



Family (Tax Initiative) Act 1996

No. 63, 1996

**An Act to provide for a family tax initiative, and
for related purposes**

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Family (Tax Initiative) Act 1996

No. 63, 1996

An Act to provide for a family tax initiative, and for related purposes

[Assented to 27 November 1996]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Family (Tax Initiative) Act 1996*.

2 Commencement

This Act commences on 1 January 1997.

3 Family tax initiative

- (1) This Act (together with the *Income Tax Rates Amendment (Family Tax Initiative) Act 1996*) provides for a family tax initiative, consisting of family tax assistance and family tax payment.

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- (2) The amendments made by items 3 to 6 and 10 to 13 of Schedule 1 and Schedule 3 (together with the amendments made by the *Income Tax Rates Amendment (Family Tax Initiative) Act 1996*) provide for the family tax assistance.
 - (3) The amendments made by items 1, 2, 7, 8 and 9 of Schedule 1, and Schedule 2, provide for the family tax payment.

4 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Income Tax Assessment Act 1936

1 Section 24AB (table)

Before:

Home child care allowance	24ABXA
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insert:

Family tax payment	24ABXAB
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2 Before section 24ABXA

Insert:

24ABXAB Family tax payment

Payments of family tax payment under Part 2.17AA, or the Family Tax Payment Rate Calculator in section 1070, of the *Social Security Act 1991* are exempt.

3 Paragraph 156(4)(b)

After “Part VIIB” (first occurring), insert “and Division 5 of Part II of the *Income Tax Rates Act 1986*”.

4 Paragraph 156(4A)(b)

After “Part VIIB” (last occurring), insert “and Division 5 of Part II of the *Income Tax Rates Act 1986*”.

5 Paragraph 156(5)(b)

After “Part VIIB” (first occurring), insert “and Division 5 of Part II of the *Income Tax Rates Act 1986*”.

6 Paragraph 156(5A)(b)

After “Part VIIB” (last occurring), insert “and Division 5 of Part II of the *Income Tax Rates Act 1986*”.

7 Subsection 159J(6) (after paragraph (aa) of the definition of *separate net income*)

Insert:

- (ab) does not include family tax payment paid under the *Social Security Act 1991*; and

8 Subsection 159J(6) (at the end of paragraphs (aa), (a) and (aaa) of the definition of *separate net income*)

Add "and".

9 At the end of section 202

Add:

- ; and (k) to facilitate the administration of sections 900AP and 900AQ of the *Social Security Act 1991*.

10 At the end of paragraphs 221YDA(1)(c), (d), (daaa), (daa), (dab), (da), (db), (dba) and (f)

Add "and".

11 After paragraph 221YDA(1)(f)

Insert:

- (g) the amount by which the amount of \$5,400 set out in column 1 of the table in clause 1 of Part I of Schedule 7 to the *Income Tax Rates Act 1986* is taken to be increased by sections 20C and 20D of that Act or would, apart from sections 20E, 20F and 20H of that Act, be taken to be so increased;

12 At the end of subparagraph 221YDA(2)(a)(ii)

Add "and".

13 At the end of paragraph 221YDA(2)(a)

Add:

- (iv) the amount of \$5,400 set out in column 1 of the table in clause 1 of Part I of Schedule 7 to the *Income Tax Rates Act 1986* were taken by sections 20C and 20D of that Act to be increased by the estimated amount shown in the statement or would, apart from sections 20E, 20F and 20H of that Act, be taken to be so increased; and

Schedule 2—Amendment of the Social Security Act 1991

1 Section 3 (Index)

Insert in their appropriate alphabetical positions (determined on a letter-by-letter basis):

claim for family tax payment	6AA
elected to receive family tax payment	900AG(2)
excluding provision	6AA
family tax payment payday	6AA
FTP child	900AA, 900AB and 900AC
lowest marginal rate of tax	6AA
recipient	6AA

2 After section 6

Insert:

6AA Family tax payment definitions

In this Act, unless the contrary intention appears:

claim for family tax payment includes an election to receive family tax payment.

election to receive family tax payment has the meaning given by subsection 900AG(2).

excluding provision means any of the following:

- (a) section 832;
- (b) paragraph 838(1)(d);
- (c) subpoint 1069-B5(1);
- (d) point 1069-B7;
- (e) point 1069-B8;
- (f) paragraphs (b), (c) and (d) of point 1069-H2;
- (g) Module J of the Family Payment Rate Calculator;
- (h) point 1069-K3.

family tax payment payday means:

- (a) the Thursday that falls on 2 January 1997; and
- (b) each following alternate Thursday.

FTP child has the meaning given by Division 1 of Part 2.17AA.

lowest marginal rate of tax means the lowest percentage set out in column 2 of the table in clause 1 of Schedule 7 to the *Income Tax Rates Act 1986*.

recipient, in relation to family tax payment, means a person to whom family tax payment is being paid.

3 Subsection 23(1) (after paragraph (m) of the definition of *recipient notification notice*)

Insert:

(ma) section 900AZL (family tax payment); or

4 Subsection 23(1) (after paragraph (m) of the definition of *recipient statement notice*)

Insert:

(ma) section 900AZM (family tax payment); or

5 Subsection 23(1) (after paragraph (d) of the definition of *social security payment*)

Insert:

(da) a family tax payment; or

6 After Part 2.17

Insert:

Part 2.17AA—Family Tax Payment

Division 1—Family tax payment child status

900AA FTP child of a person

(1) In this Division:

FTP child, in relation to a person, means a dependent child of the person.

(2) In determining whether a person is a dependent child of another person for the purposes of this Division, any payments received by the first-mentioned person under a prescribed educational scheme are to be disregarded.

- (3) Subject to subsection (4), a person who has reached the age of 16 years cannot be an FTP child.
- (4) A person who has reached the age of 16 years and is undertaking secondary studies on a full-time basis may be an FTP child until the person reaches the age of 18 years.
- (5) This section has effect subject to sections 900AB and 900AC.

900AB Requirement for FTP child to be, or live with, an inhabitant of Australia

A dependent child cannot be an FTP child of a person unless:

- (a) the child is an inhabitant of Australia; or
- (b) the child is a dependent child of an inhabitant of Australia and is living with that inhabitant.

900AC Absences from Australia

- (1) If a dependent child of a person:
 - (a) either:
 - (i) leaves Australia; or
 - (ii) is born outside Australia; and
 - (b) continues to be absent from Australia for more than 3 years;the child cannot be an FTP child of the person at any time after the first 3 years of absence while the child remains absent from Australia.
- (2) If:
 - (a) a dependent child who has been absent from Australia for less than 3 years comes to Australia; and
 - (b) the child leaves Australia less than 13 weeks later;then, for the purposes of subsection (1), the child is taken not to have come to Australia.
- (3) If:
 - (a) a dependent child of a person is not an FTP child because of subsection (1) or a previous application of this subsection; and
 - (b) the child comes to Australia; and
 - (c) the child leaves Australia less than 13 weeks later;the child cannot be an FTP child of the person when the child leaves Australia as mentioned in paragraph (c).

- (4) Subject to subsection (5), if:
 - (a) a person who is qualified for family tax payment for a dependent child leaves Australia; and
 - (b) the child remains in Australia;the child continues to be an FTP child of the person.
- (5) A child referred to in subsection (4) ceases to be an FTP child of the person referred to in that subsection if:
 - (a) the person continues to be absent from Australia for more than 13 weeks; and
 - (b) another person claims, and is qualified for, family tax payment for the child.

Division 2—Qualification for family tax payment

900AD Qualification for family tax payment

Person receiving family payment at rate exceeding minimum family payment rate

- (1) Subject to subsections (5) and (6), a person who receives family payment at a rate exceeding the minimum family payment rate is qualified for family tax payment if the person has at least one FTP child.

Person receiving family payment at minimum family payment rate

- (2) Subject to subsections (5) and (6), a person who receives family payment at the minimum family payment rate is qualified for family tax payment if the person:
 - (a) would receive family payment at a rate exceeding the minimum family payment rate if none of the excluding provisions applied to the person; and
 - (b) has at least one FTP child.

Person not receiving family payment

- (3) Subject to subsections (5) and (6), a person who does not receive family payment is qualified for family tax payment if the person:
 - (a) would receive family payment at a rate exceeding the minimum family payment rate if none of the excluding provisions applied to the person; and
 - (b) has at least one FTP child; and
 - (c) is an inhabitant of Australia.

