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**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

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**A NEW TAX SYSTEM (FAMILY ASSISTANCE) BILL 1999**

**A NEW TAX SYSTEM (FAMILY ASSISTANCE) (CONSEQUENTIAL AND  
RELATED MEASURES) BILL (NO 1) 1999**

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**EXPLANATORY MEMORANDUM**

**(Circulated by authority of the Minister for Family and Community Services,  
Senator the Hon Jocelyn Newman)**

## A NEW TAX SYSTEM (FAMILY ASSISTANCE) BILL 1999

### A NEW TAX SYSTEM (FAMILY ASSISTANCE) (CONSEQUENTIAL AND RELATED MEASURES) BILL (NO 1) 1999

#### OUTLINE AND FINANCIAL IMPACT STATEMENT

##### *Assistance for families*

As part of the Government's plan for a new tax system, the structure and administration of family assistance is being simplified with effect from 1 July 2000.

Twelve forms of assistance, currently available under the tax and social security systems, will be reduced to three.

The existing forms of assistance available to families are family allowance (including minimum family allowance and guardian allowance), family tax payment Parts A and B, family tax assistance Parts A and B, basic parenting payment, dependent spouse rebate (with children), sole parent rebate, childcare cash rebate and child care assistance. These payments are repealed by the A New Tax System (Family Assistance) (Consequential and Related Measures) Bill (No. 1) 1999.

The legislation involved in the repeal of these payments is the *Child Care Act 1972*, the *Child Care Payments Act 1997*, the *Child Care Payments (Consequential Amendments and Transitional Provisions) Act 1997*, the *Childcare Rebate Act 1993*, the *Social Security Act 1991*, *Income Tax Assessment Act 1936*, the *Income Tax Rates Act 1986* and the *Medicare Levy Act 1986*.

Under the new regime, the existing forms of family assistance will be replaced by family tax benefit Part A, family tax benefit Part B and child care benefit. The A New Tax System (Family Assistance) Bill 1999 sets out the eligibility and rate provisions relevant to these new payment types.

As part of the restructuring of family payments, maternity allowance and maternity immunisation allowance are also moved (with minor policy changes) from the *Social Security Act 1991* into the A New Tax System (Family Assistance) Bill 1999. In this way, all family related payments are located in the one Act.

The financial impact of the Government's family assistance package is:

2000-2001	\$2.301b (program costs)
2001-2002	\$2.444b (program costs)
2002-2003	\$2.589b (program costs)



### ***Fringe Benefits Reforms***

The A New Tax System (Family Assistance) (Consequential and Related Measures) Bill (No.1) 1999 amends the ***Social Security Act 1991*** to ensure that, for the purposes of the parental means test for youth allowance, the non-grossed up value of a person's fringe benefits (as that term is used in the ***Fringe Benefits Tax Assessment Act 1986***) will be used in determining whether youth allowance is payable. This measure, which commences on 1 January 2001, is part of the Government's Fringe Benefits reforms.

The financial impact of the measure is negligible.

These Fringe Benefits reforms have also been incorporated into the A New Tax System (Family Assistance) Bill 1999 so that they also apply to family tax benefit and child care benefit.

### ***Parenting payment ordinary income test taper reforms***

The A New Tax System (Family Assistance) (Consequential and Related Measures) Bill (No.1) 1999 amends the ***Social Security Act 1991*** in order to extend the income range over which the 50 per cent income taper applies to recipients of parenting payment (partnered). The measure is designed to increase financial support to working families with dependents earning low levels of income.

The financial impact of the measure is:

2000-2001	\$10m (program costs)
2001-2002	\$10m (program costs)
2002-2003	\$10m (program costs)

# **A NEW TAX SYSTEM (FAMILY ASSISTANCE) BILL 1999**

## **Part 1 - Preliminary**

**Clause 1** of the A New Tax System (Family Assistance) Bill 1999 (the Family Assistance Bill) sets out how the Act is to be cited.

**Clause 2** provides for the commencement of the Act. The Act commences after specified goods and services tax legislation has commenced (ie, 1 July 2000).

