THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SERVICES LEGISLATION AMENDMENT
(FAMILY ASSISTANCE ALIGNMENT AND OTHER MEASURES) BILL 2016

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for Social Services, the Hon Christian Porter MP)
This Bill introduces amendments to the *A New Tax System (Family Assistance) (Administration) Act 1999* (the Family Assistance Administration Act) for the purpose of ensuring that clear date of effect rules operate with respect to certain review decisions that create new or increased entitlements to family tax benefit (FTB), for example, through top-up payments or FTB supplements.

This Bill also proposes contingent amendments to repeal or revise the proposed measures in the event that the Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Bill 2015 (the Structural Reform Bill) is enacted. That Bill would, if enacted, phase out FTB supplements by 1 July 2018.

Finally, this Bill addresses an unintended consequence of previous amendments made to the Youth Allowance Rate Calculator in section 1067G of the Social Security Act.

**Schedule 1—Main amendments: Date of effect rules for certain decisions about FTB by instalment**

Schedule 1 deals with the date of effect of decisions made by the Secretary in internal review and decisions made by the Administrative Appeals Tribunal under Divisions 1 and 2 of Part 5 of the Family Assistance Administration Act. Generally, these amendments will affect certain review decisions related to the payment of FTB by instalment in the 2012-2013 and/or later income years. The intention is to more clearly align the legislation with its intended operation.

**Schedule 2—Contingent amendments: Certain FTB by instalment decisions**

Schedule 2 would make several contingent amendments to the Family Assistance Administration Act in the event that Structural Reform Bill is enacted after this Bill commences.

**Schedule 3—Other amendments: Youth Allowance Rate Calculator**

Schedule 3 corrects an unintended consequence of amendments that were made to the Youth Allowance Rate Calculator in section 1067G of the *Social Security Act 1991* by Part 3 of Schedule 1 of the Social Services Legislation Amendment (More Generous Means Testing for Youth Payments) Act 2015 (the More Generous Means Testing for Youth Payments Act). This amendment ensures that the aim to align the parental means testing arrangements for youth allowance more closely with those for FTB Part A will be met. This amendment will commence immediately after the commencement of Part 3 of Schedule 1 to the More Generous Means Testing for Youth Payments Act.
Financial impact statement

There is no or negligible financial impact arising from these amendments.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Abbreviations used in this explanatory memorandum

- **AAT** means the Administrative Appeals Tribunal;
- **AAT Act** means the *Administrative Appeals Tribunal Act 1975*;
- **ATI** means adjusted taxable income;
- **Family Assistance Administration Act** means the *A New Tax System (Family Assistance) (Administration) Act 1999*;
- **FTB** means family tax benefit;
- **Miscellaneous Measures Act** means the *Social Services Legislation Amendment (Miscellaneous Measures) Act 2016*;
- **More Generous Means Testing for Youth Payments Act** means the *Social Services Legislation Amendment (More Generous Means Testing for Youth Payments) Act 2015*;
- **Social Security Act** means the *Social Security Act 1991*;
- **Structural Reform Bill** means the *Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Bill 2015*.

**Clause 1** sets out how the new Act is to be cited – that is, as the *Social Services Legislation Amendment (Family Assistance Alignment and Other Measures) Act 2016*.

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

**Clause 3** provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.
Schedule 1 – Family Tax Benefit – Main Amendments

Summary

This Schedule introduces amendments to the Family Assistance Administration Act for the purpose of ensuring that clear date of effect rules operate for certain merit review decisions that create new or increased entitlements to family tax benefit (FTB), for example, through top-up payments or FTB supplements. Generally, most of the amendments apply with respect to the 2012-2013 and later income years.

Background

FTB is comprised of several components, including FTB Part A and FTB Part B supplements. A person may be paid FTB by instalment throughout an income year based on an estimate of adjusted taxable income (ATI) for that income year. In such cases, section 32A of the Family Assistance Administration Act provides that when calculating FTB the Secretary must disregard FTB Part A and FTB Part B supplements unless and until the individual has satisfied the relevant FTB reconciliation conditions that apply to them.