Person ceasing to be qualified for family tax payment

- (4) Subject to subsections (5) and (6), if, during a financial year, a person who is qualified for family tax payment under subsection (1), (2) or (3) would, apart from this subsection, cease to be qualified for family tax payment because the person:
- (a) does not receive family payment at a rate exceeding the minimum family payment rate; and
 - (b) would not receive family payment at a rate exceeding the minimum family payment rate even if none of the excluding provisions applied to the person;
- the person is qualified for family tax payment for the remainder of the financial year if the person:
- (c) has at least one FTP child; and
 - (d) is an inhabitant of Australia.

Person must care for child at least 30% of the time

- (5) A person is not qualified for family tax payment for an FTP child unless the person:
- (a) is responsible (whether alone or jointly with another person) for the day-to-day care, welfare and development of the child; and
 - (b) has the actual care of the child for at least 30% of the time.

Person not qualified if no estimate of taxable income given

- (6) This section has effect subject to point 1070-C8.

Note 1: For *excluding provision* see section 6AA.

Note 2: For *FTP child* see Division 1.

Note 3: For *inhabitant of Australia* see subsection 23(1).

900AE Qualification for family tax payment ceases after 3 year absence of recipient from Australia

- (1) If a person who is qualified for family tax payment:
- (a) leaves Australia; and
 - (b) continues to be absent from Australia for more than 3 years;
- the person is not qualified for family tax payment at any time after the first 3 years of the absence while the person remains absent from Australia.

Note: For effects of absence for shorter periods see section 900AC.

(2) If:

- (a) a person who has been absent from Australia for less than 3 years returns to Australia; and
- (b) the person leaves Australia again within 13 weeks after returning to Australia;

then, for the purposes of subsection (1), the person is taken not to have returned to Australia.

(3) If:

- (a) a person who has been absent from Australia is not qualified for family tax payment because of the application of subsection (1), or a previous application of this subsection, in relation to the person's absence; and
- (b) the person returns to Australia; and
- (c) within 13 weeks after returning, the person leaves Australia again;

the person is not qualified for family tax payment at any time during the absence referred to in paragraph (c).

Division 3—Payability of family tax payment

900AF Family tax payment not payable in certain circumstances

Even though a person is qualified for family tax payment, the payment may not be payable to the person because:

- (a) the person has not elected to receive family tax payment (see section 900AG); or
- (b) the payment has not begun to be payable (see sections 900AH and 900AZD); or
- (c) the person has not provided a tax file number for the person (see section 900AP) or the person's partner (see section 900AQ); or
- (d) another person who is not the person's partner is receiving family tax payment for the person's child (see section 900AO) and the Secretary has not made a declaration under subsection 900AZI(1); or
- (e) the person's partner is receiving family tax payment (see section 900AN); or
- (f) the person's family tax payment rate would be nil.

900AG Election to receive family tax payment

- (1) Family tax payment is not payable to a person unless the person has elected to receive the payment.
- (2) A person is taken to have *elected to receive family tax payment* if, and only if:
 - (a) the person has:
 - (i) made a claim for the payment; or
 - (ii) has given the Secretary notice in writing, in a form approved by the Secretary, stating that the person wishes to receive the payment; and
 - (b) the person has not, since the person last made such a claim or gave such a notice, given the Secretary a notice, in writing, in a form approved by the Secretary, stating that the person no longer wishes to receive the payment.

900AH Family tax payment generally not payable before claim

Subject to sections 900AL and 900AM, family tax payment is not payable to a person before the provisional commencement day (identified under section 900AI).

900AI Family tax payment provisional commencement day

General rule

- (1) Subject to this section and sections 900AJ and 900AK, a person's *provisional commencement day* is the day on which the person claimed or last claimed, as the case may be, family tax payment.

Initial claim for other payment followed by claim for family tax payment

- (2) If:
 - (a) a person makes a claim (the *initial claim*) for:
 - (i) a family payment, a child disability allowance or a double orphan pension; or
 - (ii) a pension, allowance, benefit or other payment under another Act, or under a program administered by the Commonwealth, that is similar in character to a family tax payment; and
 - (b) on the day on which the person makes the initial claim, the person is qualified for family tax payment; and
 - (c) the person afterwards makes a claim for family tax payment; and

- (d) the Secretary is satisfied that it is reasonable for this subsection to apply to the person;
- the person's provisional commencement day is the day on which the person made the initial claim.

Early claim

- (3) If:
 - (a) a person lodges a claim for family tax payment; and
 - (b) the person is not, on the day on which the claim is lodged, qualified for family tax payment; and
 - (c) the person becomes qualified for family tax payment during the period of 13 weeks that starts immediately after that day;the person's provisional commencement day is the first day on which the person is qualified for family tax payment.

900AJ Backdating—birth of child

- If:
- (a) a person has a dependent child; and
 - (b) the person lodges a claim for family tax payment in respect of the dependent child within 13 weeks of the birth of the dependent child;
- the person's provisional commencement day is the day on which the dependent child was born.

900AK Backdating—prospective adoption of child

- (1) If:
 - (a) as part of the process for the adoption of a child by a person, the child is entrusted to the care of a person by an authorised party; and
 - (b) the child is a dependent child of the person; and
 - (c) the person lodges a claim for family tax payment within 13 weeks after the day (the *placement day*) on which the child became a dependent child of the person;the person's provisional commencement day is the placement day.

Note: For *authorised party* see subsection (2).

(2) In subsection (1):

authorised party, in relation to the adoption of the child, means a person or agency that, under the law of the State, Territory or foreign country whose courts have jurisdiction in respect of the adoption, is authorised to conduct negotiations or arrangements for the adoption of children.

900AL Backdating—child disability allowance payable

If:

- (a) a person who is qualified for family tax payment claims family tax payment; and
- (b) an FTP child of the person is also a CDA child of the person (see sections 952 and 953); and
- (c) child disability allowance is payable to the person for the child from a day determined in accordance with section 958 (provisional commencement day);

family tax payment can become payable before the provisional commencement day but cannot become payable before:

- (d) if the person's provisional commencement day is within 3 months after the day on which the person became qualified for family tax payment—the first day in the period on which the person is qualified for family tax payment; or
- (e) if the person's provisional commencement day is more than 3 months after the day on which the person became qualified for family tax payment—the day occurring 3 months before the person's provisional commencement day.

Note 1: For ***provisional commencement day*** see section 900AL.

Note 2: The family tax payment will not necessarily be backdated to the day referred to in paragraph (d) or (e)—some other factor may make the payment not payable at that time.

900AM Backdating—death of former recipient

If:

- (a) a person who is receiving family tax payment for an FTP child dies; and
- (b) another person makes a claim for family tax payment for the child within 13 weeks after the day of the death;

family tax payment can become payable to the other person before the provisional commencement day but cannot become payable to that person before the day of the death.

900AN Family tax payment not payable to more than one member of a couple

- (1) Subject to this section, if one member of a couple is receiving family tax payment, family tax payment is not payable to the other member of the couple.
- (2) If:
 - (a) the Secretary is satisfied that each of the members of a couple is qualified for family tax payment; and
 - (b) each of them has made a claim for family tax payment (whether or not one of them is receiving family tax payment);the Secretary is to make a declaration:
 - (c) stating that the Secretary is satisfied that each of them is qualified for family tax payment; and
 - (d) naming one of them as the member of the couple to whom family tax payment is payable.
- (3) If such a declaration is made, family tax payment is not payable to the member of the couple who is not named in the declaration as mentioned in paragraph (2)(d).
- (4) The Secretary is to give notice of the declaration to each of the members of the couple involved.
- (5) In making the declaration, the Secretary must have regard to whether one member of the couple is the primary carer for their child or children.

900AO Family tax payment not payable to 2 people who are not members of the same couple for the same child

- If:
- (a) 2 persons are each qualified for family tax payment for the same child; and
 - (b) the persons are not members of the same couple; and
 - (c) the Secretary has not made a declaration under subsection 900AZI(1) in respect of family tax payment for the child; and
 - (d) one of the persons is receiving family tax payment for the child;
- family tax payment is not payable to the other person for the child.

