THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SECURITY AND OTHER LEGISLATION AMENDMENT (2012 BUDGET AND OTHER 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)
OUTLINE

This Bill introduces the following measures from the 2012-13 Budget.

Excluded income

The Bill will extend permanently the current income test exemption for the Western Australian Government's Country Age Pension Fuel Card and the Cost of Living Rebate Scheme. This amendment will make sure that people continue to benefit from the full value of the assistance provided by the Western Australian Government under those arrangements, without incurring a reduction in their pension. The income test exemption is currently due to end on 30 June 2012.

Adjustments to portability and other periods

The Bill tightens the rules for people who travel overseas while receiving some income support payments and family payments. Under the change, the length of time individuals can spend overseas while continuing to receive their payments will generally be reduced from 13 weeks to six weeks. The change will not apply to age pension, disability support pension recipients assessed as having a severe and permanent disability and no future work capacity, or students studying overseas as part of an approved Australian course. Primary payments paid by the Department of Veterans’ Affairs, such as the maximum basic rate of service pension, disability pension, and war widow(er)’s pension, will also be unaffected.

The pension supplement, which is currently payable to people who are temporarily absent from Australia for a continuous period not exceeding 13 weeks, will now be changed to allow a temporary absence for a continuous period not exceeding six weeks. Family tax benefit Part A will continue to be paid for up to three years of a temporary absence from Australia, but will reduce to the base rate after six weeks.

Newstart and youth allowance (other) are not generally able to be paid overseas at all, and, as such, are not affected.

Age/study rules for children for family assistance payments

From 1 January 2013, family tax benefit Part A will no longer be available for young people aged 18 or over unless they are in full-time secondary study. The payment may continue until the end of the calendar year for 18 and 19 year-olds who are completing secondary school or equivalent vocational education.
The Bill also introduces the following non-Budget amendments to clarify existing Government policies.

**Family tax benefit and reasonable maintenance action**

The Bill corrects an inequity in the family tax benefit Part A rate provisions. From 1 July 2012, if an individual is privately collecting child support and it is reasonable to collect the full amount, the maintenance income test for family tax benefit Part A will be based on the individual’s child support entitlement, instead of restricting the rate of family tax benefit Part A for a child to the base child rate when the individual privately collects less than the full child support entitlement.

**Percentage of care for children**

Currently, when there is a change in the actual care of a child that does not comply with a formal care arrangement, family tax benefit and child support continues to be based on the formal care arrangement for 14 weeks if the individual with reduced care disagrees with the change and is taking steps to have the formal care arrangement complied with. The objective is to strike a reasonable balance between complying with previously agreed or ordered care arrangements and ensuring there are adequate resources in households to support children.

An amendment will allow a person’s percentage of care for child support and family tax benefit purposes to be based on the actual (new) care of the child immediately, in special circumstances, such as where there is evidence of violence or other unusual behaviour.

**Low income supplement**

The Bill amends the clean energy low income supplement provisions to clarify the eligibility of a group of low-income families who may otherwise not be fully assisted for their expected average cost impacts under a carbon price. This will ensure that the low income supplement will operate as intended.

**Other amendments**

Lastly, the Bill will make minor amendments, including clarifying in the child support legislation the authority for the practice of automated decision-making using computer programs.

**Financial impact statement**

**Excluded income**

Cost of $25.5 million over four years from 2012-13.

**Adjustments to portability and other periods**

Savings of $127.2 million over four years from 2012-13.
**Age/study rules for children for family assistance payments**

Savings of $360.9 million over four years from 2012-13.

**Family tax benefit and reasonable maintenance action**

Negligible financial impact.

**Percentage of care for children**

Negligible financial impact.

**Low income supplement**

Cost of $90.1 million over four years from 2012-13.

**Other amendments**

No financial impact.

**STATEMENTS OF COMPATIBILITY WITH HUMAN RIGHTS**

The statements of compatibility with human rights appear at the end of this explanatory memorandum.
NOTES ON CLAUSES

Abbreviations used in this explanatory memorandum

- **Child Support Assessment Act** means the *Child Support (Assessment) Act 1989*
- **Child Support Registration and Collection Act** means the *Child Support (Registration and Collection) Act 1988*
- **Household Assistance Act** means the *Clean Energy (Household Assistance Amendments) Act 2011*
- **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*
- **Veterans’ Entitlements Act** means the *Veterans’ Entitlements Act 1986*

**Clause 1** sets out how the new Act is to be cited, that is, as the *Social Security and Other Legislation Amendment (2012 Budget and Other 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 – Excluded income

Summary

This Schedule will extend permanently the current income test exemption for the Western Australian Government’s Country Age Pension Fuel Card and the Cost of Living Rebate Scheme. This amendment will make sure that people continue to benefit from the full value of the assistance provided by the Western Australian Government under those arrangements, without incurring a reduction in their pension. The income test exemption is currently due to end on 30 June 2012.

Background

The general income test definitions are set out in the definitions provisions in Part 1.2 of the Social Security Act. Relevantly, subsection 8(1) provides that income, in relation to a person, means an income amount earned, derived or received by the person for the person’s own use or benefit. Subsection 8(8) of the Social Security Act provides that certain amounts received by a person that would otherwise be income are excluded for the purpose of the social security law. There are similar provisions in the Veterans’ Entitlements Act.

The Western Australian Country Age Pension Fuel Card scheme provides an annual amount for eligible singles and couples combined living in country areas of WA to purchase fuel and taxi fares. The Western Australian Cost of Living Rebate Scheme provides an annual payment for Western Australian Seniors card holders.

In 2009, the Commonwealth Government decided that amounts received under the Western Australian Cost of Living Rebate Scheme and the value of the benefits received using the Western Australian Country Age Pension Fuel Card would be excluded income under the social security and veterans’ entitlements income tests, starting on 1 July 2009 and ending on 30 June 2012. The relevant amendments were made by the Social Security and Other Legislation Amendment (Pension Reform and other 2009 Budget Measures) Act 2009.

This measure will make these income exemptions operate indefinitely from 1 July 2012.
Explanation of the changes

Amendments to the Social Security Act

Paragraph 8(8)(zaa) of the Social Security Act currently exempts from the income test an amount received under the scheme known as the Western Australian Cost of Living Rebate Scheme, where the amount is received during the financial year beginning 1 July 2009, 1 July 2010 or 1 July 2011. **Item 1** omits references to the financial years, ensuring that this exemption is ongoing.

Paragraph 8(8)(zab) of the Social Security Act currently exempts from the income test a benefit obtained by using a card known as the Western Australian Country Age Pension Fuel Card, where the use occurs during the financial year beginning 1 July 2009, 1 July 2010 or 1 July 2011. **Item 2** omits references to the financial years, ensuring that this exemption is ongoing.

Amendments to the Veterans’ Entitlements Act

**Items 3 and 4** make the same amendments to comparable income exemption provisions in the Veterans’ Entitlements Act.
Schedule 2 – Adjustments to portability and other periods

Summary

This Schedule tightens the rules for people who travel overseas while receiving some income support payments and family payments. Under the change, the length of time individuals can spend overseas while continuing to receive their payments will generally be reduced from 13 weeks to six weeks. The change will not apply to age pension, disability support pension recipients assessed as having a severe and permanent disability and no future work capacity, or students studying overseas as part of an approved Australian course. Primary payments paid by the Department of Veterans’ Affairs, such as the maximum basic rate of service pension, disability pension, and war widow(er)’s pension, will also be unaffected.