Sections 32C to 32Q of the Family Assistance Administration Act set out the relevant reconciliation conditions. Among other things, the reconciliation conditions relate to the lodgement of income taxation returns and the notification that the person or another individual is not required to lodge an income tax return. Thus, when the reconciliation conditions are satisfied, the Secretary must either know or be able to work out the ATI for that person and any other relevant individuals (for example, the person’s partner) with respect to the relevant income year.

A person who has been paid FTB by instalment in a given income year is generally subject to a process known as ‘income reconciliation’ or ‘reconciliation’. This process takes place when the person has satisfied all of the reconciliation conditions applicable to them in respect of the relevant income year. The reconciliation process is required by operation of section 105A of the Family Assistance Administration Act and is typically conducted as a Secretary-initiated review of an original decision or decisions under section 105 of that Act (because of the operation of section 105A). However, reconciliation may also be given effect as a result of a customer seeking review under section 109A in limited circumstances as established by section 108.

In the reconciliation process, the Secretary compares the amount of FTB paid to the person by instalment (as calculated on estimates of ATI) with the amount the person would have been paid if actual ATI had been known. The Secretary recalculates the person’s FTB entitlement (as required by section 105A of the Family Assistance Administration Act), factoring FTB supplements into the rate. Depending on the timing of reconciliation, any entitlements created or increased by the recalculation may be subject to the relevant date of effect provisions. The date of effect provisions for Secretary-initiated review, applicant-initiated review and review by the Administrative Appeals Tribunal (first review) are, respectively, in sections 107, 109E and 125 of the Family Assistance Administration Act.
Reconciliation conditions—Individuals not required to lodge a tax return or amounts not included in tax returns

Sections 32J, 32M and 32N of the Family Assistance Administration Act establish the relevant reconciliation time for a person who is not required to lodge an income tax return for the relevant income year. The relevant reconciliation time for such an individual is the time after the end of the relevant income year when the person notifies the Secretary, or the time after the end of the relevant income year when the Secretary becomes satisfied, of the individual’s ATI and its components. Alternatively, the Secretary may be satisfied that the ATI can be worked out without such notification.

Schedule 2 to the Miscellaneous Measures Act inserted timeframes into sections 32J, 32M and 32N. Those amendments achieved alignment between sections 32J, 32M and 32N and sections 32C, 32D and 32E of the Family Assistance Administration Act in relation to the 2015-2016 and later income years. The alignment was accomplished by including in sections 32J, 32M and 32N timeframes for satisfying the relevant reconciliation conditions that are equivalent to the timeframes that are applied under sections 32C, 32D and 32E with respect to people who must lodge income tax returns.

Date of effect rules

Prior to the amendments made by the Miscellaneous Measures Act, the date of effect rules in Part 5 of the Family Assistance Administration Act were applied to individuals who notified that they were not required to lodge an income tax return more than one year after the end of the relevant income year. This is how the date of effect provisions had been applied even though sections 32J, 32M and 32N contained no express timeframes.

In particular, where a review was conducted under section 105 and the review created an entitlement to be paid FTB by instalment, the Secretary considered that section 107 would limit the payment of supplements and increased entitlements where a person notified that they were not required to lodge an income tax return more than one year after the end of the relevant income year. The Administrative Appeals Tribunal has expressed a contrary view insofar as the date of effect provisions relate to FTB supplements.

This Schedule amends section 107 to ensure that the date of effect rules operate as they were intended. Generally, the amendments will apply to review decisions made after the commencement of Schedule 1 where the original decision related to the payment of FTB by instalment in the 2012-2013 and/or later income years (this correspond with the changed timeframes for lodging tax returns). The amendments relate to FTB entitlements for those income years and would not have the effect of creating FTB debts. The amendments clarify, however, that a person could not be paid new or increased FTB entitlements (including top-ups) where relevant legislative timeframes have not been met.

Sections 109E and 125 of the Family Assistance Administration Act are also amended so that they align with the amendments proposed to section 107.
Section 109E provides the date of effect rules where a person initiates internal review while section 125 provides the date of effect rules where a person applies to the AAT for first review of a decision relating to the payment of FTB by instalment.

Section 109E will be subject to some additional amendments to take account of the operation of that provision where the reconciliation process had not yet been undertaken by the Secretary under section 105 (because of the operation of section 105A). However, this situation is unlikely to arise under current administrative practice.