900AP Provision of person's tax file number

- (1) Family tax payment is not payable to a person if:
 - (a) the person is requested under section 900AW to:
 - (i) give the Secretary a written statement of the person's tax file number; or
 - (ii) apply for a tax file number and give the Secretary a written statement of the person's tax file number once it has been issued; and
 - (b) at the end of the period of 28 days after the request is made, the person has neither:
 - (i) given the Secretary a written statement of the person's tax file number; nor
 - (ii) given the Secretary a declaration by the person in a form approved by the Secretary and satisfied either subsection (2) or (3).
- (2) The person satisfies this subsection if:
 - (a) the person's declaration states that the person:
 - (i) has a tax file number but does not know what it is; and
 - (ii) has asked the Commissioner of Taxation to inform the person of the person's tax file number; and
 - (b) the person has given the Secretary a document by the person that authorises the Commissioner of Taxation to tell the Secretary:
 - (i) whether the person has a tax file number; and
 - (ii) if the person has a tax file number—the tax file number; and
 - (c) the Commissioner of Taxation has not told the Secretary that the person has no tax file number.
- (3) The person satisfies this subsection if:
 - (a) the person's declaration states that the person has applied for a tax file number; and
 - (b) the person has given the Secretary a document by the person that authorises the Commissioner of Taxation to tell the Secretary:
 - (i) if a tax file number is issued to the person—the tax file number; or
 - (ii) if the application is refused—that the application has been refused; or

- (iii) if the application is withdrawn—that the application has been withdrawn; and
- (c) the Commissioner of Taxation has not told the Secretary that the person has not applied for a tax file number; and
- (d) the Commissioner of Taxation has not told the Secretary that an application by the person for a tax file number has been refused; and
- (e) the application for a tax file number has not been withdrawn.

900AQ Provision of partner's tax file number

- (1) Subject to subsection (4), family tax payment is not payable to a person if:
 - (a) the person is a member of a couple; and
 - (b) the person is requested under section 900AX to give the Secretary a written statement of the tax file number of the person's partner; and
 - (c) at the end of the period of 28 days after the request is made the person has neither:
 - (i) given the Secretary a written statement of the partner's tax file number; nor
 - (ii) given the Secretary a declaration by the partner in a form approved by the Secretary and satisfied either subsection (2) or (3).
- (2) The person satisfies this subsection if:
 - (a) the partner's declaration states that the partner:
 - (i) has a tax file number but does not know what it is; and
 - (ii) has asked the Commissioner of Taxation to inform the partner of the partner's tax file number; and
 - (b) the person has given the Secretary a document by the partner that authorises the Commissioner of Taxation to tell the Secretary:
 - (i) whether the partner has a tax file number; and
 - (ii) if the partner has a tax file number—the tax file number; and
 - (c) the Commissioner of Taxation has not told the Secretary that the partner has no tax file number.
- (3) The person satisfies this subsection if:
 - (a) the partner's declaration states that an application by the partner for a tax file number is pending; and

- (b) the person has given the Secretary a document by the partner that authorises the Commissioner of Taxation to tell the Secretary:
 - (i) if a tax file number is issued to the partner—the tax file number; or
 - (ii) if the application is refused—that the application has been refused; or
 - (iii) if the application is withdrawn—that the application has been withdrawn; and
 - (c) the Commissioner of Taxation has not told the Secretary that an application by the partner for a tax file number has been refused; and
 - (d) the application for a tax file number has not been withdrawn.
- (4) The Secretary may waive the request for a statement of the partner's tax file number if the Secretary is satisfied that:
- (a) the person does not know the partner's tax file number; and
 - (b) the person can obtain none of the following from the partner:
 - (i) the partner's tax file number;
 - (ii) a statement of the partner's tax file number;
 - (iii) a declaration by the partner under subparagraph (1)(c)(ii).

Division 4—Claim for family tax payment

900AR Need for a claim

- (1) A person who wants to be granted family tax payment must make a proper claim for the payment.

Note: For *proper claim* see section 900AS (form), section 900AT (manner of lodgment) and section 900AU (inhabitant of Australia).

- (2) For the purposes of subsection (1), if:
- (a) a claim for family tax payment is made by or on behalf of a person; and
 - (b) at the time when the claim is made, the claim cannot be granted because the person is not qualified for family tax payment;

the claim is, subject to subsection 900AI(3), to be taken not to have been made.

900AS Form of claim

To be a proper claim, a claim must be made in writing and must be in accordance with a form approved by the Secretary.

900AT Lodgment of claim

- (1) To be a proper claim, a claim must be lodged:
 - (a) at an office of the Department in Australia; or
 - (b) at a place in Australia approved for the purpose by the Secretary; or
 - (c) with a person in Australia approved for the purpose by the Secretary.
- (2) The Secretary may approve a place or person outside Australia under subsection (1) for the purpose of lodgment of claims made under an international agreement.

900AU Claimant must be inhabitant of Australia

A claim by a person is not a proper claim unless the person is an inhabitant of Australia on the day on which the claim is lodged.

Note: For *inhabitant of Australia* see subsection 23(1).

900AV Claim may be withdrawn

- (1) A claimant for family tax payment, or a person on behalf of a claimant, may withdraw a claim that has not been determined.
- (2) A claim that is withdrawn is taken to have not been made.
- (3) A withdrawal may be made orally or in writing.

900AW Secretary may request claimant or recipient to give statement of tax file number

- (1) If a claimant for, or recipient of, family tax payment is in Australia, the Secretary may request but not compel the person:
 - (a) if the person has a tax file number—to give the Secretary a written statement of the person's tax file number; or
 - (b) if the person does not have a tax file number:
 - (i) to apply to the Commissioner of Taxation for a tax file number; and
 - (ii) to give the Secretary a written statement of the person's tax file number after the Commissioner of Taxation has issued it.

- (2) Family tax payment is not payable to a claimant or a recipient if, at the end of the period of 28 days after a request is made:
- (a) the person has failed to satisfy the request; and
 - (b) the Secretary has not exempted the person from having to satisfy the request.

Note: In some cases the request can be satisfied by giving the Secretary a declaration by the claimant or the recipient about the person's tax file number and an authority by the person to the Commissioner of Taxation to give the Secretary certain information about the claimant's or recipient's tax file number (see subsections 900AP(2) and (3)).

900AX Secretary may request claimant or recipient to give statement of partner's tax file number

- (1) If:
- (a) a claimant for, or recipient of, family tax payment is a member of a couple; and
 - (b) the person's partner is in Australia;
- the Secretary may request but not compel the person to give the Secretary a written statement of the tax file number of the person's partner.
- (2) Family tax payment is not payable to a claimant or a recipient if, at the end of the period of 28 days after the request is made:
- (a) the person has failed to satisfy the request; and
 - (b) the Secretary has not exempted the person from having to satisfy the request.

Note 1: In some cases the request can be satisfied by giving the Secretary a declaration by the partner about the partner's tax file number and an authority by the partner to the Commissioner of Taxation to give the Secretary certain information about the partner's tax file number (see subsections 900AQ(2) and (3)).

Note 2: The Secretary may waive the request in some cases (see subsection 900AQ(4)).

Division 5—Determination of claim

900AY Secretary to determine claim

The Secretary must, in accordance with this Act, determine the claim.

900AZ Grant of claim

The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:

- (a) the person is qualified for family tax payment; and
- (b) the payment is payable.

900AZA Date of effect of determination

General rule

- (1) Subject to this section, a determination under section 900AZ takes effect:
 - (a) on the day on which the determination is made; or
 - (b) if a later day or earlier day is stated in the determination—on the later or earlier day.

Notified decision—review sought within 13 weeks

- (2) If:
 - (a) a decision (the *previous decision*) is made rejecting a person's claim for family tax payment; and
 - (b) a notice is given to the person telling the person of the making of the previous decision; and
 - (c) the person applies to the Secretary under section 1240, within 13 weeks after the notice is given, for review of the previous decision; and
 - (d) a determination granting the claim is made as a result of the application for review;the determination takes effect on the day on which the previous decision took effect.

Notified decision—review sought after 13 weeks

- (3) If:
 - (a) a decision (the *previous decision*) is made rejecting the person's claim for family tax payment; and
 - (b) a notice is given to the person telling the person of the making of the previous decision; and
 - (c) the person applies to the Secretary under section 1240, more than 13 weeks after the notice is given, for review of the previous decision; and

(d) a determination granting the claim is made as a result of the application for review;
the determination takes effect on the day on which the person sought the review.

