THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FAMILY ASSISTANCE LEGISLATION AMENDMENT (PARTICIPATION REQUIREMENT) BILL 2009

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon Jenny Macklin MP)
OUTLINE

This bill introduces a participation requirement for family tax benefit (FTB) Part A children aged 16 to 20 years. Under a new FTB activity test, a young person aged 16 to 20 would not be an FTB child unless the young person has completed their final year of secondary school or equivalent level of education or is working towards achieving this through full-time study. In appropriate circumstances, an individual may undertake a specified number of hours of study per week (averaged over the period that the individual is enrolled in the course of education or study). There will be capacity to exempt a young person from the FTB activity test in prescribed circumstances.

Financial impact statement

<table>
<thead>
<tr>
<th>Financial impact</th>
<th>Expense</th>
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<tbody>
<tr>
<td>2009-10</td>
<td>$81.6m</td>
</tr>
<tr>
<td>2010-11</td>
<td>$8.7m</td>
</tr>
<tr>
<td>2011-12</td>
<td>-$7.0m</td>
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<tr>
<td>2012-13</td>
<td>-$41.4m</td>
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This financial impact includes impacts for the Department of Education, Employment and Workplace Relations in relation to youth allowance participation amendments included in the Social Security Amendment (Training Incentives) Act 2009.
NOTES ON CLAUSES

Clause 1 sets out how the Act is to be cited, that is, as the Family Assistance Legislation Amendment (Participation Requirement) Act 2009.

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

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

This explanatory memorandum uses the following abbreviations:

- A New Tax System (Family Assistance) Act 1999 is referred to as the Family Assistance Act;
- A New Tax System (Family Assistance) (Administration) Act 1999 is referred to as the Family Assistance Administration Act; and
- Social Security Act 1991 is referred to as the Social Security Act.
Schedule 1 – FTB activity test

Summary

This Schedule introduces a participation requirement for family tax benefit (FTB) Part A children aged 16 to 20 years. Under a new FTB activity test, a young person aged 16 to 20 would not be an FTB child unless the young person has completed their final year of secondary school or equivalent level of education or is working towards achieving this through full-time study. In appropriate circumstances, an individual may undertake a specified number of hours of study per week (averaged over the period that the individual is enrolled in the course of education or study). There will be capacity to exempt a young person from the FTB activity test in prescribed circumstances.

Background

On 30 April 2009, the Council of Australian Governments announced the Compact with Young Australians and a National Youth Participation Requirement. Broadly, the Compact will guarantee an education or training place for all young Australians under the age of 25 who are not in work or education. Under the National Youth Participation Requirement, participation in education, training or employment will be compulsory for all young people until they turn 17.

To support this Compact, the Australian Government has agreed to strengthen the conditions that 16 to 20 year olds without a Year 12 or equivalent qualification must meet in order to receive or attract payment of youth allowance or FTB Part A. The youth allowance changes have been made by the Social Security Amendment (Training Incentives) Act 2009.

The amendments made by Schedule 1 address the implications of strengthening payment conditions for FTB. In broad terms, the concept of FTB child is amended so that a young person aged 16 to 20 years is subject to an FTB activity test. The test is satisfied if the young person has completed Year 12 or an equivalent level of education. The test is also satisfied if the young person is undertaking full-time study in an approved course of education or study that assists or allows the young person to complete the final year of school or equivalent level of education or, in appropriate circumstances, is undertaking a specified number of hours of study in such a course.
There are already some FTB child requirements and rate calculation rules linked to participation in full-time study. For example, under subsection 22(6) of the Family Assistance Act, an individual aged 21 to 24 must be undertaking full-time study (among other things) to be an FTB child. Also, the rate calculation process for FTB Part B disregards an FTB child who has turned 16 years of age unless the child is undertaking full-time study and the calendar year in which the child turned 18 has not ended (subclause 29(3) of Schedule 1 to the Family Assistance Act refers). This requirement will remain for FTB Part B and will not be affected by the changes to the concept of FTB child.

The meaning of the concept of *undertaking full-time study* is defined in subsection 3(1) of the Family Assistance Act by reference to the Social Security Act (subsection 23(1) and section 541B). This definition will also be relevant for the new FTB activity test.