The amendments made by this Bill commence on the day after Royal Assent. The amendments to the date of effect rules generally apply in relation to review decisions made on or after the commencement of the Bill where the decision under review related to the payment of FTB by instalment for a period that includes the 2012-2013 income year or a later income year. However, because some of the amendments are consequential to the Miscellaneous Measures Act, some of the changes are confined to certain review decisions in the 2015-2016 and later income years.

**Explanation of the changes**

**Amendments to the Family Assistance Administration Act**

**Secretary-initiated review**

**Items 1 to 5** amend section 107 of the Family Assistance Administration Act, which provides for the date of effect of certain decisions made by the Secretary under section 105.

Section 105 provides that the Secretary may review certain decisions where the Secretary is satisfied that there is sufficient reason to review the decision. Section 105A deems the Secretary to be satisfied that there is sufficient reason to review a decision when the person has satisfied the reconciliation conditions for each of the same rate benefit periods in the relevant income year.

Where the Secretary is so satisfied, the reconciliation process compares actual ATI to estimated ATI with respect to the individual and any other relevant person (for example, the person’s partner). In this process, FTB supplements may be factored into the individual’s FTB rate. The reconciliation process may also result in a person being paid a ‘top-up’ of entitlement where they were paid an amount less than their entitlement throughout the year because they had overestimated their ATI.

As a result the reconciliation process, a person’s daily FTB rate for the relevant income year may increase or decrease. FTB supplements were introduced, in part, to reduce the likelihood that a person would be entitled to a lower overall amount of FTB after the relevant income year had ended because they had underestimated their ATI.

The date of effect provisions do not have any substantive operation with respect to reversing, waiving or writing-off FTB debts. However, they do set out the
circumstances in which a person must not be paid created or increased entitlements to FTB that arises from the review process.

Subsection 107(1) applies to certain section 105 decisions where:

- the Secretary, on review, decides to vary a decision (the original decision) or set aside the original decision and substitute a new decision; and
- the review decision would have the effect of creating or increasing an entitlement to be paid FTB by instalment; and
- the review decision is made more than 52 weeks after the person concerned was given notice of the original decision.

The amendments proposed to section 107 are intended to clarify the date of effect of a review decision in the circumstances mentioned above.

Item 1 amends subsection 107(1) to clarify that subsection 107(1) operates only subject to the limitation proposed in new subsection 107(1AA). Subsections 107(3A), (3B), (3C) and (3D) are consequentially amended so that the limitation in new subsection 107(1AA) does not apply where these provisions apply (see item 5).

Item 2 amends subsection 107(1) to provide that the date of effect is the start of the period to which the original decision relates. This is usually 1 July of the relevant income year, but may be a later date, for example, where a person became entitled to FTB during the income year or the person’s rate changed.

Item 3 inserts new subsection 107(1AA). The purpose of this new provision is to establish that any entitlement that is created or increased as a result of the Secretary’s review decision under section 105 (due to ‘top-ups’ or FTB supplements) cannot be paid if the first day of the period to which the original decision relates is earlier than the ‘cut-off day’, that is, the first day of the income year before the income year in which the review decision is made.

For example, when a person meets all of the relevant reconciliation conditions applicable to them and all relevant actual income is known, the person’s FTB entitlement is reviewed and recalculated (including to factor in supplements). As part of the recalculation, the Secretary may determine that the person received an amount of FTB for the relevant income year that is less than the amount to which they were entitled. The person may therefore be entitled to an increased amount for the relevant income year.

However, proposed subsection 107(1AA) precludes the payment of this ‘top-up’ if the review decision is made after the end of the income year that follows the relevant income year. For example, where the relevant income year is 2014-2015, proposed subsection 107(1AA) would preclude the payment of this increase when the review decision is made after 30 June 2016.

Item 4 amends subsection 107(1A), which was inserted by the Miscellaneous Measures Act. This amendment ensures that the date of effect rules do not apply to Secretary-initiated reviews undertaken because of section 105A, that is, where the reconciliation conditions have been met. Subsection 107(1AA) is not required to
apply in these circumstances because the reconciliation conditions in sections 32J, 32M and 32N now contain timeframes which will prevent reconciliation from occurring where the person fails to meet those timeframes.