Decision not notified

(4) If:

- (a) a decision (the *previous decision*) is made rejecting a person's claim for family tax payment; and
 - (b) no notice is given to the person telling the person of the making of the previous decision; and
 - (c) the person applies to the Secretary under section 1240 for review of the previous decision; and
 - (d) a determination granting the claim is made as a result of the application for review;
- the determination takes effect on the day on which the previous decision took effect.

Division 6—Rate of family tax payment

900AZB Rate struck for financial year

If the rate of the family tax payment payable to a person in a financial year has been worked out under section 900AZC, the rate of family tax payment payable to the person only has to be worked out again during that financial year if:

- (a) the person tells the Department or an officer that a notifiable event has occurred in relation to the person; or
- (b) a notifiable event has occurred in relation to the person and the person fails to tell the Department or an officer that it has occurred; or
- (c) the person or the person's partner revises an estimate of his or her taxable income; or
- (d) the person or the person's partner has underestimated his or her taxable income.

900AZC How to work out a person's family tax payment rate

The rate of family tax payment payable to a person is worked out using the Family Tax Payment Rate Calculator at the end of section 1070 (see Part 3.8).

Division 7—Payment of family tax payment

900AZD Start of family tax payment

Family tax payment becomes payable to a recipient on the first day on which:

- (a) the recipient is qualified for the payment; and
- (b) no provision of this Act makes family tax payment not payable to the recipient.

Note 1: For qualification for family tax payment see sections 900AD and 900AE.

Note 2: For the circumstances in which family tax payment is not payable see section 900AF.

Note 3: For *recipient* see section 6AA.

900AZE Payment by instalments

- (1) Subject to subsection (2), a full instalment of family tax payment is payable to a recipient on each family tax payment payday on which:

- (a) the recipient is qualified for family tax payment; and
- (b) family tax payment is payable to the recipient.

- (2) If:

- (a) a person claims a family tax payment on a particular day (the *claim day*); and
- (b) the person's provisional commencement day is before the claim day; and
- (c) there is a family tax payment payday on or after the provisional commencement day and before the claim day;

then:

- (d) no instalment of family tax payment is payable on that payday; and
- (e) the full instalment of family tax payment in respect of that payday is payable on the first family tax payment payday on or after the claim day.

Note: For *provisional commencement day* see section 900AI.

- (3) If the Secretary is satisfied that an instalment that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank holiday), the Secretary may direct that the amount be paid on an earlier day.

900AZF Payments to be paid to person or nominee

- (1) Subject to subsection (3), instalments of a recipient's family tax payment are to be paid to the recipient.
- (2) The Secretary may direct that the whole or a part of the instalments of a recipient's family tax payment are to be paid to someone else on behalf of the recipient.
- (3) If the Secretary gives a direction under subsection (2), the instalments are to be paid in accordance with the direction.

900AZG Payment into bank account etc.

- (1) An amount that is to be paid to a recipient under section 900AZF is to be paid in the manner set out in this section.
- (2) Subject to this section, the amount is to be paid to the credit of a bank account, credit union account or building society account nominated and maintained by the recipient.
- (3) The account may be an account that is maintained by the recipient either alone or jointly or in common with another person.
- (4) The Secretary may direct that the whole or a part of the amount be paid to the recipient in a different way from that provided for by subsection (2).
- (5) If the Secretary gives a direction under subsection (4), the family tax payment is to be paid in accordance with the direction.
- (6) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the family tax payment became payable to the recipient:
 - (a) the recipient has not nominated an account for the purposes of subsection (2); and
 - (b) the Secretary has not given a direction under subsection (4) in relation to payments of the family tax payment to the recipient;the family tax payment ceases to be payable to the recipient.
- (7) If the recipient nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the family tax payment again becomes payable to the recipient and is so payable:
 - (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or

- (b) otherwise—on and from the day on which the nomination was made.

900AZH Payment of family tax payment after death

- (1) If:
 - (a) a family tax payment is payable to a person; and
 - (b) the person dies; and
 - (c) at the date of the person's death the person had not received an amount of family tax payment payable to him or her; and
 - (d) another person applies to receive the amount; and
 - (e) the application is made:
 - (i) within 26 weeks after the death; or
 - (ii) within a further period allowed by the Secretary in special circumstances;

the Secretary may pay the amount to the person who, in the Secretary's opinion, is best entitled to it.
- (2) If the Secretary pays an amount of family tax payment under subsection (1), the Commonwealth has no further liability to any person in respect of that amount of family tax payment.

900AZI Secretary may make declaration where 2 people who are not members of the same couple qualified for family tax payment for the same child

- (1) If the Secretary is satisfied that 2 people who are not members of the same couple are each qualified for family tax payment for the same child, the Secretary is to make a declaration:
 - (a) stating that the Secretary is satisfied that the 2 people are each qualified for family tax payment for the child; and
 - (b) stating the share of the family tax payment for the child that each of them is to receive.
- (2) If the Secretary makes a declaration under subsection (1), the Secretary is to give notice of the declaration to each of the 2 people involved.

Note 1: Until the declaration under this section is made, only one of the 2 people involved can receive family tax payment for the child (see section 900AO).

Note 2: For the effect of a determination under this section on the calculation of family tax payment rates see Module F of the Family Tax Payment Rate Calculator.

Division 8—Protection of family tax payment

900AZJ Family tax payment to be absolutely inalienable

General rule

- (1) Subject to subsection (2) and section 1359, family tax payment is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

Deductions from instalments with recipient's consent

- (2) The Secretary may make deductions from the instalments of family tax payment payable to a recipient if the recipient consents under section 1234A to the Secretary making the deductions.

Note: Section 1234A enables the Secretary to recover a debt from a person other than the debtor if the person is receiving a social security payment.

900AZK Effect of garnishee or attachment order

- (1) If:
 - (a) a recipient has an account with a financial institution; and
 - (b) instalments of family tax payment payable to the recipient (whether on the recipient's own behalf or not) are being paid to the credit of the account; and
 - (c) a court order in the nature of a garnishee order comes into force in respect of the account;the court order does not apply to the saved amount (if any) in the account.
- (2) The saved amount is worked out as follows:

Method statement

- | |
|--|
| <p>Step 1. Work out the total amount payable to the recipient in respect of family tax payment that has been paid to the credit of the account during the 4 week period immediately before the court order came into force.</p> <p>Step 2. Subtract from that amount the total amount withdrawn from the account during the same 4 week period: the result is the <i>saved amount</i>.</p> |
|--|

- (3) This section applies to an account whether it is maintained by a person:
 - (a) alone; or
 - (b) jointly with another person; or
 - (c) in common with another person.

Division 9—Recipient obligations

900AZL Secretary may require notice of the happening of an event or a change in circumstances

- (1) The Secretary may give a recipient of family tax payment a notice that requires the recipient to tell the Department if:
 - (a) a stated event or change of circumstances occurs; or
 - (b) the recipient becomes aware that a stated event or change of circumstances is likely to occur.
- (2) An event or change of circumstances is not to be stated in a notice under subsection (1) unless the occurrence of the event or change of circumstances might affect the payment of the family tax payment.
- (3) Subject to subsection (4), a notice under subsection (1):
 - (a) must be in writing; and
 - (b) may be given personally or by post; and
 - (c) must state how the recipient is to give the information to the Department; and
 - (d) must state the period within which the recipient is to give the information to the Department; and
 - (e) must state that the notice is a recipient notification notice given under this Act.

Note: For *recipient notification notice* see subsection 23(1).

- (4) A notice under subsection (1) is not invalid merely because it fails to comply with paragraph (3)(c) or (e).
- (5) Subject to subsection (6), the period stated under paragraph (3)(d) must end at least 14 days after:
 - (a) the day on which the event or change of circumstances occurs; or
 - (b) the day on which the recipient becomes aware that the event or change of circumstances is likely to occur.

- (6) If a notice requires the person to tell the Department of any proposal by the person to leave Australia, subsection (5) does not apply to the requirement.
- (7) A recipient must not, without reasonable excuse, refuse or fail to comply with a notice under subsection (1) to the extent that the recipient is capable of complying with the notice.

Penalty: Imprisonment for 6 months.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act.

- (8) This section extends to:
 - (a) acts, omissions, matters and things outside Australia whether or not in a foreign country; and
 - (b) all people irrespective of their nationality or citizenship.

