus test day is paid to an individual (parent), no schoolkids bonus can be paid directly to the eligible child in relation to the bonus test day. For example, where a parent of a student has been paid schoolkids bonus in respect of the student, the student cannot then be paid schoolkids bonus directly.

If schoolkids bonus in relation to an eligible child and a bonus test day is paid to an individual, no further schoolkids bonus to an individual in relation to that eligible child can be paid to the individual in relation to the bonus test day.

If schoolkids bonus is paid to an individual child in relation to a bonus test day, no schoolkids bonus can be paid to another individual, for example, a parent, in relation to the child and the bonus test day.

If schoolkids bonus is paid directly to an individual student in relation to a bonus test day, no further schoolkids bonus can be paid directly to that individual in relation to the bonus test day.

**Item 10** inserts new Division 1A after Division 1 of Part 4, to deal with the amount of schoolkids bonus.

**New section 65A** sets out the amount of schoolkids bonus per child.

The primary school amount is $205.

The secondary school amount is $410.

**New section 65B** then sets out the general rule in respect of a bonus test day for individuals eligible in relation to a child. Subsection (1) provides that the amount of schoolkids bonus for such an eligible individual is worked out by adding together the amounts provided for under this section in relation to the bonus test day for each child who is, under section 35UD, an eligible child in relation to the individual for the bonus test day.

Subsection (2) sets up a default rule in relation to the amount of schoolkids bonus. If the eligible child is under 16 on the bonus test day, they give rise to eligibility for the primary school amount, unless subsection (3) or (4) applies. If the eligible child is aged 16 or over on the bonus test day, this results in eligibility for the secondary school amount.
This means that, if parents do not inform DHS that their child has progressed to high school, they will continue to be paid at the primary school rate until their child turns 16.

A note draws to the attention of the reader that special transitional rules apply in relation to the bonus test day that is 1 January 2013 (see Part 2 of Schedule 2 to this Bill).

Subsection (3) applies if the amount applicable to the most recent bonus test day for the child was the secondary school amount, or an amount calculated as a percentage of the secondary school amount. If a secondary school amount had previously been paid for a child under 16, then the rate of schoolkids bonus applicable to them remains the secondary school rate while they continue to give rise to qualification.

This means that, once parents have notified DHS that their child has progressed to secondary school, they will be paid at this rate.

Subsection (4) applies if the Secretary is notified, or otherwise becomes aware, that the eligible child will undertake, or undertook full-time study in respect of a secondary course on at least one day in the previous education period for the bonus test day. For children who do not meet this requirement, the Secretary may be notified that the eligible child undertook an eligible activity in this period.

‘Eligible activity’ under subsection (7), means study, education or an activity of a kind prescribed in a legislative instrument made by the Minister for the purposes of the subsection.

However, if the individual’s daily rate of FTB Part A in relation to the bonus test day for the bonus test day in respect of the eligible child takes into account a shared care percentage (under section 59 of the Family Assistance Act), then the amount applicable for the eligible child is that percentage of the relevant amount (new subsection (5) refers).

New section 65C provides for the amount of schoolkids bonus for an eligible individual (where the schoolkids bonus is paid directly to the student). New subsection (1) requires that the amount of schoolkids bonus is the sum of all amounts in relation to the bonus test day for each child who is an eligible child for the individual. The amounts, or part amounts, for each such child are provided for by this new section.

Subsection (2) identifies that for a child who is an eligible child because of a payment of education allowance under the Veteran’s Children Education Scheme or the Military Rehabilitation and Compensation Act Education and Training Scheme, if the payment was made under section 3.2 of either Scheme (which deals with primary school aged children) the rate is the primary school amount. Otherwise, the rate is the secondary school amount.
Subsection (3) provides that, if only a part of the allowance referred to above was paid in respect of an eligible child, and that individual or another individual was paid another part of the allowance in relation to the eligible child and the bonus test day, the amount of schoolkids bonus calculated under subsection (2) is reduced under a formula set out in this subsection.

New section 65D provides for the amount of schoolkids bonus for individuals eligible under a legislative instrument made by the Minister in respect of school leavers. The amount is calculated by adding together the amount of schoolkids bonus for the individual for the bonus test day for each child eligible under any such instrument.

The default amount of schoolkids bonus is the secondary school amount. However, if a shared care percentage applied in relation to the child, or there is a determination under section 28 or 29 (blended or separated families) or there are circumstances in which the Minister considers it appropriate to vary the amount, then the amount is that percentage of the secondary school rate.

If the instrument otherwise provides for the amount worked out under this section to be varied, the amount is the amount as varied under the instrument.

New section 65E provides for the amount of schoolkids bonus for individuals eligible for payment of the bonus because they are the child or student receiving the primary payment. Because these children will be aged 16 or older, the amount is the secondary school amount.