The pension supplement, which is currently payable to people who are temporarily absent from Australia for a continuous period not exceeding 13 weeks, will now be changed to allow a temporary absence for a continuous period not exceeding six weeks. Family tax benefit Part A will continue to be paid for up to three years of a temporary absence from Australia, but will reduce to the base rate after six weeks.

Newstart and youth allowance (other) are not generally able to be paid overseas at all, and, as such, are not affected.

Background

Currently, a number of social security and veterans’ affairs payments, benefits and allowances are subject to a period in which they will remain ‘portable’, meaning the recipient can leave Australia and continue to receive the payment, benefit or allowance for the relevant portability period. The portability period for most payments, benefits and allowances in the Social Security Act is 13 weeks.

Also, for some payments, benefits and allowances, an absence from Australia of more than 13 weeks will affect whether a person qualifies for that payment, benefit or allowance. Some payments, benefits and allowances also have a 13-week residency requirement that must be met before the person qualifies for the payment, benefit or allowance, or before it becomes portable.

In addition, some payments, benefits and allowances are subject to a 13-week return rule, meaning that the person does not qualify for a new portability period until the person has remained in Australia for a period of 13 weeks.
This Schedule amends the Family Assistance Act, Farm Household Support Act 1992, Military Rehabilitation and Compensation Act 2004, Paid Parental Leave Act 2010, Social Security Act, Social Security (Administration) Act 1999 and Veterans’ Entitlements Act in relation to all social security and veterans’ affairs payments, benefits or allowances, including concession cards, which have an overseas portability, temporary absence, required residency or return rule period of 13 weeks. This Schedule amends these periods of 13 weeks by reducing them to a period of six weeks.

Existing exceptions to these rules will be maintained, as will all overseas portability, temporary absence, required residency and return rule periods which refer to a period other than 13 weeks. For example, periods of unlimited portability which apply to certain payments such as age and service pensions, will remain unchanged. The only exception to this is in relation to the new low income supplement, which was introduced as part of the Household Assistance Act. Currently, it is a requirement of the low income supplement that recipients are in Australia for at least 39 weeks in a year. This period will be changed to 46 weeks to reflect a new allowable absence period of six rather than 13 weeks.

The amendments made by this Schedule commence on 1 January 2013. People outside Australia at the time of commencement and subject to a 13-week portability period will continue to be subject to the full 13-week period, but will then be subject to any applicable six-week periods upon their return to Australia.

**Explanation of the changes**

**Part 1 – Amendments commencing on 1 January 2013**

**Amendments to the Family Assistance Act**

**Items 1 to 3 and 5 to 11** substitute new references to six weeks for the current references to 13 weeks in relation to certain absences from Australia relating to family tax benefit and single income family supplement.

**Item 4** substitutes a new reference to six weeks for the current reference to 13 weeks in relation to certain absences from Australia relating to child care benefit. This item also makes minor technical amendments to align the wording of subsections 42(1A), 44(1A) and 45(1A) with equivalent provisions relating to family tax benefit, which were previously amended by the new Family Assistance and Other Legislation Amendment Act 2012.

**Item 12** is a consequential change to the heading to section 63A.

**Item 13** substitutes a new reference to a six-week period for the current reference to a 13-week period in relation to the Secretary’s power to extend periods of absence from Australia under section 63A.
Amendments to the Farm Household Support Act 1992

Item 14 substitutes a new reference to six weeks for the current reference to 13 weeks in relation to temporary absences from Australia relevant to the qualification for a clean energy advance under the Farm Household Support Act 1992 for people both of, and not of, youth allowance age.

Amendments to the Military Rehabilitation and Compensation Act 2004

Item 15 amends subsections 424A(2), 424B(2) and 424C(2) to substitute new references to six weeks for the current references to 13 weeks in relation to a temporary absence from Australia for people eligible for clean energy payments under Part 5A of Chapter 11 of the Military Rehabilitation and Compensation Act 2004.

Amendments to the Paid Parental Leave Act 2010

Items 16 and 17 substitute new references to six weeks for the current references to 13 weeks in relation to temporary periods of absence from, and required periods of return to, Australia under the Australian residency test for paid parental leave in sections 45 and 46. Item 16 also makes a minor technical amendment to align the wording of subsection 45(2) with an equivalent provision relating to family tax benefit, which was previously amended by the new Family Assistance and Other Legislation Amendment Act 2012.

Amendments to the Social Security Act

Items 18 to 20 substitute new references to six weeks for the current references to 13 weeks in relation to periods of absence and return to Australia relevant to the definition of principal carer in section 5.

Item 21 is a consequential change to the note to subsection 5G(2).

Item 22 substitutes a new reference to six weeks for the current reference to 13 weeks in relation to temporary absences from Australia for the purposes of qualifying for clean energy advances.

Item 23 substitutes a new reference to 46 weeks for the current reference to 39 weeks in which a claimant was in Australia for the income year relevant to the low income supplement, in order to allow for absences from Australia of six weeks rather than 13 weeks in an income year.

Items 24 to 28 substitute new references to six weeks for the current references to 13 weeks in relation to temporary periods of absence and required periods of return to Australia for the pensioner education supplement, telephone allowance and utilities allowance.
Items 29 to 45 are consequential amendments to notes to various provisions, in which new references to six weeks are substituted for the current references to 13 weeks.

Item 46 to 48 substitute new references to six weeks for the current references to 13 weeks in relation to temporary absences from Australia relevant to concession cards.

Items 49 to 58 substitute new references to six weeks for the current references to 13 weeks, and make consequential amendments, concerning temporary periods of absence from Australia in relation to the inclusion of the pension supplement in various pension rate calculators.

Item 59 substitutes a new reference to six weeks for the current reference to 13 weeks in relation to the maximum portability periods for those social security payments, benefits and allowances to which a 13-week maximum portability period currently applies.

Item 60 substitutes a new reference to six weeks for the current reference to 13 weeks in relation to the default period that applies in the event that the Secretary revokes an unlimited portability period determination under subsection 1218AA(2).

Items 61 and 62 substitute new references to six weeks for the current references to 13 weeks in relation to temporary periods of absence from Australia and return rules relevant to exceptions from the general portability provisions.

Items 63 and 64 substitute new references to six weeks for the current references to 13 weeks in relation to temporary periods of absence from Australia referred to in subparagraphs 147(1)(c)(ii), (2)(c)(ii), (3)(b)(ii) and (4)(b)(ii) of Schedule 1A, as well as consequential changes to notes 4 and 5 to subclause 146(4).

**Amendments to the Social Security (Administration) Act 1999**

Item 65 substitutes new references to six weeks for the current references to 13 weeks in relation to temporary periods of absence from Australia relevant to claims for sickness allowance.

**Amendments to the Veterans’ Entitlements Act**

Item 66 amends subparagraphs 58A(7)(b)(ii) and 60(1)(b)(ii) to substitute new references to six weeks for the current references to 13 weeks in relation to a temporary absence from Australia for people eligible for the minimum rate of pension supplement.

Item 67 amends paragraph 61A(3)(b) to substitute a new reference to six weeks for the current reference to 13 weeks in relation to a temporary absence from Australia for a person eligible for a clean energy advance.
Item 68 amends subparagraph 118P(2)(c)(ii) to substitute a new reference to six weeks for the current reference to 13 weeks in relation to a temporary absence from Australia for a person eligible for seniors supplement.

Item 69 amends subparagraphs 118V(1)(e)(ii), 118V(1A)(d)(ii), 118V(2)(e)(ii) and 118V(3)(e)(ii) to substitute new references to six weeks for the current references to 13 weeks in relation to a temporary absence from Australia for people eligible for the Commonwealth Seniors Health Card.