**Item 5** makes a consequential amendment to subsections 107(3A), (3B), (3C) and (3D) of the Family Assistance Administration Act to ensure that the new limitation in proposed subsection 107(1AA) does not prevent the payment of created or increased entitlements arising from income taxation assessments revised by the Commissioner of Taxation or child support assessments revised by the Child Support Registrar.

**Example**

DHS decides that Khalil is entitled to be paid FTB by instalment with effect from 5 July 2013. Khalil is not required to lodge an income tax return for the 2013-2014 income year. However, it is not until 16 November 2015 that Khalil notifies the Department of Human Services (DHS) that he is not required to lodge an income tax return. Following this notification, DHS conducts the reconciliation process (that is, a review under section 105 due to the operation of section 105A) and varies the original decision.

This review determines that Khalil was paid less FTB for the 2013-2014 income year than he was entitled to because his estimate of income was more than the actual income he received for the income year. As such, the review would have the effect of increasing Khalil’s FTB entitlement for the 2013-2014 income year.

However, the review decision is made more than 52 weeks after Khalil was given notice of the original decision. As a result, the date of effect rules in subsection 107(1) apply such that the date of effect of the review decision is the date that the original decision took effect (that is, 5 July 2013).

New subsection 107(1AA) applies because the first day of the period to which the original decision relates (5 July 2013) is earlier than the ‘cut-off day’ (1 July 2014), that is, first day of the income year before the income year in which the review decision was made.

The effect of new subsection 107(1AA) is that Khalil cannot be paid the created or increased entitlement for the 2013-2014 income year. That is, Khalil is not entitled to the increased entitlement arising because he overestimated his income. Nor can Khalil be paid the FTB Part A or the FTB Part B supplements.

The outcome in this example is consistent with the original policy intent of the date of effect provisions and the way in which these processes have been administered. The law is clarified to more clearly achieve this outcome.

**Applicant-initiated review**

**Items 6 to 10** amend section 109E, which deals with the date of effect of certain decisions relating to payment of family tax benefit by instalment. The items align the timeframes applied in sections 109E with the equivalent provisions in sections 107...
and 125 so that a person would not be paid top-ups or FTB supplements where they failed to meet the relevant statutory timeframes. These include the timeframes for applying for review as well as the timeframes embedded in the reconciliation conditions in sections 32C to 32Q of the Family Assistance Administration Act.

Subsection 109E(1) is relevant if:

- a person applies for review of a decision (the original decision) relating to the payment to the person of FTB by instalment; and
- the application is made more than 52 weeks after the person was given notice of the original decision; and
- the Secretary or an authorised review officer decides to vary the original decision or to set aside the original decision and substitute a new decision; and
- the decision of the Secretary or authorised review officer will have the effect of creating or increasing an entitlement to be paid FTB by instalment.

The amendments made by items 6 to 10 ensure that the date of effect rules for a review conducted pursuant to an application for review made under section 109A(2) are the same as the date of effect rules for reviews conducted under section 105(4), including because of the operation of section 105A.

**Items 6 and 7** are equivalent to items 2 and 3, but apply with respect to section 109E of the Family Assistance Administration Act.

**Item 6** provides that the date of effect is the start of the period to which the original decision relates. This is usually 1 July of the relevant income year, but may be a later date, for example, where a person became entitled to FTB during the income year or the person’s rate changed.

**Item 7** inserts new subsection 107(2AA). The purpose of this new provision is to establish that any entitlement that is created or increased as a result of a review decision under subsection 109A(2) (that is, a ‘top-up’ payment or FTB supplement) cannot be paid if the date to which the original decision relates is earlier than the ‘cut-off day’, namely, the first day of the income year before the income year in which the review application was made.

**Items 8, 9 and 10** take account of the peculiar operation of section 109E where a person seeks reconciliation before this process is undertaken by the Secretary under section 105 (as required by section 105A). This situation is unlikely to arise under current administrative practice. However, it is proposed that the Family Assistance Administration Act be amended to align the outcomes of the different review processes. The purpose of these provisions is to ensure that successive reviews of a person’s entitlement do not undo the date of effect provisions to provide a favourable result when the person has not satisfied the legislative timeframes which relate to reconciliation and applying for review of an original decision.