900AZM Secretary may require recipient to give particular information relevant to payment of family tax payment

- (1) The Secretary may give a recipient of family tax payment a notice that requires the recipient to give the Department a statement about a matter that might affect the payment of the family tax payment to the recipient.
- (2) Subject to subsection (3), a notice under subsection (1):
 - (a) must be in writing; and
 - (b) may be given personally or by post; and
 - (c) must state how the statement is to be given to the Department; and
 - (d) must state the period within which the recipient is to give the statement to the Department; and
 - (e) must state that the notice is a recipient statement notice given under this Act.

Note: For *recipient statement notice* see subsection 23(1).

- (3) A notice under subsection (1) is not invalid merely because it fails to comply with paragraph (2)(c) or (e).
- (4) The period stated under paragraph (2)(d) must end at least 14 days after the day on which the notice is given.

- (5) A statement given in response to a notice under subsection (1) must be in writing and must be in accordance with a form approved by the Secretary.
- (6) A recipient must not, without reasonable excuse, refuse or fail to comply with a notice under subsection (1) to the extent that the recipient is capable of complying with the notice.

Penalty: Imprisonment for 6 months.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act.

- (7) This section extends to:
 - (a) acts, omissions, matters and things outside Australia whether or not in a foreign country; and
 - (b) all people irrespective of their nationality or citizenship.

900AZN Secretary may require recipient to give notice of change of address

- (1) The Secretary may give a recipient of family tax payment a notice that requires the recipient to tell the Department if the recipient has changed or changes his or her address.
- (2) Subject to subsection (3), a notice under subsection (1):
 - (a) must be in writing; and
 - (b) may be given personally or by post; and
 - (c) must state how the recipient is to give the information to the Department; and
 - (d) must state the period within which the recipient is to give the information to the Department; and
 - (e) must state that the notice is a notice given under this Act.
- (3) A notice under subsection (1) is not invalid merely because it fails to comply with paragraph (2)(c) or (e).
- (4) Subject to subsection (3), a period stated under paragraph (2)(d) must end:
 - (a) at least 14 days after the day on which the recipient changes address; or
 - (b) at least 14 days after the day on which the notice is given; whichever is the later.

Division 10—Continuation, variation and termination

Subdivision A—General

900AZO Continuing effect of determination

Entitlement determination

- (1) A determination that:
- (a) a person's claim for family tax payment is granted; or
 - (b) family tax payment is payable to a person;
- continues in effect until:
- (c) the payment ceases to be payable under section 900AZP or 900AZQ; or
 - (d) a further determination in relation to the payment under section 900AZV, 900AZW or 900AZX has taken effect.

Note 1: For paragraph (a) see section 900AZ.

Note 2: For paragraph (b) see section 900AZZ—this paragraph is relevant where the determination in question reverses an earlier cancellation or suspension.

Note 3: For paragraph (d) see also section 900AZY.

Rate determination

- (2) A determination of the rate of family tax payment continues in effect until:
- (a) the family tax payment becomes payable at a lower rate under section 900AZR; or
 - (b) a further determination in relation to the family tax payment under section 900AZT or 900AZU has taken effect.

Note: For paragraph (b) see also section 900AZY.

Subdivision B—Automatic termination

900AZP Automatic termination—recipient *complying with* section 900AZL notification obligations

If:

- (a) a recipient is given a notice under section 900AZL; and
- (b) the notice requires the recipient to tell the Department of the occurrence of an event or change in circumstances within a stated period (the *notification period*); and
- (c) the event or change in circumstances occurs; and

- (d) the recipient tells the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
- (e) because of the occurrence of the event or change in circumstances:
 - (i) the recipient ceases to be qualified for family tax payment; or
 - (ii) family tax payment would, apart from this section, cease to be payable to the recipient; and
- (f) family tax payment is not cancelled before the end of the notification period;

family tax payment continues to be payable to the recipient until the end of the notification period and then ceases to be payable to the recipient.

Note: If the recipient tells the Department, within the notification period, of an event or change in circumstances that reduces the rate of the recipient's family tax payment, there is no automatic rate reduction and a determination under section 900AZU must be made in order to bring the rate reduction into effect.

900AZQ Automatic termination—recipient *not* complying with section 900AZL notification obligations

If:

- (a) a recipient is given a notice under section 900AZL; and
- (b) the notice requires the recipient to tell the Department of the occurrence of an event or change in circumstances within a stated period (the *notification period*); and
- (c) the event or change in circumstances occurs; and
- (d) the recipient does not tell the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
- (e) because of the occurrence of the event or the change in circumstances:
 - (i) the recipient ceases to be qualified for family tax payment; or
 - (ii) family tax payment ceases to be payable to the recipient;

family tax payment ceases to be payable to the recipient immediately after the day on which the event or change in circumstances occurs.

Subdivision C—Automatic rate reduction

900AZR Automatic rate reduction—recipient *not complying* with section 900AZL notification obligations

If:

- (a) a recipient is given a notice under section 900AZL; and
- (b) the notice requires the recipient to tell the Department of the occurrence of an event or change in circumstances within a stated period (the *notification period*); and
- (c) the event or change in circumstances occurs; and
- (d) the recipient does not tell the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
- (e) because of the occurrence of the event or change in circumstances, the recipient's rate of family tax payment is to be reduced;

family tax payment becomes payable to the recipient at the reduced rate immediately after the day on which the event or change in circumstances occurs.

900AZS Changes to payments by computer following automatic termination or reduction

If:

- (a) a person is receiving a family tax payment on the basis of data in a computer; and
- (b) the family tax payment is automatically terminated or the family tax payment rate is automatically reduced by the operation of a provision of this Act; and
- (c) the automatic termination or reduction is given effect to by the operation of a computer program approved by the Secretary stopping payment or reducing the rate of payment of family tax payment;

there is taken to be a decision by the Secretary that the automatic termination or rate reduction provision applies to the person's family tax payment.

Note: The decision that is taken to have been made is a decision of an officer for the purposes of review by the Secretary (see sections 1239 and 1240) and the Social Security Appeals Tribunal (see section 1247).

Subdivision D—Determinations

900AZT Rate increase determination

If the Secretary is satisfied that the rate at which family tax payment is being, or has been, paid is less than the rate provided for by this Act, the Secretary is to determine that the rate is to be increased to the rate stated in the determination.

Note: For the date of effect of a determination under this section see section 900AZZA.

900AZU Rate reduction determination

If the Secretary is satisfied that the rate at which family tax payment is being, or has been, paid is more than the rate provided for by this Act, the Secretary is to determine that the rate is to be reduced to the rate stated in the determination.

Note 1: A determination under this section is not necessary if an automatic rate reduction is produced by section 900AZR (see subsection 900AZO(2)).

Note 2: For the date of effect of a determination under this section see section 900AZZB.

900AZV Cancellation or suspension determination

If the Secretary is satisfied that family tax payment is being, or has been, paid to a recipient to whom it is not, or was not, payable under this Act, the Secretary is to determine that the family tax payment is to be cancelled or suspended.

Note 1: A determination under this section is not necessary if an automatic termination is produced by section 900AZP or 900AZQ (see subsection 900AZO(1)).

Note 2: For the date of effect of a determination under this section see section 900AZZB.

900AZW Cancellation or suspension for failure to comply with section 900AZM, 1304 or 1305 notice

If:

- (a) a recipient is given a notice under section 900AZM, 1304 or 1305; and
- (b) the recipient does not comply with the requirements set out in the notice;

the Secretary may determine that the family tax payment is to be cancelled or suspended.

Note 1: This section will not apply if section 900AZV applies.

Note 2: For the date of effect of a determination under this section see section 900AZZB.

900AZX Suspension for failure to comply with section 900AZM, 1304 or 1305 notice after being given a section 900AZN notice

- (1) If:
- (a) a recipient is given a notice under section 900AZN; and
 - (b) the recipient is given a notice under section 900AZM, 1304 or 1305; and
 - (c) the recipient does not comply with the requirements set out in the section 900AZM, 1304 or 1305 notice; and
 - (d) the Secretary is satisfied that the recipient did not comply because the recipient changed his or her address;
- the Secretary may determine that the family tax payment is to be suspended.
- (2) The Secretary may determine that the recipient's family tax payment is to be suspended even if the Secretary is not satisfied that:
- (a) the recipient has ceased to be qualified for family tax payment; or
 - (b) family tax payment has ceased to be payable to the recipient.
- (3) Subsection (1) does not limit the Secretary's power to suspend the recipient's family tax payment under section 900AZW.

Note 1: This section will not apply if section 900AZV applies.

Note 2: For the date of effect of a determination under this section see section 900AZZB.