New section 65F provides that, if the Secretary determines that an amount of schoolkids bonus should be paid to an individual in substitution for payment to an individual who has died, the amount of bonus paid is the amount that would have otherwise been paid to the deceased individual.

Item 11 amends clause 2 of Schedule 4 to insert reference to the primary school and secondary school amounts for schoolkids bonus into the table which references amounts which are to be indexed, and provides an abbreviation for those amounts. The abbreviations PSA for schoolkids bonus and SSA for schoolkids bonus are used. Various indexed amounts in relation to baby bonus are repealed and replaced without change to the substantive effect, to produce the correct ordering for the payments within the table.

Item 12 amends subclause 3(1) of Schedule 4 to provide for indexation of the schoolkids bonus rates each 1 July, from July 2013, by reference to the December quarter, with the highest December quarter not to be before December quarter 2012. The resulting amount is rounded to the nearest dollar.

**Amendments of the Family Assistance Administration Act**

Item 13 inserts new Division 2A, providing for the entitlement for and payment of Schoolkids bonus.
New section 35F provides that, if an individual is eligible under new Division 1A of Part 3 of the Family Assistance Act for schoolkids bonus on a bonus test day, the individual is entitled to schoolkids bonus on the bonus test day.

New section 35G then provides for payment of schoolkids bonus to individuals with an entitlement under new section 35F. Payment of schoolkids bonus to an entitled individual must be made in a single lump sum:

- on the date that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be made; and
- in such manner as the Secretary considers appropriate.

A note alerts the reader that an individual does not have to make a claim for schoolkids bonus.

However, new subsection (2) provides that payment of the school bonus should not occur during a prohibited instalment period for a customer applying under sections 32AA or 32AD. A prohibited period may apply where the customer has not lodged relevant tax returns, resulting in the customer ceasing to be entitled to instalment payments of family tax benefit for the prohibited period. If a prohibited period is in force on the bonus test day, then no payment of school bonus is to be made until after the prohibited period ends. The concept of such period ending is dealt with in provisions such as subsection 32AB(3), (4), (4A) or (7), and subsection 32AC(3),(4), (4A) or (9).

Item 14 amends section 66 by adding reference to schoolkids bonus, to render such payment inalienable in accordance with that section.

Item 15 amends subsection 71(1) to include reference to schoolkids bonus. This will allow a debt of schoolkids bonus to arise in circumstances which are the same as those applying for family assistance payments generally.

Item 16 includes reference to schoolkids bonus in subsection 93A(6), in order to allow recovery of mispaid amounts from financial institutions, in common with other family assistance payments.

Item 17 amends section 219TA, in order to allow the nominee provisions in Part 8B to apply to schoolkids bonus, in common with other family assistance payments.

Amendments of the Social Security Administration Act

Item 18 amends the Social Security Administration Act, to provide for income management of the schoolkids bonus.
New Subdivision DG is inserted before Subdivision E of Division 5 of Part 3B. New section 123XPL provides for deductions from schoolkids bonus payments, where a person is subject to the income management regime, and a payment of schoolkids bonus under the Family Assistance Act is payable to the person. In common with other income managed payments, subsection (2) provides for the Secretary to deduct the deductible portion of the payment, and credit an amount equal to the deductible portion to the Income Management Record and to the person’s income management account.

Subsection (3) provides that the deductible portion of schoolkids bonus payments is 100 per cent, in common with most lump sum family assistance payments.

**Part 2 – Application and Transitional provisions**

**Item 19** provides for the application of the indexation provisions set out at item 12 above. The amendment applies in relation to the indexation day that is 1 July 2014 and all later indexation days.

**Item 20** allows for the automatic qualification for schoolkids bonus of children of a certain age in relation to the 1 January 2013 bonus test day, without the requirement for notification that the child is attending school. Provided the child is born after 1 January 1997, and before 1 August 2007, then they will be considered to give rise to eligibility for the schoolkids bonus payment. This is because all children aged 6 by 31 July 2013 to aged less than 16 by 1 January 2013 would be expected to be attending school.

**Item 21** provides that, in certain circumstances, new section 65B of the Family Assistance Act applies in relation to the 1 January 2013 bonus test day as if the secondary school amount was the amount applicable under new subsection 65B(2).

This rule applies if an eligible child is born after 1 January 1997 and before 1 August 2000 and, on 1 January 2013, the child’s usual place of residence is in New South Wales, Victoria, Tasmania, the Australian Capital Territory or the Northern Territory.

This rule also applies if an eligible child is born after 1 January 1997 and before 1 August 1999 and, on 1 January 2013, the child’s usual place of residence is in Queensland, Western Australia or South Australia.

**Part 3 – Other amendments**

**Amendment to the Family Assistance Administration Act**

**Item 22** makes a consequential change to new section 35G(2). The change is technical and picks up the new definition of **estimated income basis** that is inserted into subsection 3(1) of the Family Assistance Administration Act by item 3 of Schedule 3 to the Family Assistance and Other Legislation Amendment Bill 2012.
Schedule 3 – Other amendments

Summary

This Schedule makes consequential amendments to the *Income Tax Assessment Act 1997* (Income Tax Assessment Act) to make the new payments introduced by this Bill exempt from income tax and, in effect, to remove the education tax refund from the taxation legislation.