**Items 8 and 9** amend subsection 109E(2A), which was inserted by the Miscellaneous Measures Act.
Item 8 is equivalent to item 4 of this Schedule (which amends subsection 107(1A)). This amendment ensures that the date of effect rules do not apply to applicant-initiated reviews where the reconciliation conditions have been met. In respect of the 2015-2016 and later income years, subsection 109E(2AA) is not required to limit payment because that effect will be achieved by the reconciliation conditions in sections 32J, 32M and 32N, which contain timeframes which will prevent reconciliation from occurring where the person has failed to meet those timeframes.

Item 9 operates to disapply subsection 109E(2AA) where the decision is not a review decision made under section 105(4) (including because of the operation of section 105A) or section 109A(2). This is amendment is required to prevent payments of created or increased entitlements where a person seeks review of a reconciliation decision more than 52 weeks after receiving notice of a reconciliation decision.

Item 10 makes a consequential amendment to subsections 109E(3) of the Family Assistance Administration Act to ensure that the new limitation in proposed subsection 109E(2AA) does not prevent the payment of created or increased entitlements arising from income taxation assessments revised by the Commissioner of Taxation or child support assessments revised by the Child Support Registrar.

**First tier review by the Administrative Appeals Tribunal**

Items 11 and 12 amend section 125 of the Family Assistance Administration Act to reinforce the amendments proposed to sections 107 and 109E of the Family Assistance Administration Act and strengthen the disincentive for delaying applications to the AAT for external review. Items 11 and 12 mirror items 2 and 3 (with respect to section 107) and items 6 and 7 (with respect to section 109E). They are intended to create a disincentive to applications for review outside the allowable 13-week period.

Item 11 amends subsection 125(1) to provide that where a person makes an application for AAT (first review) of a decision relating to the payment of FTB by instalment more than 13 weeks after the person was given notice of the decision and the decision has the effect of creating or increasing the person’s FTB entitlement, the date of effect would be the first day of the period to which the original decision relates.

Item 12 inserts new subsection 125(3). The purpose of this new subsection is to establish that any entitlement that is created or increased (that is, a ‘top-up’ payment or FTB supplement) as a result of certain decisions made by the AAT under subsection 43(1) of the AAT Act cannot be paid if the first day of the period to which the original decision relates is earlier than the ‘cut-off day’, that is, the first day of the income year before the income year in which the application for AAT first review was made.

When the AAT (first review) completes a review, the tribunal would be required to apply the same date of effect rules as the original decision-maker (that is, those applied by the Secretary or the authorised review officer at the section 105 or
section 109A review stage). This may or may not lead to a new or increased entitlement depending on the date of effect rules in section 107 or 109E of the Family Assistance Administration Act.

In addition to those limits, where the person sought AAT review (first review) more than 13 weeks after receiving notice of the original decision (or such longer period that the AAT determines as appropriate on the basis of special circumstances) that person would not be paid any entitlement that is created or increased by that AAT review.

**Application provisions**

**Item 13** sets out a range of application provisions that establish how items 1-12 will apply. The majority of these items are intended to apply to certain review decisions made on or after commencement with respect to the 2012-2013 and later income years. Their effect, however, clarifies the position largely with respect to the 2012-2013 to 2014-2015 income years.

Items 13(2) and (4) apply the amendments made by items 4, 8 and 9 to certain review decisions made on or after commencement only with respect to the 2015-2016 and later income years. The amendments made by these items would be redundant if they were applied with respect to review decisions in earlier income years. For those later income years the reconciliation conditions can only be satisfied where the legislative timeframes inserted by the Miscellaneous Measures Act are satisfied.

**Item 14 and 15** are intended to ensure that the amendments to paragraph 107(1)(a) of the Family Assistance Administration Act that were made by item 14 of Schedule 1 of the Miscellaneous Measures Act are applied to the 2012-2013, 2013-2014 and 2014-2015 income years (that is, as well as in respect of later income years).

Currently, subitem 21(3) of Schedule 2 of the Miscellaneous Measures Act applies the amendment to paragraph 107(1)(a) of the Family Assistance Administration Act to review decisions made on or after the commencement of that Schedule, where the original decision related to the payment of FTB by instalment in the 2015-2016 or later income years.