Item 70 amends Notes 4 and 5 of subclause 30(4) of Schedule 5 to substitute a new reference to six weeks for the current reference to 13 weeks in relation to the transitional provisions of the Schedule that refer to a temporary absence from Australia.

Item 71 amends subparagraphs 31(1)(c)(ii), 31(2)(c)(ii), 31(3)(b)(ii) and 31(4)(b)(ii) of Schedule 5 to substitute a new reference to six weeks for the current reference to 13 weeks in relation to the temporary absence from Australia of a person eligible for the payment of a service pension or income support supplement under the transitional provisions related to the Pension Reform amendments of 20 September 2009.

Items 72 and 73 amend paragraph SCH6-BA2(b) and the heading to point SCH6-BA5 to substitute new references to six weeks for the current references to 13 weeks in relation to a temporary absence from Australia for people eligible for the pension supplement.

Part 2 – Clean energy amendments

Amendments to the Military Rehabilitation and Compensation Act 2004

Item 74 amends subparagraph 83A(1)(c)(ii) to substitute a new reference to six weeks for the current reference to 13 weeks in relation to a temporary absence from Australia for a person who is receiving permanent impairment compensation and is eligible for the clean energy supplement, contingent on the commencement of the Household Assistance Act.

Item 75 amends subparagraphs 209A(1)(c)(ii) and 238A(1)(c)(ii) to substitute new references to six weeks for the current references to 13 weeks in relation to a temporary absence from Australia for people receiving the Special Rate Disability Pension or wholly dependent partners eligible for the clean energy supplement, contingent on the commencement of the Household Assistance Act.

Amendments to the Social Security Act

Items 76 to 84 substitute new references to six weeks for the current references to 13 weeks in relation to temporary absences from Australia relevant to the seniors supplement and clean energy supplement, contingent on the commencement of the Household Assistance Act.
Amendments to the Veterans’ Entitlements Act

Item 85 amends subparagraphs 62A(1)(d)(ii) and 62B(1)(d)(ii) to substitute new references to six weeks for the current references to 13 weeks in relation to a temporary absence from Australia for people who are receiving the disability pension or the war widow / war widower pension and are eligible for the clean energy supplement, contingent on the commencement of the Household Assistance Act.

Item 86 amends paragraph 118PB(2)(b) to substitute a new reference to six weeks for the current reference to 13 weeks in relation to a temporary absence from Australia for people who are eligible for the seniors supplement, contingent on the commencement of the Household Assistance Act.

Item 87 amends paragraph SCH6-BB1(b) of Schedule 6 to substitute a new reference to six weeks for the current reference to 13 weeks in relation to a temporary absence from Australia for people who are receiving service pension and are eligible for the clean energy supplement, contingent on the commencement of the Household Assistance Act.

Part 3 – Application provisions

Item 88 sets out the application provisions for this Schedule.

Subitem (1) provides that, subject to subitems (2) to (6), the amendments made by this Schedule apply in relation to periods of absence from Australia starting on or after 1 January 2013.

Subitems (2) and (3) provide that the amendments made by items 2, 9, 11, and 20 of this Schedule, and items 3, 7, 17, 25, 48 and 61 of this Schedule, apply, respectively, to children coming to Australia and individuals returning to Australia on or after 1 January 2013.

Subitem (4) provides that the amendment made by item 19 of this Schedule applies in relation to children born outside Australia on or after 1 January 2013.

The effect of the above subitems is that people outside Australia on 1 January 2013 and within a relevant 13-week period will continue to be subject to that 13-week period. However, children and individuals coming or returning to Australia on or after this date, as well as children born outside Australia on or after this date, will be subject to any subsequent six-week periods, such as return rules, as provided by the amendments to this Schedule.

Subitem (5) provides that the amendment made by item 23 of this Schedule applies in relation to working out whether a person is qualified for a low income supplement for the 2013-14 income year and later income years.
Subitem (6) provides that the amendment made by item 60 of this Schedule applies in relation to qualifying circumstances that cease to exist on or after 1 January 2013.
Schedule 3 – Age/study rules for children for family assistance payments

Summary

This Schedule will amend the child age eligibility rules for family tax benefit Part A. From 1 January 2013, family tax benefit Part A will no longer be available for young people aged 18 or over unless they are in full-time secondary study. The payment may continue until the end of the calendar year for 18 and 19 year-olds who are completing secondary education or equivalent vocational education.

Background

Currently, family tax benefit Part A is payable to a parent/guardian, or an approved care organisation, for a child aged under 21 years or a dependent full-time student aged 21 years, and there is a provision from 1 January 2012 for ‘grandfathering’ certain young people aged 22 to 24 while they are completing their course.

From 1 January 2013, this Schedule limits eligibility for family tax benefit Part A to young people aged under 18, or until the end of the calendar year for 18 and 19 year-olds who are completing secondary education or equivalent vocational education. This Schedule also makes similar changes to eligibility for family tax benefit for an approved care organisation.

A young person who no longer attracts eligibility for family tax benefit Part A may be eligible to receive youth allowance. This change will focus payments in the family assistance system on families with young children, and children who are at school, while youth allowance will become the primary form of assistance to eligible young adults aged 18 and over. This measure implements another recommendation of the Australia’s Future Tax System review.

Explanation of the changes

Part 1 – Main amendments

Amendments to the Family Assistance Act

Item 1 repeals the heading to subsection 22(4) and substitutes the new heading, Individual aged 18-19. This item is consequential to item 2.

Item 2 repeals and substitutes new paragraph 22(4)(a). New paragraph 22(4)(a) lowers the maximum age of eligibility for an FTB child from 18-20 to 18-19 years. To be eligible as an FTB child under this new age category, an individual must be aged 18 or it must be the case that the individual is aged 19 and the calendar year in which the individual turns 19 has not ended.
**Item 3** repeals and substitutes new paragraph 22(4)(d). New paragraph 22(4)(d) limits the eligibility criteria for an FTB child who is in the 18-19 age category to an individual who is a senior secondary school child. Section 22B of the Family Assistance Act defines *senior secondary school child*.

**Item 4** repeals subsection 22(6), which provides the eligibility criteria for an FTB child who is aged 21 and undertaking full-time study or studying overseas full-time. This item is consequential to item 2 as the maximum age of eligibility for FTB children who are in full-time secondary study will be lowered to 18-19 years.

**Item 5** repeals paragraphs 31(3)(a) and (b) and substitutes new paragraphs 31(3)(a), (b) and (c). Section 31 sets out when an individual continues to be eligible for family tax benefit if an FTB or regular care child dies. Subsection 31(2) sets out that an individual generally remains eligible for family tax benefit for 14 weeks after the death of the child. Subsection 31(3) outlines when the 14-week period mentioned in subsection 31(2) does not apply.

New paragraph 31(3)(a) applies if the child had turned 18 and was a senior secondary school child when the child died. The 14-week period will not include any day on which the Secretary is satisfied the child would not have been a senior secondary school child if the child had not died.

New paragraph 31(3)(b) applies if the child had not turned 18 and was a senior secondary school child when the child died. The 14-week period will not include any day on which the child would have been aged 18, and on which the Secretary is satisfied the child would not have been a senior secondary school child, if the child had not died.

New paragraph 31(3)(c) applies if the child was not a senior secondary school child when the child died. The 14-week period will not include any day on which the child would have been aged 18 if the child had not died.

**Item 6** repeals and substitutes new subparagraphs 34(1)(a)(ii) and (iii) to reflect the new age rules applicable to family tax benefit. Section 34 sets out when an approved care organisation is eligible for family tax benefit in respect of an individual who is a client of the organisation.