## **Part 2 – Interpretation**

**Division 1 of Part 2** defines the terms used in the Bill. The definitions in **subsection 3(1)** will be explained in the context in which they appear in the eligibility or rate provisions in the Bill. **Subsection 3(2)** provides that the terms used in this Act that are defined in the *A New Tax System (Family Assistance) (Administration) Act 1999* have the same meaning as in that Act.

**Division 2 of Part 2** sets out the immunisation requirements that must be met before certain individuals are eligible for child care benefit and maternity immunisation allowance. These immunisation requirements will be explained in the context in which they appear in the eligibility provisions.

**Division 3 of Part 2** sets out other interpretative provisions that are relevant to child care benefit and the rate calculation process for family tax benefit. Again, these provisions will be explained in the context in which they appear in those provisions.

**Division 4 of Part 2** provides for the approval, by the Secretary, of organisations providing residential care services to young people and allows for the revocation of such approval. In some circumstances an “approved care organisation” can be eligible for family tax benefit for a child. These circumstances are set out in the eligibility provisions for family tax benefit and will be explained further in that context.

## **Part 3 - Eligibility for family assistance**

### **Division 1 - Eligibility for family tax benefit**

#### **Subdivision A - Eligibility of individuals for family tax benefit in normal circumstances**

**Subdivision A** sets out the rules that apply to determine an individual's eligibility for family tax benefit (FTB).

The eligibility criteria applicable to an individual are listed in **section 21**.

First, an individual must have at least one FTB child. The concept of an “FTB child” is discussed in detail below.

Second, the individual must be an Australian resident. An Australian resident is defined in **section 3** as having the same meaning as in the Social Security Act, ie, a person who resides in Australia and is one of the following:

- an Australian citizen;
- the holder of a permanent visa;
- the holder of a special category visa who is likely to remain permanently in Australia;
- the holder of a special purpose visa who is likely to remain permanently in Australia.

For the purposes of this definition, the terms “holder”, “permanent visa”, “special category visa” and “special purpose visa” have the same meaning as in the *Migration Act 1958*.

Third, the rate of FTB for the individual, worked out under **Division 1 of Part 4** must be greater than nil. **Division 1 of Part 4** provides, among other things, that an individual's rate of FTB is to be calculated in accordance with the rate calculator in **Schedule 1**. There will be situations where the rate worked out under **Schedule 1** will be nil. An example is where a family's income equals or exceeds the relevant income cut-out applicable under the FTB income test. In nil rate situations, the individual concerned will not be eligible for FTB.

Fourth, there are other provisions in **subdivision A** that expressly exclude certain individuals from eligibility for FTB. These provisions are which are explained more fully below.

## ***Who is an FTB child***

**Section 22** sets out the situations in which an individual is an "FTB child" of another individual (the "adult").

### *Individual aged under 18 - subsections 22(2) to (4)*

An individual who is under 18 years of age is an FTB child of an adult in the following situations:

First, an individual is an FTB child of an adult where the adult is legally responsible (either solely or jointly with someone else) for the day-to-day care, welfare and development of the individual and the individual is in the adult's care.

This scenario covers adults who, by virtue of being parents, have legal responsibility for a child as well as adults who have been given sole or joint legal responsibility for a child by a court, or have agreed upon legal responsibility for a child and registered the agreement with a court.

Where two adults who are members of the same couple have joint legal responsibility for a child and the child lives with the adults, then the child can be an FTB child of both parents. In this situation, it is arguable that the child is in the care of both parents. However, other provisions (**section 26** refers) would operate to ensure that only one member of the couple could be eligible for FTB.

Similarly, where two adults are not members of the same couple but live in the same house with the child, then the child can be an FTB child of both adults. In this situation, both adults would be eligible for FTB but the rate of FTB may be shared between them.

Where two adults, who are not members of the same couple and do not live together, have joint legal responsibility for the day-to-day care, welfare and development of the child, the child would be an FTB child of the adult who has actual care of the child for the period or periods of care (provided the other relevant eligibility conditions are satisfied).