The amendments proposed by **items 14 and 15** ensure that all section 105 reviews relating to the 2012-2013 and later income years that are triggered by section 105A are subject to the date of effect rules in section 107 of the Family Assistance Administration Act.
Schedule 2 – Family Tax Benefit – Contingent Amendments

Summary

Schedule 2 proposes amendments to repeal or revise the measures proposed in Schedule 1 of this Bill in the event that Part 3 of Schedule 3 of the Social Services Legislation Amendment (Family Payments Structural Reform Bill and Participation Measures) Bill 2016 (the Structural Reform Bill) commences. If this occurs, FTB supplements would be phased out by 1 July 2018. This would mean that any references to FTB supplements in the Schedule 1 amendments would be redundant with respect to FTB entitlements arising in the 2018-2019 and later income years.

Background

Schedule 1 proposes several amendments to the Family Assistance Administration Act to ensure that clear date of effect rules operate to limit the payment of new or additional entitlements created by certain review decisions.

If commenced, the amendments proposed in Schedule 2 would repeal or amend a small number of the provisions that would be introduced or amended by Schedule 1. The purpose of the amendments in Schedule 2 is to remove any references that relate solely to FTB supplements to reflect the phasing out of FTB supplements.

The amendments proposed in Schedule 2 are contingent amendments only, that is, they would only operate in the event that Schedule 1 of this Bill commences and Part 3 of Schedule 3 of the Structural Reform Bill commences either at the same or a later time as Schedule 1 of this Bill. Currently, it is anticipated that the relevant provisions of the Structural Reform Bill would commence on 1 July 2018.

Explanation of the changes

Item 1 amends subsection 107(1AA) to remove the reference to FTB supplements. However, subsection 107(1AA) is retained in the amended form to provide clear date of effect rules in respect of created or increased entitlements that arise from Secretary initiated review decisions made under section 105 of the Family Assistance Administration Act.

Item 2 makes a similar amendment to subsection 109E(2AA) to remove the reference to FTB supplements.

Item 3 amends paragraph 109E(2A)(aa) to remove references to section 105A, which triggers a review under section 105 (and reconciliation). Under the Structural Reform Bill, section 105A (and the related 32A) will be repealed. However, as the FTB reconciliation conditions are relevant for other purposes, the Structural Reform Bill will make wording changes to section 32B of the Family Assistance Administration Act so that the family tax benefit reconciliation conditions can continue to operate.
Item 4 similarly amends subsection 125(3) to remove the reference to the FTB supplements.

Item 5(1) is a saving provision. It ensures that the amendments to section 107 and 109E of the Family Assistance Administration Act made by Schedule 2 continue to apply with respect to review decisions made before, on or after the commencement of Schedule 2 (in effect until the supplements are phased out).

Item 5(2) is a saving provision. It ensures that the amendments made by Schedule 1 continue to apply with respect to review decisions made before, on or after the commencement of Schedule 2 (in effect until the supplements are phased out).
Schedule 3 – Other amendments

Summary

Schedule 3 corrects an unintended consequence of amendments that were made by Part 3 of Schedule 1 of the Social Services Legislation Amendment (More Generous Means Testing for Youth Payments) Act 2015 (the More Generous Means Testing for Youth Payments Act) to the Youth Allowance Rate Calculator in section 1067G of the Social Security Act 1991. This amendment ensures that the aim to align the parental means testing arrangements for youth allowance more closely with those for family tax benefit Part A will be met.

Background

Subject to Division 5 of Part 2.11 (section 556) of the Social Security Act, the rate of a person’s youth allowance is worked out in accordance with the Youth Allowance Rate Calculator in section 1067G.

Amendments made under the More Generous Means Testing for Youth Payments Act to step 8 of the method statement in point 1067G-A1 provided for the insertion of Module E which sets out how to work out a person’s reduction for parental income.

Under the method in Module E the maintenance income test only applies if the parental income test result (Module F) is less than the MIT reducible amount (step 1 of point 1067G-E1). If the parental income test in Module F is equal to or more than the MIT reducible amount, a person’s reduction for parental income is the parental income test result (step 3 of point 1067G-E1).