New subparagraphs 34(1)(a)(ii) and (iii) enable an approved care organisation to become eligible for family tax benefit in respect of an individual who has turned 16 but is aged under 18 and satisfies or is exempt from the FTB activity test; or has turned 18 and is a senior secondary school child.

**Items 7 and 8** amend sections 35A and 35B, which apply to the determination of an individual’s percentage of care. The amendments are consequential to item 4.
**Item 9** amends section 65, which applies to the calculation of a single amount for the death of an FTB or regular care child, to reflect the new age rules. Subsection 65(2), for the purpose of the method statement in subsection 65(1), sets out the rules where a day in the lump sum period is an *excluded day* in relation to the child. This item repeals paragraphs 65(2)(a) and (b), and substitutes new paragraphs 65(2)(a), (b) and (c) as follows:

New paragraph 65(2)(a) applies where the child had turned 18 and was a senior secondary school child when the child died. A day will be an *excluded day* if the Secretary is satisfied the child would not have been a senior secondary school child on that day if the child had not died.

New paragraph 65(2)(b) applies where the child had not turned 18 and was a senior secondary school child when the child died. A day will be an *excluded day* if the child would have been aged 18, and the Secretary is satisfied the child would not have been a senior secondary school child, on that day if the child had not died.

New paragraph 65(2)(c) applies where the child was not a senior secondary school child when the child died. A day will be an *excluded day* if the child would have been aged 18 on that day if the child had not died.

**Item 10** amends clause 7 of Schedule 1 (table item 5) by repealing item 5 from the table, which applies to work out an individual’s standard rate of family tax benefit Part A. Item 5 of the table applies to an FTB child who has reached 18, but who is under 22 years of age and not a secondary school child. This amendment reflects the new age rules applicable to family tax benefit.

**Item 11** repeals subclause 26(2) of Schedule 1 and substitutes a new subclause (2), which provides that the *FTB child rate* for the purpose of subclause (1) is $1,416.20.

**Item 12** amends subclause 45(2) of Schedule 1 by omitting the words ‘for an FTB child who had not turned 18’.

**Item 13** amends clause 2 of Schedule 4 (table item 6), which refers to ‘subclause 26(2) – all amounts’ by omitting the words ‘– all amounts’. This amendment is consequential to item 11.

*Amendments to the Family Assistance Administration Act*

**Item 14** amends paragraph 35A(1)(c) by omitting the words ‘for an FTB child who had not turned 18’.

*Amendments to the Family Assistance and Other Legislation Amendment Act 2011*

**Item 15** repeals and substitutes a new heading for item 6 of Schedule 1, consequential to item 16.
Item 16 repeals subitems 6(2), (3) and (4) of Schedule 1, which are saving provisions that applied to certain children who had turned 22 but were aged under 25 and were enrolled in, and undertaking, a course of full-time study. The repeal of these rules is consistent with the new age rules applicable to family tax benefit and ensures that the new rules apply consistently from 1 January 2013.

Application provisions

Item 17 sets out how the amendments in Part 1 for the new age rules will apply.

Subitem 17(1) provides that the amendments made by items 1 to 12 and 14 to 16 apply for the purposes of working out eligibility for family tax benefit, and how much family tax benefit is payable, for a day that is on or after 1 January 2013.

Subitem 17(2) provides that the amendments made by items 1 to 4 and 7 and 8 also apply for the purposes of working out eligibility for single income family supplement, and how much single income family supplement is payable, for a day that is on or after 1 January 2013.

Subitem 17(3) provides that the amendments made by items 1 to 4 and 7 and 8 also apply for the purposes of working out eligibility for child care benefit, and how much child care benefit is payable, in respect of care provided to a child by an approved child care service or a registered carer on or after 1 January 2013.

Subitem 17(4) provides that subitem (1) applies, in relation to the amendments made by items 5 and 9, whether the child died before, on or after 1 January 2013.

Subitem 17(5) provides that the amendment made by item 13 applies in relation to the indexation day that is 1 July 2013 and all later indexation days.

Part 2 – Clean energy consequential amendments

Amendments to the Family Assistance Act

Item 18 amends subclause 38AA(1) of Schedule 1 (table item 5) by repealing the item. The removal of this item from the table reflects the new age rules applicable to family tax benefit.

Item 19 repeals subclause 38AF(1) of Schedule 1 and substitutes a new subclause 38AF(1) which provides that the amount of the clean energy supplement (Part A) to be added in working out an individual’s Method 2 base rate under clause 25 is the sum of the FTB clean energy child amounts, worked out under subclause (2) of this clause and clause 38AG, for each FTB child of the individual.
Item 20 amends subclause 38AF(2) of Schedule 1 by omitting the words ‘in relation to an item in the table in subclause (1)’ and substituting ‘for an FTB child of the individual’. This amendment is consequential to the amendment made by item 19.

Item 21 amends subclause 38AF(2) of Schedule 1 (method statement, step 1) by repealing the step. A new step 1 is substituted that states: ‘Work out the amount applicable on 1 July 2013 under subclause 26(2)’. This amendment is consequential to the amendment of clause 26 of Schedule 1 made by item 11.

Item 22 amends clause 2 of Schedule 4 (table item 8B) by omitting the words ‘subclause 38AF(2)—all FTB clean energy child amounts’ and substituting ‘subclause 38AF(2)—the FTB clean energy child amount’.

Application provisions

Item 23 sets out the application provisions for Part 2 of Schedule 3.

Subitem 23(1) provides that the amendments made by items 18 to 21 apply in relation to the 2013-14 income year and later income years.

Subitem 23(2) provides that the amendment made by item 22 applies in relation to the indexation day that is 1 July 2014 and all later indexation days.

Amendments to the Household Assistance Act

Item 24 repeals item 35 of Schedule 2. This amendment is consequential to item 16.

Part 3 – Single income family supplement consequential amendments

Amendments to the Family Assistance Act

Item 25 repeals paragraphs 57GE(3)(a) and (b) and substitutes new paragraphs 57GE(3)(a), (b) and (c). These amendments are similar in effect to those made by item 5.

Section 57GE provides for continued eligibility for single income family supplement if a qualifying child dies. Subsection 57GE(2) provides that the individual is eligible for single income family supplement, at a rate worked out under Division 4B of Part 4, for each day in the period of 14 weeks beginning on the day the child died, but this is subject to subsection 57GE(3) and section 57GF. Subsection 57GE(3) contains rules which operate to exclude certain days from eligibility for the single income family supplement should certain circumstances exist.
New paragraph 57GE(3)(a) applies if the child had turned 18 and was a senior secondary school child when the child died. Any day on which the Secretary is satisfied the child would not have been a senior secondary school child if the child had not died is disregarded for working out the amount of single income family supplement.

New paragraph 57GE(3)(b) applies if the child had not turned 18 and was a senior secondary school child when the child died. Any day on which the child would have been aged 18, and on which the Secretary is satisfied the child would not have been a senior secondary school child, if the child had not died, is disregarded for working out the amount of single income family supplement.

New paragraph 57GE(3)(c) applies if the child was not a senior secondary school child when the child died. Any day on which the child would have been aged 18 if the child had not died is disregarded for working out the amount of single income family supplement.