It should be noted that an adult can continue to have the care of an individual for periods when the individual and the adult are temporarily not living in the same house. This can occur when, for example, an individual goes to boarding school or goes to stay with a relative or friend for the school holidays. Whether or not the care of an individual continues during a temporary physical absence will ultimately depend on the given facts.

Second, an individual is an FTB child of an adult where, under a family law order or registered parenting plan, the adult is someone with whom the individual is supposed to live or have contact and the individual is in the adult's care.

The terms "family law order" and "registered parenting plan" are defined in **section 3**.

A "family law order" means:

- a parenting order within the meaning of section 64B of the *Family Law Act 1975*;



- a family violence order within the meaning of section 60D of that Act;
- a State child order registered under section 70D of that Act; or
- an overseas child order registered under section 70G of that Act.

A "registered parenting plan" is a parenting plan registered under section 63E of the *Family Law Act 1975*.

This scenario includes the situation where an adult does not have legal responsibility for the day-to-day care, welfare and development of an individual but has contact rights and the care of the individual while exercising those rights. The intention is to enable the adult to be eligible for FTB for those periods during which the adult has the care of the individual pursuant to a family law order or registered parenting plan. Eligibility would be to the exclusion of anyone else (including the adult with legal responsibility for the individual).

Third, an individual is an FTB child of an adult where the individual is not in the care of anyone with legal responsibility and is in the adult's care.

Each of the above situations requires the individual to meet certain residence requirements, that is, to be an Australian resident (as defined in the *Social Security Act 1991*) or living with the adult.

*Individual aged 18 - subsection 22(5)*

An 18 year old can only be an FTB child of an adult until the end of the calendar year in which the individual turned 18. Otherwise, the individual must be in the adult's care and meet certain residence requirements, that is, to be an Australian resident (as defined in the Social Security Act) or living with the adult.

*When an individual is not an FTB child - subsection 22(6)*

Despite satisfying the eligibility conditions described above, an individual will not be an FTB child in the following situations.

In relation to an individual who is aged between 5 and 16, the individual cannot be an FTB child if the individual is not undertaking full-time study and the individual's adjusted taxable income for the current income year equals or exceeds the "cut-out amount".

The rule is similar for an individual aged between 16 and 19. The individual cannot be an FTB child if the individual is not undertaking full-time study or the individual's adjusted taxable income for the current income year equals or exceeds the "cut-out amount".

The concept of "undertaking full-time study" is defined in **section 3** as having the same meaning as in section 541B of the Social Security Act. In broad terms, an individual must be enrolled, or intend to enrol, in an approved course of education at an educational institution and be undertaking, or intending to undertake, at least three-quarters of the normal amount of

full-time study in respect of the course, and must be making satisfactory progress in the course.

“Adjusted taxable income” is defined in **Schedule 3**.

The “cut-out amount” is defined in subsection (7) to mean the sum of the amount specified in column 2 of item 2 of the table in **clause 30 of Schedule 1** divided by 30% and the amount specified in **clause 33** of that schedule. The “cut-out amount” is effectively the amount of adjusted taxable income that would result in an individual’s Part B rate of FTB being nil assuming the individual is a member of a couple whose youngest child is 5 years of age or more.

An individual cannot be an FTB child of an adult if the adult is the individual’s partner. “Partner” is defined in **section 3** as having the same meaning as in the Social Security Act.

An individual cannot be an FTB child of an adult if the individual or someone on behalf of the individual is receiving a social security pension or benefit, payments under a Labour Market Program or payments under a prescribed educational scheme. This provision prevents individuals from “double dipping”, that is, attracting certain social security payments (such as youth allowance) or educational payments (such as ABSTUDY) and also being an FTB child so as to enable an adult to be eligible for FTB in respect of the individual.

The terms “social security pension”, “social security benefit”, “receiving” and “prescribed educational scheme” are defined in **section 3** as having the same meaning as in the Social Security Act.

A “social security pension”, as defined in the Social Security Act, includes disability support pension, wife pension, carer payment, pension PP (single) and bereavement allowance.

The definition also includes other pensions that are not relevant in the context of **subsection 22(6)** (for example, age pension). A “social security benefit” includes youth allowance, austudy payment, newstart allowance, sickness allowance, special benefit, partner allowance, benefit PP (partnered) and others not relevant for current purposes.