The MIT reducible amount in step 1 of Module E is worked out by subtracting the base FTB child rate in point 1067G-E2 from the maximum FTB child rate in point 1067G-E3. As the base FT child rate under section 3 of the Family Assistance Act and the maximum FTB child rate is an annual amount, the MIT reducible amount is also an annual amount.

Step 2 of Module E applies the parental income test in Module F to work out the parental income test result for a person. Parental income test result is worked out under Submodule 1 of Module F. If the person’s combined parental income does not exceed the person’s parental income free area or the person is exempt from the parental income test, then the parental income test result for the person is nil (step 5). However, if the person’s combined parental income exceeds the person’s parental income free area, then the parental income test result is worked out using Submodule 6 of Module F (step 6). The overarching effect of Submodule 6 is that the parental income test result is worked out as a fortnightly figure.

The effect of applying step 1 and step 3 to work out the reduction for parental income in Module E provides an anomalous result as it is unlikely that a fortnightly figure worked out under Submodule 6 of Module F will ever be greater than the MIT reducible amount which will be an annual amount. Accordingly, it is likely that step 4
of Module E will always apply so that the maintenance income test will be triggered resulting in the reduction of a person’s youth allowance under the Youth Allowance Rate Calculator.

This Schedule therefore amends step 1 of the method statement in point 1067-E1 to ensure that the calculation for working out the MIT reducible amount provides a realistic result.

The amendments made by this Bill will commence immediately after the commencement of Part 3 of Schedule 1 to the More Generous Means Testing for Youth Payments Act.

**Explanation of changes**

**Amendments to the Social Security Act**

**Item 1** amends step 1 of new Module E, which was inserted in section 1067G of Part 3.5 of Chapter 3 (Youth Allowance Rate Calculator) of the Social Security Act by the More Generous Means Testing for Youth Payments Act. For the purposes of working out the MIT reducible amount in step 1 of the method statement in point 1067G-E1, the amount calculated by subtracting the base FTB child rate in point 1067G-E2 from the maximum FTB child rate in point 1067G-E3 is to be divided by 26.

**Item 2** is an application provision. The amendment to step 1 of point 1067G-E1 applies in relation to working out the rates of youth allowance for days on or after 1 January 2017.

In the event that this Bill does not pass through the parliamentary process by 1 January 2017, the amendment at item 1 will have retrospective effect. However, the effect of this amendment will ensure that Parliament’s intention that ‘the MIT reducible amount provide a cap on the reduction in parental income that may be taken away from the maximum payment rate at step 13 of the method statement for calculating a person’s rate of youth allowance (point 1067G-A1)’ is met (see the Explanatory Statement to the More Generous Means Testing for Youth Payments Act).

This measure is beneficial in nature and produces an equitable outcome for youth allowance recipients.
STATEMENTS OF COMPATIBILITY WITH HUMAN RIGHTS

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

SOCIAL SERVICES LEGISLATION AMENDMENT (FAMILY ASSISTANCE ALIGNMENT AND OTHER MEASURES) BILL 2016

SCHEDULE 1 – MAIN AMENDMENTS

This Schedule is 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 Schedule

This Schedule introduces amendments to the A New Tax System (Family Assistance Administration) Act 1999 (the Family Assistance Administration Act) for the purpose of ensuring that clear date of effect rules operate for certain merit review decisions that create new or increased entitlement for Family Tax Benefit (FTB), for example, through top-up payments or FTB supplements. Generally, most of the amendments apply with respect to the 2012-2013 and/or later income years.

Human rights implications

The Schedule engages the following human rights:

• the right of everyone to social security in Article 9, and the right of everyone to an adequate standard of living for an individual and their family, including adequate food, clothing and housing, and the continuous improvement of living conditions in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); and

• the rights of the child in Article 26 of the Convention on the Rights of the Child.

Rights to social security and the right to an adequate standard of living

Article 9 of the ICESCR recognises the right of everyone to social security. Article 11 of the ICESCR recognises the right of everyone to an adequate standard of living and to the continuous improvement of living conditions.

The right to social security requires that a system be established under domestic law, and that public authorities must take responsibility for the effective administration of the system. The social security scheme must provide a minimum essential level of benefits to all individuals and families that will enable them to cover essential living costs.