**Application provision**

**Item 26** sets out an application rule for Part 3 of Schedule 3.

**Item 26** provides that the amendment made by **item 25** applies for the purposes of working out whether an individual is eligible for single income family supplement for a day that is on or after 1 January 2013 (whether the child died before, on or after 1 January 2013).
Schedule 4 – Family tax benefit and reasonable maintenance action

Summary

This Schedule corrects an inequity in the family tax benefit Part A rate provisions. From 1 July 2012, if an individual is privately collecting child support and it is reasonable to collect the full amount, the maintenance income test for family tax benefit Part A will be based on the individual’s child support entitlement, instead of restricting the rate of family tax benefit Part A for a child to the base child rate when the individual privately collects less than the full child support entitlement.

Background

This Schedule will amend the family assistance law relating to how much family tax benefit Part A is payable if an individual is privately collecting child support (that is, not through the Child Support Agency), but does not receive their full child support entitlement and does not take reasonable action to remedy that (for example, swapping to collection by the Child Support Agency).

Currently, the failure to take ‘reasonable maintenance action’ in such cases results in the individual’s rate of family tax benefit Part A for the child being restricted to the base child rate (currently, $52.64 a fortnight). The inequity is that this may be significantly less than what the individual’s family tax benefit Part A rate would have been even if the individual received their full child support entitlement. The current outcome is disproportionate to the individual’s inaction.

From 1 July 2012, the amendments in this Schedule will ensure that the rate of family tax benefit Part A for a child is not restricted to the base child rate due to privately collecting less than the full child support entitlement. Instead, the maintenance income test for family tax benefit will be based on the child support that an individual would receive if they were receiving their full child support entitlement. An appropriate incentive to privately collect the full amount will remain, as the extra child support would improve the individual’s financial circumstances.

Explanation of the changes

Amendments to the Family Assistance Act

Item 1 amends the definition of capitalised maintenance income in subsection 3(1) because of the changes made by item 7.

Item 2 amends the definition of maintenance income in subsection 3(1) because of the changes made by item 7.

Item 3 substitutes a new heading for clause 10 of Schedule 1.
**Items 4 and 5** add subclause (2) to clause 10 of Schedule 1. The new subclause (2) provides that subclause (1) does not apply to maintenance under an administrative assessment (within the meaning of the Child Support Assessment Act) that is not an enforceable maintenance liability (within the meaning of the Child Support Registration and Collection Act). This will ensure that the rate of family tax benefit Part A for a child is not restricted to the base child rate due to privately collecting less than the full child support entitlement.

**Item 6** amends subclause 20C(3) because of the insertion of new clause 20D by item 7.

**Item 7** inserts new clause 20D into Schedule 1. New clause 20D provides for the working out of child maintenance for administrative assessments that are privately collected.

New clause 20D applies if, during a period in an income year:

- an individual is entitled to receive an amount of child maintenance for an FTB child of the individual under a liability under an administrative assessment (within the meaning of the Child Support Assessment Act); and

- the liability is not an enforceable maintenance liability (within the meaning of the Child Support Registration and Collection Act); and

- the child maintenance is not maintenance to which clause 20B applies; and

- the Secretary considers that it is reasonable for the individual to take action to obtain the amount.

Under subclause 20D(2), the individual is taken to have received, for the period in the income year, the amount of child maintenance for the child that the individual is entitled to receive under the liability, disregarding so much of that amount as is attributable to the individual receiving disability expenses maintenance.

**Item 10** amends clause 38AD of Schedule 1 by the addition of subclause (2), which provides that subclause (1) does not apply to maintenance under an administrative assessment (within the meaning of the Child Support Assessment Act) that is not an enforceable maintenance liability (within the meaning of the Child Support Registration and Collection Act). This will ensure that, when the clean energy supplement commences on 1 July 2013, the rate of family tax benefit Part A for a child is not restricted to the base clean energy child amount due to privately collecting less than the full child support entitlement.
Items 8 and 9 are consequential amendments as a result of the changes made by item 10.

Item 11 is an application provision, which provides that the amendments made by items 1 to 7 of this Schedule will apply for working out a Part A rate of family tax benefit for a day that occurs on or after 1 July 2012.
Schedule 5 – Percentage of care for children

Summary

Currently, when there is a change in the actual care of a child that does not comply with a formal care arrangement, family tax benefit and child support continues to be based on the formal care arrangement for 14 weeks if the individual with reduced care disagrees with the change and is taking steps to have the formal care arrangement complied with. The objective is to strike a reasonable balance between complying with previously agreed or ordered care arrangements and ensuring there are adequate resources in households to support children.

This Schedule will allow an individual’s percentage of care for child support and family tax benefit purposes to be based on the actual (new) care of the child immediately, in special circumstances, such as where there is evidence of violence or other unusual behaviour.

Background

This Schedule will amend the family assistance and child support law, relating to the percentage of care rules for family tax benefit and child support. Currently, if a change in actual care occurs that does not comply with a written agreement, parenting plan or order, the Secretary or Registrar must base the percentage of care on the agreement, plan or order for 14 weeks after the change if the individual with reduced actual care is taking steps to have the agreement, plan or order complied with. The percentage of care is based on the actual level of care at the end of the 14-week period. The time limit of 14 weeks recognises that it is not appropriate for family tax benefit and child support to continue indefinitely based on circumstances that no longer apply.

From 1 July 2012, the Secretary or Registrar will have discretion to decide that the percentage of care be immediately based on the actual level of care if there are special circumstances which support that outcome. The discretion would only be exercised in unusual cases, for example, where there is evidence of violence or other unusual behaviour by the individual who has reduced care, which led to the change in care.

The Schedule will also amend the family assistance law relating to the definition of an FTB child or regular care child. This change also affects intact couples, and will mainly affect eligibility for family tax benefit, but may also affect eligibility for other payments under the family assistance law, including child care benefit. Similar to the change relating to the percentage of care, if a child ceases to be in an individual’s care without their consent, the Secretary will have discretion to decide that the child immediately ceases to be an FTB child or regular care child of the individual if there are special circumstances which support that outcome.
Explanation of the changes

Amendments to the Family Assistance Act

**Item 1** amends subsection 23(2) of the Family Assistance Act to make provision for the new subsection 23(4A), inserted by item 2.

**Item 2** inserts new subsection 23(4A), which enables the Secretary to determine that the rule provided in subsection (2) (which may deem the child to remain an FTB child of an adult for, generally, 14 weeks after ceasing to be in the adult’s care) does not apply to the child and the adult if special circumstances exist in relation to the child. This will allow the child to immediately cease to be an FTB child or regular care child of the adult if there are special circumstances which support that outcome. In such cases, the child will immediately become an FTB child of the adult who has actual care of the child.

Special circumstances in relation to a child may also consider circumstances that relate to another individual to the extent that those circumstances also relate to the child. This may apply, for example, where the other individual has care of the child.

**Item 3** substitutes a new paragraph (b) in the definition of **qualifying period** in subsection 23(5). The qualifying period is the period that a child is deemed an FTB child of an adult while not in the actual care of the adult. The new paragraph (b) will enable a qualifying period that is shorter than the general 14-week period, as a consequence of the amendment by item 4.

**Item 4** inserts a new subsection 23(5A), which allows the Secretary to set a qualifying period that is shorter than the general 14-week period, if special circumstances exist in relation to the child.