A “prescribed educational scheme” means the ABSTUDY Schooling Scheme, the ABSTUDY Tertiary Scheme, a Student Financial Supplement Scheme, the Veterans' Children Education Scheme and the Post-Graduate Awards Scheme.

A person is “receiving” a social security pension or benefit from the earliest day on which the payment is payable to the person even if the first instalment of the payment is not paid until a later date. This rule prevents an individual who receives arrears of pension or benefit for a past period from being an FTB child of an adult for the period covered by the arrears payment.

In addition, “receiving” a social security pension means receiving the pension until the latest day on which it is payable to the person even if the last instalment of the pension is paid before that day. A person is “receiving” a social security benefit (other than a benefit PP (partnered)) until the latest day for which the benefit is payable to the person even if the last instalment of the benefit is not paid until a later day. A person is taken to be “receiving” a

benefit PP (partnered) until the last day on which the payment is payable to the person even if the last instalment of the benefit PP (partnered) is paid before that day.

*What happens if an FTB child ceases to be in the individual's care without the individual's consent*

**Section 23** deals with the situation where an individual is an FTB child of an adult because the adult has legal responsibility and care of a child, or has care of a child under a family law order or registered parenting plan, and an event occurs in relation to the child, without the consent of the adult, that prevents the child from being in the adult's care.

Examples of where the provision would apply are as follows:

- the child is missing for any reason (including where the child is presumed to have been abducted);
- a family law order or registered parenting plan does not exist and the child is living with another individual who is not a parent (eg the child has run away from the family home);
- a family law order or registered parenting plan is not being complied with - this could be due to action taken by a parent (eg prevention of contact or not returning a child after contact), or due to action taken by the child (eg, choosing to live with the other parent or with another individual).

If the adult then takes reasonable steps to regain care of the child (for example, reporting a missing child to the police) the child continues to be an FTB child of the adult for that part or parts of the qualifying period for which the child would have been an FTB child of the adult had the care not ceased. The adult would need to continue to meet all the relevant eligibility criteria (except for the requirement that the child is in the adult's care) in order to benefit from this provision. For example, the provision does not apply to an adult who ceases to have legal responsibility, or contact rights, in relation to the child.

If, during the qualifying period, the child would have been in the care of another individual (who has legal responsibility, or contact rights, in relation to the child) had the event not occurred, then the child continues to be an FTB child of that other individual as if the event had not occurred. Again, the individual would need to continue to meet all the relevant eligibility criteria (except for the requirement that the child is in the adult's care) in order to benefit from this provision.

The above rules provide for continuity of eligibility for FTB for the qualifying period in the prescribed situation. They apply where the "absent" child is an FTB child of one person for the qualifying period and also where there is a pattern of care in relation to the child such that the child is an FTB child of more than one individual at different times in the qualifying period.

"Qualifying period" is defined in **subsection 23(5)**. The effect of this definition is that the provision ceases to apply if:

- before the end of 14 weeks, the individual again has care of the child; or
- the maximum 14 week period has ended; or

- the child has left the care of a parent of the child and comes into the care of the other parent, and there is no family law order or registered parenting plan in relation to the child.

When the provision ceases to apply, eligibility for FTB would be based on the actual circumstances applying at that time. This would mean that payment would continue in the first scenario above, and would change to the new carer of the child in the second and third scenarios.

#### *Absences from Australia*

The absence of an FTB child from Australia has an impact on the child's status as an FTB child. Similarly, the absence from Australia of an individual will effect the individual's eligibility for FTB. The rules that deal with these matters are outlined in **section 24**.

If an FTB child is absent from Australia for more than 3 years, the child ceases to be an FTB child after the period of 3 years beginning on the first day of the child's absence. This rule also applies to a child born overseas who is an FTB child.

If an FTB child has been absent from Australia for between 26 weeks and 3 years, the child comes to Australia and then leaves less than 26 weeks later, the child is taken not to have come to Australia. This rule deems the child to continue to be absent from Australia for the purposes of the 3 year absence rule.