Under section 32A of the Family Assistance Administration Act, the Secretary must disregard FTB Part A and FTB Part B supplements unless and until the individual has satisfied the relevant FTB reconciliation conditions that apply to them. This
Schedule ensures that all recipients are treated equally, regardless of the relevant reconciliation conditions that apply to them.

Those people who are not required to lodge a tax return in order for reconciliation to take place will be treated in the same manner as those required to lodge a tax return.

It is acknowledged there is potential that some individuals will miss out on amounts of FTB such as the supplements, due to notifying their adjusted taxable income after the confirmation timeframe, however, this outcome is consistent with the intent of the policy and is a proportional and reasonable requirement to ensure that individuals are paid their correct entitlement at the time they need it most.

While most of the amendments have retrospective effect from the 2012-2013 income year, individuals have been aware of these notification timeframes for a number of years already. There have been extensive communications of the requirements; the individuals have been advised of these timeframes regularly in letters sent directly to them, and on government websites. These changes ensure that the law is aligned with the practice as intended.

The rights of the child

Article 26 of the Convention on the Rights of the Child 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.

Families who meet their relevant reconciliation conditions and lose entitlement to any supplement or top-up will still have access to their overall family assistance entitlement. However, they will cease to be eligible for an end of year lump sum payment.

The changes will ensure the family payments system is sustainable and support is better targeted to assist with the direct costs of raising dependent children for families that have limited resources.

Conclusion

The Schedule is compatible with human rights because people are not being restricted from accessing social security payments. The amendments proposed ensure additional FTB entitlement calculated at income reconciliation would not be paid to a person who has failed to notify they are not required to lodge in time for the 2012-2013 and later income years.

There is no material effect on individuals as a result of these amendments, as they are intended to clarify and strengthen the current law.
SCHEDULE 2 – CONTINGENT AMENDMENTS

This Schedule is 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 Schedule

Schedule 2 proposes amendments to repeal or revise the measures proposed in Schedule 1 of this Bill in the event that Part 3 of Schedule 3 of the Structural Reform Bill commences. If this event occurs, FTB supplements would be phased out by 1 July 2018. This would mean that any references to FTB supplements in the amendments proposed by Schedule 1 would be redundant with respect to FTB entitlements in respect of the 2018-2019 and later income years.

These are contingent amendments only. They rise and fall with the enactment of Schedule 3 of the Structural Reform Bill.

Human rights implications

The Explanatory Memorandum to the Structural Reform Bill contains a Statement of Compatibility with Human Rights for Schedule 3 of that Bill. That document notes that the amendments proposed by that Bill are likely to engage:

- the right to social security, particularly Articles 9 and 11 of the International Covenant on Economic, Social and Cultural Rights; and
- the rights of the child, particularly Article 26 of the Convention on the Rights of the Child.

The Explanatory Memorandum to the Structural Reform Bill states that the amendments proposed by Schedule 3 of that Bill are compatible with human rights because they do not limit or preclude people from gaining or maintaining access to social security in Australia and, to the extent that those changes limit access to family payments, the limitations are reasonable and proportionate.

Conclusion

As the amendments proposed by Schedule 2 of this Bill are consequential to the amendments proposed by Schedule 3 of the Structural Reform Bill, they are compatible with human rights for the same reasons as specified above.
SCHEDULE 3 – OTHER AMENDMENTS

This Schedule is 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 Schedule

Schedule 3 corrects an unintended consequence in a provision of the More Generous Means Testing for Youth Payments Act and ensures that the aim to align the parental means testing arrangements for youth allowance more closely with those for Family Tax Benefit Part A will be met.

Human rights implications

Schedule 3 engages the following human rights:

Right to social security

The Schedule is consistent with supporting the right to social security and consistent with the means tested nature of the social security system in Australia.

From 1 January 2017, maintenance income will be assessed under a new maintenance income test for Youth Allowance.

This measure was part of a package of changes that included removing maintenance income from the Youth Allowance parental income test from 1 January 2016 and replacing it with a maintenance income test, similar to that applying to Family Tax Benefit Part A, from 1 January 2017.

This Schedule corrects a minor technical error in the Social Security Act and gives effect to the intended outcome from that reform package.

Conclusion

The amendments in the Schedule are compatible with human rights because they do not limit access to social security.

[Circulated by the authority of the Minister for Social Services, the Hon Christian Porter MP]