**Item 5** inserts a heading before subsection 35C(2).

**Item 6** amends subsection 35C(2), consequential to the amendment by item 7.

**Item 7** amends section 35C to allow the determination of a single percentage of care in relation to an adult, based on the adult’s actual care of a child, by the addition of new subsections (5) and (6). New subsection (5) applies if the Secretary is satisfied that special circumstances exist in relation to the child. New subsection (6) provides for the relevant percentage of care based on the adult’s actual care to be applied under section 35A or 35B. The exercise of the discretion in special circumstances will allow the percentage of care for a child to be immediately based on the actual care of the child.
Items 8 to 12 amend section 35L. Item 8 inserts a new heading before subsection 35L(1). Item 9 amends paragraph 35L(1)(b), consequential to the amendment by item 10. Item 10 inserts new paragraph 35L(1)(ba), with the effect that subsections 35L(1) to (4), and new subsection 35L(5), apply only where two percentages of care must be determined (the first percentage based on the formal ‘care arrangement’ applies for an interim period, and the second percentage based on actual care applies after the interim period). This effectively continues the operation of the current provisions where the special circumstances discretion in new subsection 35C(5) does not apply (that is, the percentage of care continues to be based on the formal ‘care arrangement’ for 14 weeks after a change in care, and on actual care after that time).

Item 11 amends subsection 35L(3), consequential to the amendment by item 12.

Item 12 adds subsections 35L(5) and (6). New subsection (5) allows for the application of the percentage of care for an interim period (that is, the percentage based on the formal ‘care arrangement’) to be shorter than the general 14-week period if the Secretary is satisfied that special circumstances exist in relation to the child.

New subsection 35L(6) provides that, if a single percentage of care is determined due to the exercise of the special circumstances discretion in new subsection 35C(5), the percentage of care will apply from the application day (as defined in section 35K), which is generally the first day of the new care period.

Item 13 is an application provision. The amendments made by items 1 to 4 apply where the event of a child ceasing to be in an adult’s care occurs on or after 1 July 2012. The amendments made by items 5 to 12 apply in relation to care periods beginning on or after 1 July 2012, irrespective of when the care arrangement was made.

**Amendments to the Child Support Assessment Act**

Items 14 to 21 make amendments to the Child Support Assessment Act to enable the Child Support Registrar (the Registrar) to exercise the same discretion in special circumstances that will apply for the Secretary under the Family Assistance Act due to the amendments in items 5 to 12 above.

Item 14 inserts a heading before subsection 51(2).

Item 15 amends subsection 51(2), consequential to the amendment by item 16.
Item 16 adds new subsections 51(5) and (6), which enable the determination of a single percentage of care in relation to a responsible person, based on the person’s actual care of a child. New subsection (5) applies if the Registrar is satisfied that special circumstances exist in relation to the child. New subsection (6) provides for the relevant percentage of care based on the person’s actual care to be applied under section 49 or 50. The exercise of the discretion in special circumstances will allow the percentage of care for a child to be immediately based on the actual care of the child.

Items 17 to 19 amend subsection 54C(1). Item 17 inserts a new heading before subsection 54C(1). Item 18 amends paragraph 54C(1)(b), consequential to the amendment by item 19. Item 19 inserts new paragraph 54C(1)(ba), with the effect that subsections 54C(1) to (4), and new subsection 54C(5), apply only where two percentages of care must be determined (the first percentage based on the formal ‘care arrangement’ applies for an interim period, and the second percentage based on actual care applies after the interim period). This effectively continues the operation of the current provisions where the special circumstances discretion in new subsection 51(5) does not apply (that is, the percentage of care continues to be based on the formal ‘care arrangement’ for 14 weeks after a change in care, and on actual care after that time).

Item 20 amends subsection 54C(3), consequential to the amendment by item 21.

Item 21 adds new subsections 54C(5) and (6). New subsection (5) allows for the application of the percentage of care for an interim period (that is, the percentage based on the formal ‘care arrangement’) to be shorter than the general 14-week period if the Registrar is satisfied that special circumstances exist in relation to the child.

New subsection 54C(6) provides that, if a single percentage of care is determined due to the exercise of the special circumstances discretion in new subsection 51(5), the percentage of care will apply to each day in a child support period from the ‘application day’ (as defined in section 54B).

Item 22 is an application provision. The amendments made by items 14 to 21 apply in relation to care periods beginning on or after 1 July 2012, irrespective of when the care arrangement was made.
Schedule 6 – Low income supplement

**Summary**

This Schedule amends the clean energy low income supplement provisions to clarify the eligibility of a group of low-income families who may otherwise not be fully assisted for their expected average cost impacts under a carbon price. This will ensure that the low income supplement will operate as intended.

**Background**

Low income supplement is an annual lump sum paid to adults in low-income households, based on the household’s circumstances from the previous income year, who are not adequately assisted through the clean energy tax reform package and other clean energy household assistance measures. The amount of the payment is $300 for each qualifying person and is limited to one payment per year. Low income supplement will be available from 1 July 2012.

**Explanation of the changes**

This measure would enable a group of family tax benefit families to qualify for a low income supplement payment, ensuring that these low-income families receive financial assistance that at least covers their average expected carbon price impact.

The amendments would allow family tax benefit households to qualify for the low income supplement, where a person has an FTB child for 39 weeks or more during the relevant year, where both partners (as applicable) have a notional tax liability of less than $300 a year, and where the person meets the other qualification conditions for the low income supplement. Only one low income supplement payment would be paid in respect of these households under these changes.

**Part 1 – Amendments**

**Amendments to the Household Assistance Act**

**Items 1 and 2** make some minor changes to the transitional rules in Schedule 6 to the Household Assistance Act.

**Item 1** makes a technical change to paragraph 10(1)(b) of Schedule 6 to take account of the insertion of new provisions into section 916B of the Social Security Act.

**Item 2** inserts a new item into Schedule 6 to make it clear that the transitional rules in Schedule 6 do not apply where the new transitional rules in Part 2 of this Schedule apply.
Amendments to the Social Security Act

Section 916B of the Social Security Act sets out the qualification requirements for low income supplement.

**Item 3** makes a minor technical change to section 916B.

**Item 4** is also a technical change that takes account of the insertion of new subsection 916D(1A), which sets out another way that a person can satisfy the excluded payment requirement.

**Item 5** inserts several new provisions into section 916B. In broad terms, these new provisions ensure that households cannot get more than one low income supplement payment under the changes made by this Schedule.

New subsection 916B(2) provides that a person cannot qualify for low income supplement where the person is a member of a couple when the person claims low income supplement and the person’s partner has already received low income supplement for the relevant income year, even though the person satisfies the new excluded payment requirement in new subsection 916D(1A). This means that a person cannot qualify for low income supplement under the new rules in this Schedule if their partner has already been paid low income supplement.

New subsection 916B(3) covers the situation where the person and their partner claim low income supplement (but neither has been paid). If partner A is qualified for low income supplement and satisfies the current excluded payment requirement in subsection 916D(1) and partner B satisfies the excluded payment requirement in new subsection 916D(1A), then partner A is qualified for low income supplement and partner B cannot qualify.

New subsection 916B(4) covers the situation where two people who are members of the same couple claim low income supplement (but neither has been paid), where partner A is qualified for low income supplement and satisfies the excluded payment requirement in new subsection 916D(1A), and where partner B satisfies the excluded payment requirement in new subsection 916D(1A). If the Secretary decides that partner A should be paid low income supplement, then partner B cannot qualify for low income supplement.

Section 916D sets out the excluded payment requirement.

**Item 6** makes a minor technical change to subsection 916D of the Social Security Act.

**Item 7** inserts new subsection 916D(1A), which sets out another way that a person can satisfy the excluded payment requirement. Under this new provision, a person satisfies the excluded payment requirement if the following conditions are met.
The first condition is that there were at least 92 days during the relevant income year in respect of which a relevant clean energy payment, excepting a clean energy advance or clean energy supplement under the family assistance law, was not paid to the person. The payments that comprise relevant clean energy payments are listed in current subsection 916D(5). The second condition is that there were at least 39 weeks in the relevant income year for which the person had an FTB child. Finally, there must have been at least 13 weeks in the year for which the person did not receive any of the excluded payments listed in current subsection 916D(3).