900AZY Changes to payments by computer

- If:
- (a) payment of family tax payment to a person is based upon data in a computer; and
 - (b) the rate of family tax payment is increased or reduced, or family tax payment is cancelled or suspended, because of the operation of a computer program approved by the Secretary; and

- (c) the program causes the change for a reason for which the Secretary could determine the change;
the change is taken to have been made because of a determination by the Secretary for that reason.

Note: The determination that is taken to have been made is a decision of an officer for the purposes of review by the Secretary (see sections 1239 and 1240) and the Social Security Appeals Tribunal (see section 1247).

900AZZ Resumption of payment after cancellation or suspension

- (1) If the Secretary:
 - (a) cancels or suspends a recipient's family tax payment under section 900AZV or 900AZW; and
 - (b) reconsiders the decision to cancel or suspend; and
 - (c) becomes satisfied that, because of the decision to cancel or suspend:
 - (i) the recipient did not receive family tax payment that was payable to the recipient; or
 - (ii) the recipient is not receiving family tax payment that is payable to the recipient;

the Secretary is to determine that family tax payment was or is payable to the recipient.

- (2) The reconsideration referred to in paragraph (1)(b) might be a reconsideration on an application under section 1240 for review or a reconsideration on the Secretary's own initiative.

Note: For the date of effect of a determination under this section see section 900AZZA.

Subdivision E—Date of effect of determination

900AZZA Date of effect of favourable determination

- (1) The day on which a determination under section 900AZT or 900AZZ (the *favourable determination*) takes effect is worked out in accordance with this section.

Notified decision—review sought within 13 weeks

- (2) If:
 - (a) a decision (the *previous decision*) is made in relation to family tax payment; and
 - (b) a notice is given to the recipient telling the recipient of the making of the previous decision; and

- (c) the recipient applies to the Secretary under section 1240, within 13 weeks after the notice is given, for review of the previous decision; and
 - (d) the favourable determination is made as a result of the application for review;
- the determination takes effect on the day on which the previous decision took effect.

Notified decision—review sought after 13 weeks

- (3) If:
- (a) a decision (the *previous decision*) is made in relation to a family tax payment; and
 - (b) a notice is given to the recipient telling the recipient of the making of the previous decision; and
 - (c) the recipient applies to the Secretary under section 1240, more than 13 weeks after the notice is given, for review of the previous decision; and
 - (d) the favourable determination is made as a result of the application for review;
- the determination takes effect on the day on which the recipient sought the review.

Decision not notified

- (4) If:
- (a) a decision (the *previous decision*) is made in relation to a family tax payment; and
 - (b) no notice is given to the recipient telling the recipient of the making of the previous decision; and
 - (c) the recipient applies to the Secretary under section 1240 for review of the previous decision; and
 - (d) the favourable determination is made as a result of the application for review;
- the determination takes effect on the day on which the previous decision took effect.

Notified change of circumstances

- (5) Subject to subsections (6) and (7), if the favourable determination is made following a recipient having told the Department of a change in circumstances, the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.

Determination following birth of child

- (6) If:
- (a) the favourable determination is made following the birth of a child; and
 - (b) the recipient told the Department of the birth of the child within 13 weeks after the date of the birth;
- the determination takes effect on the date of the child's birth.

Determination following adoption of child

- (7) If:
- (a) as part of the process for the adoption of a child by the recipient, the child is entrusted to his or her care by an authorised party; and
 - (b) the favourable determination is made because the child is a FTP child of the recipient; and
 - (c) the recipient told the Department of the circumstances in which the child became an FTP child of the recipient within 13 weeks after the day (the *placement day*) on which the child became an FTP child of the recipient;
- the determination takes effect on the placement day.

Note: For *authorised party* see subsection (10).

Other determination

- (8) In any other case, the favourable determination takes effect:
- (a) on the day on which the determination was made; or
 - (b) if a later or earlier day is stated in the determination—on the later or earlier day.
- (9) The day stated under paragraph (8)(b) must not be more than 13 weeks before the determination was made.
- (10) In subsection (7):
- authorised party***, in relation to the adoption of a child, means a person or agency that, under the law of the State, Territory or foreign country whose courts have jurisdiction in respect of the adoption, is authorised to conduct negotiations or arrangements for the adoption of children.

900AZZB Date of effect of adverse determination

- (1) The day on which a determination under section 900AZU, 900AZV, 900AZW or 900AZX (the *adverse determination*) takes effect is worked out in accordance with this section.

Note: If the adverse determination depends on a discretion or opinion and a person affected by the determination applies for review, the Secretary may continue payment pending the outcome of the review. See section 1241 (internal review) and section 1251 (review by Social Security Appeals Tribunal).

General rule

- (2) The adverse determination takes effect on:
- (a) the day on which the determination is made; or
 - (b) if another day is stated in the determination—on that day.
- (3) Subject to subsections (4), (5) and (6), the day stated under paragraph (2)(b) must be later than the day on which the determination is made.

Contravention of Act

- (4) If:
- (a) the recipient whose family tax payment is affected by the adverse determination has contravened a provision of this Act (other than section 900AZM, 900AZN, 1304, 1305, 1306 or 1307); and
 - (b) the contravention causes a delay in making the determination;
- the day stated under paragraph (2)(b) may be earlier than the day on which the determination is made.

False statement or misrepresentation—suspension or cancellation

- (5) If:
- (a) a recipient has made a false statement or a misrepresentation; and
 - (b) because of the false statement or the misrepresentation, the family tax payment has been paid to a recipient when it should have been cancelled or suspended;
- the day stated under paragraph (2)(b) may be earlier than the day on which the determination is made.

False statement or misrepresentation—rate reduction

- (6) If:
- (a) a recipient has made a false statement or a misrepresentation;
and
 - (b) because of the false statement or the misrepresentation, the rate at which the family tax payment was paid to a recipient was more than it should have been;
- the day stated under paragraph (2)(b) may be earlier than the day on which the determination is made.

Division 11—Bereavement payments (death of FTP child)

900AZZC Death of dependent child

- If:
- (a) a person is receiving family tax payment; and
 - (b) a dependent child of the person in respect of whom the family tax payment or part of the payment is being paid dies;
- the person is qualified for family tax payment for the period of 4 weeks starting on the day after the day on which the child died as if the child had not died.

900AZZD Continued payment of family tax payment

If a person is qualified for payments under this Division in relation to the death of a dependent child, the person's family tax payment rate, during the period of 4 weeks that starts on the day on which the child dies, is calculated as if the child had not died.

7 After Part 3.7

Insert:

Part 3.8—Family Tax Payment Rate Calculator

1070 Rate of family tax payment

- (1) A person's rate of family tax payment for a financial year is calculated in accordance with the Rate Calculator at the end of this section.
- (2) The *appropriate financial year* for a family tax payment payday is the financial year in which the payday occurs.

Family Tax Payment Rate Calculator

Module A—Overall rate calculation process

Method of calculating rate

- 1070-A1(1) A person's rate of family tax payment for a financial year is a fortnightly rate calculated in accordance with this point.
- (2) A person's **fortnightly rate of family tax payment** consists of the sum of:
- (a) the person's fortnightly Part A rate of family tax payment worked out in accordance with Method statement A1; and
 - (b) the person's fortnightly Part B rate of family tax payment worked out in accordance with Method statement A2.

Method statement A1

- Step 1.** Work out the person's provisional fortnightly Part A rate of family tax payment in accordance with Module B.
- Step 2.** Work out in accordance with Module C whether the family income test in that Module applies to the person. If it does, apply the test to the person in accordance with that Module.
- Step 3.** If the person does not satisfy the test, the person's **fortnightly Part A rate of family tax payment** for the financial year is nil.
- Step 4.** If the test does not apply to the person or the person satisfies the test, the person's **fortnightly Part A rate of family tax payment** is the amount obtained by multiplying the person's provisional fortnightly Part A rate of family tax payment by the number of FTP children of the person.
- However, if Module F applies, the amount obtained under this Step may be reduced as provided in that Module.

Note: For **FTP child** see section 6AA.