Explanation of the changes

Items 1 to 9 amend the Income Tax Assessment Act so that the ETR Payment and the Schoolkids Bonus are wholly exempt from income tax from the day this Schedule receives Royal Assent.

Items 10 to 13 amend the Income Tax Assessment Act so that, from the 2011-12 income year, the education expenses tax offset (that is, the education tax refund) is only available for income years ending before 1 July 2011.
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the
Human Rights (Parliamentary Scrutiny) Act 2011

The purpose of the Bill is to introduce a new payment to assist families with their education costs. This will replace a refundable tax offset, called the Education Tax Refund, which operates on a claims basis. Many eligible families do not currently claim the full amount of the tax offset, but all eligible families will get the payment.

Overview of the Schedules

Schedule 1 amends family assistance and veterans’ entitlements legislation to allow a one-off ETR payment to be made to individuals entitled to certain payments on 8 May 2012. Schedule 1 also establishes an administrative scheme to allow some individuals who were not paid a statutory ETR payment to otherwise have access to the ETR Payment.

Schedule 2 also amends family assistance legislation to establish a new payment called Schoolkids Bonus. The Schoolkids Bonus would be paid to individuals entitled to certain payments and would provide ongoing assistance for education expenses from 2013 onwards. It should be noted payments under this Schedule can be made in respect of children aged under 18 years, young people aged up 18 years and young people turning 19 years in the relevant calendar year.

Schedule 3 amends taxation legislation to remove provisions relating to the education expenses tax offset (also known as the Education Tax Refund) for the 2011-12 income year and thereafter. In its place, the ETR payment established under Schedule 1 would deliver assistance for the 2011-12 income year, as the amount of the ETR payment would be equivalent to the current education expenses tax offset amount and eligibility groups are similar. The Schoolkids Bonus would deliver education expenses assistance for the 2012-13 income year and thereafter.

Human rights implications

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as Article 26 of the Convention on the Rights of the Child (CRC), recognise the right of a child to benefit from social security.

The right to social security in article 9 of the ICESCR requires that a social security system be established and that a country must, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education. Article 26 of the CRC imposes similar requirements on a country in relation to a child.
Schedule 1 allows for a one-off payment to be paid to families and students in respect of education expenses in the 2011-12 income year, in lieu of the education expenses tax offset to be removed under Schedule 3. The one-off payment would cover the same groups to those covered by the education expenses tax offset, but would pay the full amount to all eligible families so that families do not miss out.

Schedule 2 introduces a new payment into the social security system that will deliver a greater level of support for education expenses to many families and students when they need it. Eligibility criteria for the payment draw on eligibility for existing social security payments, to ensure assistance is targeted to individuals who may not have the resources to provide for education expenses. The same level of payment is delivered to eligible families regardless of the level of education expenses incurred, thereby benefitting individuals who do not have the resources required to incur education expenses upfront, as was required under the education expenses tax offset.

The right to education is contained in article 13 of ICESCR and makes specific reference to primary and secondary education, as well as technical and vocational education. Under the article, countries have obligations to respect, protect and fulfil each of the essential features of the right to education, including economic accessibility. Article 28 of CRC imposes similar obligations on a country in relation to a child.

The education payments introduced by Schedules 1 and 2 would be delivered automatically to families and students at key points in the calendar year when education expenses are most likely to arise. While a system of public education exists in Australia, there are numerous costs associated with placing a child in school which families and students are required to absorb. Under the Bill, payments would be targeted to children of compulsory school age and, for children aged 16 to 19 years, where they meet existing education and training-related activity requirements. These activity requirements include both secondary education and, for some categories of entitlement, the vocational equivalent. The rate in respect of a child in secondary or vocational education is significantly higher, in recognition of higher costs associated with this level of study in comparison to primary education.

Further to a child’s right to education under article 28 of CRC, article 29 outlines the aims of a child’s education and specifies consideration should be given to the “development of the child’s personality, talents and mental and physical abilities to their fullest potential”. Under this article, there is recognition that a range of experiences should contribute to a child’s development in addition to government curricula-set learning processes.
The education payments introduced by Schedules 1 and 2 would be paid to eligible families and students at a set rate depending on whether they are in primary, secondary or vocational education. There would be no conditions attached to receipt of the payment and no requirement that the payment be spent in respect of prescribed items. This would provide flexibility for families and students to use the payment for items such as school excursions, musical instruments and tuition, and sporting equipment and registration. These items are currently not covered under the education expenses tax offset.

Conclusion

The Schedules are compatible with human rights as education payments delivered under the Bill promote the right to social security and the right to education.