Section 916E sets out the tax requirement.

**Item 8** ensures that the current tax requirement applies where a person satisfies the current excluded payment requirement.

**Item 9** inserts new subsections 916E(1A) and (1B) into the Social Security Act.

New subsection 916E(1A) sets out the tax requirement for a person who satisfies the excluded payment requirement in new subsection 916D(1A) and is not a member of a couple at the claim time (the time the person made a claim for low income supplement). In this situation, the person’s accepted taxable income for the relevant income year would need to be either less than $18,000, or $18,000 or more but less than the person’s low income supplement threshold amount for the income year. This is consistent with the tax requirement that currently applies.

New subsection 916E(1B) sets out the tax requirement for a person who satisfies the excluded payment requirement in new subsection 916D(1A) and is a member of a couple at the claim time (the time the person made a claim for low income supplement). In this situation, the person and the person’s partner would each need to satisfy the tax requirement, being accepted taxable income for the relevant income year of either less than $18,000, or $18,000 or more but less than the person’s low income supplement threshold amount for the income year.

The existing concepts of accepted taxable income and low income supplement threshold amount are defined in subsections 916E(2) and (4) respectively, in relation to a ‘person’. These definitions will apply to the new rules in relation both to a person and to their partner (the partner also being a ‘person’ for the purposes of the definitions).

These new tax requirement rules need to be read in conjunction with the new transitional rules in Part 2 of this Schedule, which affect their operation in relation to a claim made for the 2012-13 income year. There are similar transitional rules that apply in relation to the current tax requirement.

A person to whom these new rules apply would still need to satisfy the income requirement in section 916C and the remaining requirements in section 916F in order to qualify for low income supplement.
Part 2 – Application and transitional provisions

Part 2 uses the concepts of **claim time** and **accepted taxable income** (which are concepts used in the current low income supplement provisions). **Item 10** provides the relevant definitions. Claim time is defined by reference to subsection 916C(7) of the Social Security Act, while accepted taxable income is defined by reference to subsection 916E(2) of the Social Security Act.

**Item 11** provides that the amendments made by this Schedule apply in relation to claims for low income supplement made on or after 1 January 2013.

**Item 12** provides the tax requirement that must be met by a person who claims low income supplement for the 2012-13 income year (based on circumstances in 2011-12), where the person is not a member of a couple at the claim time and the person satisfies the excluded payment requirement in new subsection 916D(1A). In these circumstances, the tax requirement as set out in new subsection 916E(1A) does not apply and the person must instead meet the following conditions in order to satisfy the tax requirement. First, the person must have an accepted taxable income for the 2011-12 income year. Second, the amount of tax owed by the person for that year (as worked out under subsection 4-10(3) of the *Income Tax Assessment Act 1997* by reference to the person’s accepted taxable income), must be less than $300.

**Item 13** provides the tax requirement that must be met by a person who claims low income supplement for the 2012-13 income year (based on circumstances in 2011-12), where the person is a member of a couple at the claim time and the person satisfies the excluded payment requirement in new subsection 916D(1A). In these circumstances, the tax requirement as set out in new subsection 916E(1B) does not apply and the person and their partner must instead meet the following conditions in order to satisfy the tax requirement. First, the person must have an accepted taxable income for the 2011-12 income year. Second, the amount of tax owed by the person for that year (as worked out under subsection 4-10(3) of the *Income Tax Assessment Act 1997* by reference to the person’s accepted taxable income), must be less than $300. The person’s partner must also satisfy these requirements.
Schedule 7 – Other amendments

**Summary**

This Schedule will make minor amendments, including clarifying in the child support legislation the authority for the practice of automated decision-making using computer programs.

**Background**

This Schedule makes minor and technical amendments that do not change current policy.

Some of the amendments are to clarify in the child support legislation the authority for the practice of automated decision-making using computer programs.

A number of other changes are to the definition of regular care child in subsection 3(1) of the Family Assistance Act and provisions involving the Secretary’s discretion in relation to child care benefit, namely subsections 42(2), 44(3) and 45(3) of the Family Assistance Act.

Section 42 sets out when an individual is conditionally eligible for child care benefit by fee reduction for care provided by an approved care service. Section 44 sets out when an individual is eligible for child care benefit for a past period for care provided by an approved child care service, and section 45 sets out when an individual is eligible for child care benefit for a past period for care provided by a registered carer.

Under paragraphs 42(1)(a), 44(1)(a) and 45(1)(a), the care can be provided to a regular care child.

A **regular care child** of an individual (the **adult**) is defined in subsection 3(1), and, in relation to child care benefit, also means a child determined by the Secretary under subsection 42(2), 44(3) or 45(3) to be a regular care child of the adult.

Broadly speaking, the changes will enable the Secretary to make a determination under subsection 42(2), 44(3) or 45(3) in relation to an individual who is aged 18 and over (a young person) and provided with care by an approved child care service or registered carer. This will enable the payment of child care benefit to the adult with care of the young person.

Lastly, the Schedule makes a technical clarification to an instalment provision for baby bonus, in the family assistance law, to confirm that the sum of baby bonus instalments is to be no less than $5,000 (instead of $4,999.95, as would incorrectly apply from 1 September 2012 without this amendment).

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

Amendments to the Family Assistance Act

Items 1 omits the reference to ‘a child’ in paragraph (b) of the definition of *regular care child* in subsection 3(1) and substitutes a reference to ‘an individual’. Items 3, 7 and 11 make similar amendments to subsections 42(2), 44(3) and 45(3) respectively.

Item 2 is consequential to the amendment made by item 1. This item repeals the heading to subsection 42(2) and substitutes a new heading, ‘Secretary may determine that individual is a regular care child’. Items 6 and 10 make similar amendments to the headings of subsections 44(3) and 45(3).

Item 4 amends subsection 42(2) by omitting the reference to ‘an individual’ and substituting a reference to ‘another individual’. This is to differentiate between the subject of the care (the individual) and the claimant (another individual). Items 8 and 12 make similar amendments to subsections 44(3) and 45(3) respectively.

Item 5 amends subsection 42(2) by omitting the reference to ‘the individual’ and substituting a reference to ‘the other individual’. This amendment is made for a similar purpose as for item 4. Items 9 and 13 make similar amendments to subsections 44(3) and 45(3) respectively.

Item 14 is an application provision applicable to items 1 to 13. This item provides that the amendments made by items 1 to 13 apply in relation to determinations made by the Secretary on or after commencement of those items. As noted above, these provisions will commence on Royal Assent.

Amendments to the Family Assistance Administration Act

Item 15 is a technical amendment to paragraph 47(2A)(b), which substitutes ‘$846.20’ for ‘$846.15’. This is a technical clarification to an instalment provision for baby bonus to confirm that the sum of baby bonus instalments is to be no less than $5,000 (instead of $4,999.95, as would incorrectly apply from 1 September 2012 without this amendment).

Amendments to the Child Support Assessment Act

Item 16 inserts a new section 12A into the Child Support Assessment Act. The new section confirms that the Secretary of the Department of Human Services may arrange for the Child Support Registrar to use a computer system to make appropriate automated decisions under the Child Support Assessment Act on the Registrar’s behalf.
In effect, this means that the Secretary allows the Registrar to use the department’s computer system to make automated decisions under the Child Support Assessment Act. The Registrar then decides which decisions, which he or she could otherwise make under the Child Support Assessment Act, are appropriate to be automated. In appropriate cases, automating decisions can increase efficiency and improve accuracy. A decision made by the operation of a computer program is taken to have been made by the Registrar for the purposes of the Child Support Assessment Act.