Method statement A2

- Step 1.* Work out the person's provisional fortnightly Part B rate of family tax payment in accordance with Module B.
- Step 2.* If the person does not have at least one FTP child under the age of 5 years, the person's ***fortnightly Part B rate of family tax payment*** is nil.
- Step 3.* If the person has at least one FTP child under the age of 5 years, work out in accordance with Module D whether the breadwinner's income test in that Module applies.
- Step 4.* If the breadwinner's income test applies and is not satisfied, the person's ***fortnightly Part B rate of family tax payment*** is nil.
- Step 5.* If:
- (a) the person has at least one FTP child under the age of 5 years; and
 - (b) the breadwinner's income test does not apply or is satisfied; and
 - (c) the person is a member of a couple;
- work out in accordance with Module E whether the spouse income test applies.
- Step 6.* If the spouse income test applies and is not satisfied, the person's ***fortnightly Part B rate of family tax payment*** is nil.
- Step 7.* If the person has at least one FTP child under the age of 5 years and neither the breadwinner's income test nor the spouse income test applies or the test or tests that apply are satisfied, the person's ***fortnightly Part B rate of family tax payment*** is an amount equal to the person's provisional fortnightly Part B rate of family tax payment. However, if Module F applies, the amount applicable under this Step may be reduced as provided in that Module.

Note: For ***FTP child*** see section 6AA.

Module B—Calculation of provisional rates of family tax payment

Provisional Part A rate

- 1070-B1 A person's provisional fortnightly Part A rate of family tax payment is worked out in accordance with Method statement B1.

Method statement B1

- Step 1.* Multiply \$1,000 by the lowest marginal rate of tax.
- Step 2.* Divide the result by 26 and, if the resulting amount includes a fraction of a cent, round up the amount to the next whole cent. The amount obtained is the person's **provisional fortnightly Part A rate of family tax payment**.

Note: For **lowest marginal rate of tax** see section 6AA.

Provisional Part B rate

- 1070-B2 A person's provisional fortnightly Part B rate of family tax payment is worked out in accordance with Method statement B2.

Method statement B2

- Step 1.* Multiply \$2,500 by the lowest marginal rate of tax.
- Step 2.* Divide the result by 26 and, if the resulting amount includes a fraction of a cent, round up the amount to the next whole cent. The amount obtained is the person's **provisional fortnightly Part B rate of family tax payment**.

Note: For **lowest marginal rate of tax** see section 6AA.

Module C—Family income test

People to whom family income test applies

- 1070-C1 The family income test applies to a person other than a person who is qualified for family tax payment under subsection 900AD(1), (2) or (3).

Application of test

- 1070-C2 A person satisfies the family income test if the person's family income for the appropriate financial year is less than the person's family income ceiling.

Family income

- 1070-C3 A person's **family income** for the appropriate financial year is the person's taxable income for that year and, if the person is a member of a couple, includes the taxable income of the person's partner for that year.

Taxable income

- 1070-C4 A person's **taxable income** for the appropriate financial year is taken to be the estimate of the person's taxable income for that year according to the most recent notice given by the person under point 1070-C5 and accepted by the Secretary for the purposes of this Module.

Notice estimating taxable income

- 1070-C5 A person may give the Secretary a notice setting out the person's estimate of the person's taxable income for the appropriate financial year.

Acceptance of notice

- 1070-C6 The Secretary is to accept a notice referred to in point 1070-C5 only if the Secretary is satisfied that the estimate is reasonable.

Family income ceiling

- 1070-C7 A person's **family income ceiling** is worked out using Table C. A person's family income ceiling is the basic ceiling amount in column 1 plus an additional amount in column 2 for each FTP child of the person (after the first).

Table C
Family income ceiling

Column 1	Column 2
basic ceiling amount	additional amount for each FTP child (after the first)
\$70,000	\$3,000

Note: For **FTP child** see section 6AA.

No estimate of taxable income—person not qualified

- 1070-C8(1) Subject to subpoint (2), a person to whom the family income test applies is not qualified for family tax payment if the taxable income of the person or of the person's partner for the appropriate financial year is unknown.

- (2) However, subpoint (1) is not to apply in respect of the taxable income of the person or the person's partner if:
- (a) the person or the person's partner, as the case may be, gives a notice under point 1070-C5 in relation to the appropriate financial year; and
 - (b) the Secretary accepts the notice under point 1070-C6; and
 - (c) the Secretary makes a determination to give effect to the acceptance of the notice.

Module D—Breadwinner's income test

Relevant person

1070-D1 In this Module:

relevant person means the person whose rate of family tax payment for the appropriate financial year is being calculated.

Taxable income for the relevant tax year

1070-D2 In this Module:

taxable income for the relevant tax year, in relation to the relevant person or the relevant person's partner, means the taxable income, for the purposes of Module H of the Family Payment Rate Calculator at the end of section 1069, of the relevant person or the relevant person's partner, as the case may be, for:

- (a) subject to paragraph (b), the tax year that ended on 30 June in the calendar year that came immediately before the calendar year in which the relevant family tax payment payday occurs; or
- (b) if the Secretary determines that it is more appropriate to have regard, in relation to the relevant person and the relevant person's partner, to a tax year other than the tax year applicable under paragraph (a)—the other tax year.

Breadwinner

1070-D3(1) Subject to any determination made under subpoint (2) or (3), for the purposes of the application of this Module to a relevant person, the **breadwinner** is:

- (a) if:
 - (i) the relevant person is not a member of a couple; or
 - (ii) the taxable income for the relevant tax year of the relevant person is equal to or greater than the taxable

- income for the relevant tax year of the relevant person's partner;
the relevant person; or
- (b) if the taxable income for the relevant tax year of the relevant person is less than the taxable income for the relevant tax year of the relevant person's partner—the relevant person's partner.
- (2) If:
- (a) apart from this subpoint, the breadwinner would be the relevant person; and
- (b) the Secretary is satisfied that, if the breadwinner were the relevant person's partner, the relevant person's fortnightly rate of family tax payment would be greater than it would be if the breadwinner were the relevant person;
- the Secretary may determine that the breadwinner is the relevant person's partner.
- (3) If:
- (a) apart from this subpoint, the breadwinner would be the relevant person's partner; and
- (b) the Secretary is satisfied that, if the breadwinner were the relevant person, the relevant person's fortnightly rate of family tax payment would be greater than it would be if the breadwinner were the relevant person's partner;
- the Secretary may determine that the breadwinner is the relevant person.

People to whom breadwinner's income test applies

- 1070-D4 The breadwinner's income test applies to a breadwinner other than a breadwinner who, or whose partner, is qualified for family tax payment under subsection 900AD(1), (2) or (3).

Application of test

- 1070-D5 The breadwinner's income test is satisfied in relation to a relevant person if the breadwinner's taxable income for the appropriate financial year is less than the breadwinner's income ceiling.

Taxable income

- 1070-D6 The ***breadwinner's taxable income*** for the appropriate financial year is the amount that is the taxable income of the person who is the breadwinner, as determined for the purposes of Module C, for that year.

Breadwinner's income ceiling

- 1070-D7 The ***breadwinner's income ceiling*** is worked out using Table D. The breadwinner's income ceiling is the basic ceiling amount in column 1 plus an additional amount in column 2 for each FTP child (after the first) of the relevant person:

Table D	
Breadwinner's income ceiling	
Column 1	Column 2
basic ceiling amount	additional amount for each FTP child (after the first)
\$65,000	\$3,000

Note: For ***FTP child*** see section 6AA.

Module E—Spouse income test*Definitions*

- 1070-E1 In this Module:

breadwinner's partner means the partner of the person who is the breadwinner for the purposes of Module D.

ordinary income does not include payments under a prescribed educational scheme.

relevant person means the person whose rate of family tax payment for a financial year is being calculated.

People to whom the spouse income test applies

- 1070-E2 The spouse income test applies to a breadwinner's partner other than a breadwinner's partner who is receiving a non-benefit parenting allowance.

Application of test

- 1070-E3 The spouse income test is satisfied in relation to a relevant person if the fortnightly rate of the ordinary income of the breadwinner's partner for the appropriate financial year does not exceed the income ceiling of the breadwinner's partner.

Note: For ***ordinary income*** see subsection 8(1) and point 1070-E1.

Ordinary income of breadwinner's partner

1070-E4 The *fortnightly rate of the ordinary income of the breadwinner's partner* for a financial year is the amount obtained using the formula:

$$\frac{\text{annual ordinary income}}{26}$$

where:

annual ordinary income means the annual amount of the ordinary income of the breadwinner's partner.

Note: For *ordinary income* see subsection 8(1) and point 1070-E1.