To support the new FTB activity test, amendments are also made to section 29 of the Family Assistance Administration Act to enable a claimant’s instalment entitlement determination to be varied if the person fails to provide information relevant to the new FTB activity test. The Secretary will have capacity to vary the claimant’s determination so as to establish a different rate of FTB that disregards the FTB child in respect of whom the information or document has been sought. Section 31 of the Family Assistance Administration Act will apply, without the need for amendment, to enable a claimant’s entitlement determination to be appropriately varied if a child fails to satisfy the activity test (the ‘event’ referred to in section 31). The usual review and appeals processes will apply.

The amendments made by this Schedule commence on 1 January 2010. However, the amendments will apply progressively. New claimants from 1 January 2010, including end of year lump sum / past period claimants, will be subject to the new activity test from 1 January 2010. For existing instalment customers, it will first be necessary to collect information relevant to the application of the new FTB activity test (under authority of a transitional provision), a process that is expected to occur in March 2010. If the relevant information is not provided or an FTB child is found not to be satisfying the FTB activity test, then this will affect a claimant’s entitlement to FTB by instalment from 1 May 2010. The amendments will apply to payment of FTB for a past period that falls on or after 1 January 2010.

**Explanation of the changes**

**Part 1 – Amendments**

**Amendments to the Family Assistance Act**

**Items 1 to 3** insert definitions into subsection 3(1) of the Family Assistance Act. The newly defined terms and concepts are relevant for the purposes of the FTB activity test set out in new section 17B (inserted by item 4).
An approved course of education or study has the meaning given by subsection 541B(5) of the Social Security Act for the purposes of paragraph (1)(c) of that section, that is, a course determined under section 5D of the Student Assistance Act 1973 to be a secondary or tertiary course for the purposes of that Act.

An individual is exempt from the activity test in the circumstances mentioned in new subsection 17B(2).

An individual satisfies the activity test in the circumstances mentioned in new subsection 17B(1).

Item 4 outlines the new FTB activity test.

An individual satisfies the FTB activity test if the individual has completed their final year of secondary school or an equivalent level of education.

An individual can also satisfy the FTB activity test by undertaking full-time study (as defined in subsection 3(1) of the Family Assistance Act) in an approved course of education or study that, in the Secretary's opinion, assists or allows the individual to complete their final year of secondary school or an equivalent level of education.

These rules are in new subsection 17B(1).

The Secretary will have the capacity to set guidelines, by legislative instrument, for the exercise of the Secretary's power to determine that an approved course of education or study would assist or allow a person to complete the final year of secondary school or an equivalent level of education (new subsection 17B(4) refers). New subsection 17B(5) requires the Secretary to have regard to the guidelines in making such a determination.

New subsection 17B(3) provides some flexibility, where an individual's circumstances warrant, for the Secretary to determine a number of hours of study per week for an individual, averaged over the period that the individual is enrolled in the course, which would then become that individual's normal amount of full-time study for the purposes of the definition.

For example, where a child has almost completed their Year 12 or equivalent qualification, but is undertaking a final unit, it would be appropriate for the Secretary to determine this reduced number of hours as meeting the definition of full-time study for FTB purposes.

New subsection 17B(2) sets out the situations in which an individual is exempt from the activity test. These are if:

- there is no locally accessible approved course of education or study (including any such course available by distance education);
• where there is such a course, there is no place available, the person is not qualified to undertake the course, or the person lacks capacity to undertake the course due to physical, psychiatric, intellectual or learning disability; or

• there are, in the Secretary’s opinion, special circumstances that make it unreasonable for the person to undertake such a course.

It is not uncommon in the family assistance law for certain discretions to be exercised in special circumstances. Generally, special circumstances are interpreted by Courts and tribunals as those that are unusual, uncommon or exceptional, and it is difficult for the legislation to define exhaustively the range of circumstances that might be covered under this description.

New subsection 17B(4) provides authority for the Secretary to set guidelines, by legislative instrument, for the exercise of the Secretary’s power to determine that there are special circumstances that make it unreasonable for a person to undertake an approved course of education or study. New subsection 17B(5) requires the Secretary to have regard to the guidelines in making such a determination. Otherwise, policy guidelines will assist in this regard. The discretion would be exercised by an appropriate decision maker with delegated authority, having regard to relevant guidelines and policy. The usual review and appeals processes would apply in relation to these decisions.

Item 5 repeals the FTB child categories in subsections 22(2) to (5) and reworks these provisions to enable an FTB activity test to apply only to individuals who are aged 16 to 20. The legal responsibility requirements are also reworked into a single provision (new subsection 22(5)), which is then cross-referenced as appropriate. The latter is a change in form, not substance.