This provision is intended only to confirm the validity of fully automated decisions. It is not intended to apply to computer-assisted decisions where the Registrar, or a delegate, makes the final decision on the basis of information supplied by a departmental computer system. Computer-assisted decision-making in the child support context is consistent with general administrative law principles and does not require statutory authorisation.

Governance arrangements within the Department will ensure that the Registrar approves the types of automated decisions that are to be made under the Child Support Assessment Act. There is no requirement for the Registrar, or Secretary, to approve each update or change to the department’s computer software for the purposes of this provision.

The Child Support Registrar is a statutory appointment made under paragraph 10(2)(b) of the Child Support Registration and Collection Act. Only an SES officer of the Department of Human Services can be appointed to this position.

**Amendments to the Child Support Registration and Collection Act**

**Item 17** inserts a new section 4A after section 4 of the Child Support Registration and Collection Act. The new section makes, for the Child Support Registration and Collection Act, the same provisions relating to automated decisions as are made by new section 12A (inserted by item 16) for the Child Support Assessment Act.
STATEMENTS OF COMPATIBILITY WITH HUMAN RIGHTS

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

Schedule 1 – Excluded income

These amendments are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the legislative amendments

Amendments to the Social Security Act and the Veterans’ Entitlements Act will ensure that amounts received under the Western Australian Cost of Living Rebate Scheme and the value of a benefit obtained using the Western Australian Country Age Pension Fuel Card continue to be exempt income from 1 July 2012.

The amendments will make these income exemptions for the Western Australian Country Age Pension Fuel Card and the Western Australian Cost of Living Rebate Scheme operate permanently from 1 July 2012, ensuring that recipients of payments or benefits under the two schemes will continue to benefit from the full value of assistance provided by the Western Australian Government.

Human rights implications

These legislative amendments engage the human right: **Right to social security**.

Subsection 8(8) of the Social Security Act provides that certain amounts received by a person that would otherwise be income are excluded for the purpose of the social security law.

Subsection 5H(8) of the Veterans’ Entitlements Act provides that certain amounts received by a person that would otherwise be income are excluded for the purposes of the income test.

Conclusion

The amendments to the legislation provide a permanent income test exemption for the value of the Western Australian Country Age Pension Fuel Card and the Cost of Living Rebate Scheme, thereby ensuring that people receiving a benefit from the Western Australian Country Age Pension Fuel Card Scheme or a payment from the Western Australian Cost of Living Rebate Scheme do not have those benefits or payments assessed for income test purposes.

The amendments to legislation support their right to social security.
### Schedule 2 – Adjustments to portability and other periods

These amendments are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### Overview of the legislative amendments

This Bill tightens the rules for people who travel overseas while receiving some income support payments and family payments. Under the change, the length of time individuals can spend overseas while continuing to receive their payments will generally be reduced from 13 weeks to six weeks.

The Australian Social Security System still retains generous portability provisions for those people on income support payments. Although, limited to six weeks there is generally no limit on the number of times a person can leave Australia, as long as they continue to reside in Australia.

There are also generous portability extension provisions for those people who are prevented from returning to Australia.

It should be noted that the change will generally not apply to those people who are not expected to have a participation requirement. These are people in receipt of the age pension and those disability support pensioners assessed as having a severe and permanent disability and no future work capacity. The new rules will not apply to students studying overseas as part of an approved Australian course. Family tax benefit Part A will continue to be paid for up to three years of a temporary absence from Australia, but will reduce to the base rate after six weeks.

### Human rights implications

This Bill has considered the human rights implications particularly with reference to the right to social security as contained within Article 9 of the International Covenant on Economic, Social and Cultural Rights. It was concluded that the Bill does not place limitations on human rights and will have no impact on an individual’s right to social security.

### Conclusion

The amendments are compatible with human rights because they advance the human rights to social security.
Schedules 3, 4 and 5 –
Family assistance amendments and related measures

These Schedules are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the legislative amendments

Schedule 3 will amend eligibility for family tax benefit Part A to focus the payment on supporting families with young children while they are at school. From 1 January 2013, family tax benefit Part A will no longer be available for young people aged 18 or over unless they are in full-time secondary study. The payment may continue until the end of the calendar year for 18 and 19 year-olds who are completing secondary education or equivalent vocational education.

Schedule 4 corrects an inequity in the family tax benefit Part A rate provisions concerning whether reasonable maintenance action is considered to have been taken in certain cases in which child support is privately-collected.

Schedule 5 will allow an individual’s percentage of care for child support and family tax benefit purposes to be based on the actual care of the child immediately, rather than following a 14-week delay that applies currently when there is a change in care that departs from a formal care arrangement. This amendment will apply only in special circumstances, such as where there is evidence of violence or other unusual behaviour.

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. Article 27 of the CRC recognises the right of a child to a standard of living adequate for the child’s development.

The right to social security in article 9 of the ICESCR requires a social security system to 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 requires countries to recognise the right of the child to benefit from social security. Benefits should take into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child.
Article 27 of the CRC recognises the right of a child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development. Countries are required to take appropriate measures to assist parents and others responsible for the child to implement this right. Countries are also required to take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child.

Schedule 3 will limit eligibility for family tax benefit Part A to young people aged under 18, or until the end of the calendar year for 18 and 19 year-olds who are competing secondary education or equivalent vocational education. A young person who no longer attracts eligibility for family tax benefit Part A may be eligible to receive youth allowance. This change will focus payments in the family assistance system on families with children who are at school, while youth allowance will become the primary form of assistance to eligible young adults aged 18 and over. To the extent that the changes in Schedule 3 may limit human rights, those limitations are reasonable and proportionate.

Schedule 4 will ensure that the rate of family tax benefit Part A for a child is not restricted to the base child rate due to privately collecting less than the full child support entitlement. Instead, if it is reasonable for an individual to take action to privately collect their full entitlement, the individual will be deemed to receive the full child support entitlement for the maintenance income test. This will be proportionate to the individual’s inaction of not collecting the full amount. The changes in Schedule 4 advance the protection of human rights.

Schedule 5 will allow an individual’s percentage of care for child support and family tax benefit purposes to be based on the actual care of the child immediately, rather than following a 14-week delay that applies currently when there is a change in care that departs from a formal care arrangement. This amendment will apply only in special circumstances, such as where there is evidence of violence or other unusual behaviour. The changes in Schedule 5 advance the protection of human rights.

**Conclusion**

The Schedules are compatible with human rights because they advance the protection of human rights and, to the extent that they may also limit human rights, those limitations are reasonable and proportionate.

Australia has one of the most generous family payment systems in the world. The most recent analysis shows that spending on cash family benefits by Australia was 1.80 per cent of GDP in 2007, well above the OECD average of 1.22 per cent.
**Schedule 6 – Low income supplement**

These amendments are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the legislative amendments**

This Bill amends the clean energy low income supplement provisions to clarify the eligibility of a group of low-income families.

**Human rights implications**

The payment of a low income supplement is likely to engage the right to social security recognised in Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the right to an adequate standard of living recognised in Article 11 of the ICESCR.

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.

The right of everyone to an adequate standard of living in article 11 of the ICESCR requires a country to take appropriate steps to ensure continuous improvement of living conditions for the individual and their family.

By providing the low income supplement to help family tax benefit families who may not have received sufficient compensation to offset their increased costs of living, the amendments clearly advance these rights.

**Conclusion**

The amendments are compatible with human rights because they advance the human rights to social security and an adequate standard of living.

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