Income ceiling of the breadwinner's partner

1070-E5 The *income ceiling of the breadwinner's partner* is the amount per fortnight worked out under the Method statement in Table E.

Table E

Income ceiling of breadwinner's partner

Method statement

- Step 1.* Work out the current maximum basic component of parenting allowance (see point 1068A-B6).
- Step 2.* Reduce the amount obtained under Step 1 by \$40.
- Step 3.* Take the amount obtained under Step 2 and divide it by 0.7. If the resulting amount includes a fraction of a cent, round off the amount to the next highest cent.
- Step 4.* Add:
- (a) the amount obtained under Step 3; and
 - (b) \$140.

The result is the *income ceiling of the breadwinner's partner*.

Module F—Shared care of child

Sharing family tax payment (determination under subsection 900AZI(1))

1070-F1(1) If:

- (a) 2 persons who are not members of the same couple are each qualified for family tax payment for the same FTP child; and

(b) the Secretary has made a declaration under subsection 900AZI(1) in respect of family tax payment payable for the child; and

(c) the declaration states the percentage of family tax payment for the child that a person is to receive;

the following provisions have effect in relation to the person in respect of the child.

(2) The person's fortnightly Part A rate of family tax payment for the child for the financial year is the stated percentage of the rate that would otherwise apply for the child.

(3) Subject to subpoints (4) and (5), if the child is under the age of 5 years, the person's fortnightly Part B rate of family tax payment for the financial year is the stated percentage of the rate that would otherwise apply.

(4) If:

(a) the person has another FTP child, or other FTP children, under the age of 5 years; and

(b) the person's fortnightly Part B rate of family tax payment for the financial year is not reduced by an application of subpoint (3) in respect of the other child or at least one of the other children;

the person's fortnightly Part B rate of family tax payment is not reduced under subpoint (3).

(5) However, if:

(a) the person has 2 or more FTP children under the age of 5 years; and

(b) the person does not have the actual care of any of the children all the time;

the person's fortnightly Part B rate of family tax payment is the maximum care percentage of the rate that would otherwise apply.

(6) In subpoint (5):

maximum care percentage means the greatest percentage of the time during which the person has the actual care of any of the children.

Note: For FTP child see section 6AA.

2 people who are not members of the same couple qualify for family tax payment for same child (no determination under subsection 900AZI(1))

1070-F2(1) If:

- (a) 2 persons who are not members of the same couple are each qualified for family tax payment for the same FTP child; and
- (b) the Secretary has not made a declaration under subsection 900AZI(1) in respect of family tax payment payable for the child; and
- (c) the rate of family tax payment of one of the persons:
 - (i) includes a fortnightly Part A rate of family tax payment for the child; or
 - (ii) includes a fortnightly Part B rate of family tax payment that, if the child were not an FTP child of the person, would not have been included;

the following provisions have effect in respect of the fortnightly rate of family tax payment of the other person.

- (2) If subparagraph (1)(c)(i) applies, the other person's fortnightly rate of family tax payment is not to include a Part A rate of family tax payment for the child.
- (3) If subparagraph (1)(c)(ii) applies, the child is not taken into account in determining whether the other person's family tax payment is to include a fortnightly Part B rate of family tax payment.

8 After subsection 1223(1C)

Insert:

(1D) If:

- (a) an amount has been paid to a person by way of a family tax payment; and
- (b) the person was not qualified for the family tax payment; and
- (c) the person's lack of qualification for the family tax payment resulted from:
 - (i) the person's not having been qualified for family payment; or
 - (ii) the person's not receiving family payment at a rate exceeding the minimum family payment rate; and

- (d) the person's lack of qualification for family payment, or the person's not receiving family payment at a rate exceeding the minimum family payment rate, as the case may be, resulted from an incorrect estimate made by the person of an income component under Module H of the Family Payment Rate Calculator at the end of section 1069;
 - (e) the incorrect estimate resulted in the person's improperly receiving family payment at a rate exceeding the minimum family payment rate; and
 - (f) at the time when the incorrect estimate was made the person did not know, and had no reason to suspect, that the estimate was incorrect; and
 - (g) the family income test referred to in Module C, and the breadwinner's income test referred to in Module D, of the Family Tax Payment Rate Calculator at the end of section 1070 would have been satisfied in relation to the person if those tests had been applicable;
- subsection (1) does not apply in relation to the payment.

9 After section 1298B

Insert:

1298C The Secretary and the Commissioner of Taxation may agree on administrative arrangements

The Secretary and the Commissioner of Taxation may agree on administrative arrangements to further the objectives of Part 2.17AA.

10 Transitional provisions—people qualified under subsection 900AD(1) or 900AD(2) of the Social Security Act

- (1) This item applies to the following people:
 - (a) a person who, at the commencement of this Act, is qualified for family tax payment under subsection 900AD(1) of the *Social Security Act 1991*;
 - (b) a person who, at the commencement of this Act, would be qualified for family tax payment under subsection 900AD(2) of the *Social Security Act 1991* if the definition of ***excluding provision*** in section 6AA of that Act did not include paragraph (a) of that definition.

- (2) Each person to whom this item applies is taken to have made, on the day on which this Act commences, a proper claim under subsection 900AR(1) of the *Social Security Act 1991* for family tax payment.
- (3) The Secretary to the Department of Social Security is taken to have duly determined under section 900AY of the *Social Security Act 1991*, on the day on which this Act commences, that each claim referred to in subitem (2) is granted.
- (4) The rate of family tax payment payable to a person to whom subitem (3) applies is to be initially worked out on the basis that:
 - (a) the person has satisfied the family income test in Module C of the Family Tax Payment Rate Calculator at the end of section 1070 of the *Social Security Act 1991*; and
 - (b) if the person has an FTP child under the age of 5 years, the breadwinner's income test in Module D of that Family Tax Payment Rate Calculator is satisfied.
- (5) This item has effect despite anything in the *Social Security Act 1991*, but nothing in subitem (4) prevents the rate of family tax payment initially worked out as provided by that subitem from being worked out again if and when Part 2.17AA of that Act so requires.

11 Transitional provision—people qualified under subsection 900AD(3) of the Social Security Act

- (1) If a person who is qualified for family tax payment under subsection 900AD(3) of the *Social Security Act 1991* makes a proper claim for the payment in accordance with Division 4 of Part 2.17AA of that Act on or before 30 June 1997, the person's provisional commencement day for the purposes of that Part is:
 - (a) subject to paragraph (b), 1 January 1997; or
 - (b) if the person first became qualified for family tax payment on a later day—the later day.
- (2) This item has effect despite anything in the *Social Security Act 1991*.

12 Transitional provision—people whose family payments are suspended

- (1) This item applies to a person:
 - (a) whose family payment was suspended at the commencement of this Act; but

- (b) who, if the family payment had not been suspended, would have been qualified, at that commencement, for family tax payment under subsection 900AD(1) or (2) of the *Social Security Act 1991*.
- (2) If, after the commencement of this Act, the person's family payment again becomes payable with effect from a day on or before 1 January 1997:
 - (a) the person is taken to have made, on the day on which the suspension ceases, a proper claim under subsection 900AR(1) of the *Social Security Act 1991* for family tax payment; and
 - (b) the Secretary to the Department of Social Security is taken to have duly determined under section 900AY of the *Social Security Act 1991*, on 1 January 1997, that the claim referred to in paragraph (a) is granted; and
 - (c) the rate of family tax payment payable to the person is to be initially worked out on the basis that:
 - (i) the person has satisfied the family income test in Module C of the Family Tax Payment Rate Calculator at the end of section 1070 of the *Social Security Act 1991*; and
 - (ii) if the person has an FTP child under the age of 5 years, the breadwinner's income test in Module D of that Family Tax Payment Rate Calculator is satisfied.
- (3) This item has effect despite anything in the *Social Security Act 1991*, but nothing in subitem (2) prevents the rate of family tax payment initially worked out as provided by paragraph (c) of that subitem from being worked out again if and when Part 2.17AA of that Act so requires.

Schedule 3—Amendment of the Taxation Administration Act 1953

1 Paragraph 8WA(1)(a)

After “202(e)”, insert “or (k)”.

2 Paragraph 8WB(1)(d)

Omit “or (j)”, substitute “, (j) or (k)”.

3 Paragraph 8WB(1)(e)

Omit “or (j)”, substitute “, (j) or (k)”.

*[Minister's second reading speech made in—
House of Representatives on 11 September 1996
Senate on 11 October 1996]*