New subsection 22(2) covers individuals aged under 16. There is no substantive change for this category of FTB child. New subsection 22(3) covers individuals aged 16 and 17 and incorporates the substance of the existing rules plus the new requirement for the individual to satisfy or be exempt from the FTB activity test. New subsection 22(4) covers 18 to 20 year olds and also incorporates the substance of the existing rules plus the new requirement for the individual to satisfy or be exempt from the FTB activity test.

Items 6 to 9 amend various provisions as a consequence of the restructure of the FTB child categories in section 22 of the Family Assistance Act. These changes are not substantive in effect.
Section 34 of the Family Assistance Act sets out the circumstances in which an approved care organisation is eligible for FTB in respect of an individual (young person). Under the current rules, the individual must be aged under 21 or aged under 25 and undertaking full-time study and meet other prescribed requirements. Item 10 amends subsection 34(1) so that an individual aged 16 to 20 must satisfy or be exempt from the FTB activity test. The rules for individuals aged under 16 and individuals aged 21 to 24 are unchanged.

Amendments to the Family Assistance Administration Act

Section 29 of the Family Assistance Administration Act applies where the claimant (or their partner) is required, under Division 1 of Part 6, to provide information or produce a document relevant to the claimant’s eligibility for, or rate of, FTB, and there is a refusal or failure to comply with the requirement.

In these circumstances, the Secretary can vary the claimant’s instalment entitlement determination with the effect that the claimant is not entitled to payment of FTB for any day after the end of the last instalment period before the variation decision is made or a later day determined by the Secretary. The effect of the variation under section 29 is different where the required information or documents relate to eligibility for, or rate of, rent assistance, in which case the claimant’s entitlement determination is varied to exclude rent assistance from their rate of FTB.

In either scenario, if the claimant subsequently gives the information or produces the document by the end of the next income year, then the Secretary must undo the effect of the variation (and reassess eligibility or rate having regard to the new information).

Item 11 amends section 29 to take account of the introduction of the new FTB activity test. Under new subsection 29(2A), if the information or documents required to be provided relate to whether a child satisfies or is exempt from the new FTB activity test and the claimant fails to comply with the requirement, then the Secretary will have capacity to vary the claimant’s instalment entitlement determination, disregarding the FTB child in respect of whom the information or document has been sought.

The variation would take effect from the day after the end of the last instalment period before the variation decision is made or a later day specified by the Secretary. As with other variations under section 29 of the Family Assistance Administration Act, if the claimant subsequently gives the information or produces the document by the end of the next income year, then the Secretary must undo the effect of the variation. However, if the information provided indicates that the relevant child is not meeting the new FTB participation requirement, then relevant action will need to be taken to vary the claimant’s entitlement determination under section 31 of the Family Assistance Administration Act. The event referred to in section 31 would be the failure of an FTB child to meet the new FTB participation requirement. The variation would take effect from the date of the event.
The usual review and appeals processes would apply in relation to these decisions.

**Item 12** makes a consequential amendment to subsection 29(3).

**Part 2 - Application and transitional**

**Item 13** sets out the application rules for the amendments made by Part 1 of Schedule 1.

While these amendments commence on 1 January 2010, they will apply progressively.

The amendments will apply from 1 January 2010 in relation to new claims for FTB by instalment made on or after that date. The relevant questions relating to the new FTB activity test will be asked as part of the claim process and the claim will then be determined and the rate of FTB calculated on the basis of the information provided.

For existing instalment customers, it will first be necessary to collect information relevant to the application of the new FTB activity test. This initial data collection will occur under authority of **item 14**. **Item 14** enables the Secretary to require the provision of information or production of a document during the transition period (1 January 2010 to 30 April 2010) that may be relevant for the purposes of the new FTB activity test, as if the requirement were made under Division 1 of Part 6 of the Family Assistance Administration Act. This process is expected to occur in March 2010.

If the relevant information is not provided or an FTB child is found not to be satisfying the FTB activity test, then this will affect a claimant’s entitlement to FTB by instalment from 1 May 2010.

This transitional provision is required because the amendments will not apply until 1 May 2010 to existing instalment customers. After 1 May 2010, Division 1 of Part 6 will provide authority for the Secretary to require the provision of information or production of documents relevant to the new FTB activity test, which potentially affects eligibility for, and rate of, FTB.

The amendments will apply to payment of FTB for a past period that falls on or after 1 January 2010. As with new claims for FTB by instalment after 1 January 2010, the relevant questions relating to the new FTB activity test will be asked as part of the claim process for past period claims and the claims will then be determined and rate of FTB calculated on the basis of the information provided.