If a child is overseas for longer than 3 years, comes to Australia and then leaves less than 26 weeks later, then the child is not an FTB child during the subsequent absence from Australia. The child may, however, be an FTB child of an individual while the child is in Australia.

Similar rules apply to an individual who is absent from Australia. Such an individual loses eligibility for FTB after 3 years of absence. If the individual has been absent from Australia for between 26 weeks and 3 years, comes to Australia and then leaves less than 26 weeks later, the individual is taken not to have come to Australia. This rule deems the individual to continue to be absent from Australia for the purposes of the 3 year absence rule. If the individual is overseas for longer than 3 years, comes to Australia and then leaves less than 26 weeks later, then the individual is not eligible for FTB during the subsequent absence from Australia. The individual may, however, be eligible for FTB while in Australia.

The inclusion of a minimum period of return to Australia of 26 weeks as a condition for starting a new 3 year period of eligibility for an absence from Australia would prevent brief periods of return to Australia from acting as a means to circumvent the intent of the 3 year limit. Otherwise, a brief return to Australia would effectively avoid the limit on eligibility (assuming the individual was still regarded as an Australian resident while outside Australia).

An absence from Australia of an FTB child or an individual may also affect the rate of FTB. This generally applies when the absence exceeds 26 weeks. These provisions are explained further under the explanation for **Part 4, Division 1**.

#### *Eligibility of an individual (adult) for FTB*

**Section 25** deals with the situation where there is a pattern of care in relation to a child during a period such that the child is an FTB child of more than one adult during that period. If an adult claims FTB for the period or part of the period and, under the pattern of care, the

child was, or will be, in the adult's care for less than 10% of the period, then the adult is not eligible for FTB for any part of the period. Instead, the Secretary may determine that another individual who has the care of the child during the period is eligible for FTB for the period during which the adult is not eligible, assuming that the other individual has more than 10% care of the child during the period.

An example of the operation of **section 25** would be where parents are separated and one parent (parent A) has the care of the child at all times except one weekend every month when the other parent (parent B), pursuant to a contact order, has the care of the child. In this scenario, there is a pattern of care each month during which the child is an FTB child of two individuals at different times during the period. In this scenario, parent B has the care of the child for 2 days each month that is less than the 10% requirement in **section 25**. Parent B would therefore not be eligible for FTB for the child for the 2 days each month during which time the child was in his or her care. In this scenario, the Secretary would have the discretion to determine that parent A was eligible for FTB for the child for the 2 contact days of parent B.

*Only one member of a couple can be eligible for FTB*

**Section 26** deals with the situation where 2 individuals who are members of a couple are both eligible for FTB for one or more FTB children. This broad rule covers intact couples with children (ie, both parents have legal responsibility for and the care of the child/ren) and, by virtue of section 325A, blended families where members of a couple have children from another relationship and perhaps children of the current relationship.

**Section 27** operates to deem an FTB child of one member of the couple to be an FTB child of the other and vice versa where 2 individuals are members of a couple and either or both have a child from a previous relationship. The deeming rule applies for as long as the two individuals are members of that couple.

The general rule is that only one of the individuals is eligible for FTB. If there is a dispute about which member of the couple should be eligible for FTB then it would be up to the Secretary to determine which member is eligible having regard to two matters - who is the primary carer of the child or children and whether the couple have previously agreed on which member should claim eligibility for FTB for the child or children.

In the majority of cases, only one member of the couple will claim payment of FTB for the child or children in the family - **section 26** will not be an issue. Couples will have a choice as to who should be eligible for FTB for the children in the family.

**Section 28** gives certain blended families an alternative to the rule in **section 26**. The alternative in **section 28** acknowledges that there may be occasions when it is more appropriate that each member of the couple is eligible for FTB and the rate of FTB for the family unit is apportioned between the couple.

**Section 28** covers members of a couple (person A and B) where A has at least one child from a previous relationship, and at least one of the other children is a child of the relationship between A and B or a child of a previous relationship of B. In this scenario, where A and B would both be eligible for FTB for the children but for **section 26**, then the Secretary has a discretion to determine that both A and B are to be eligible for FTB for the children and the

percentage of each individual's FTB for the children. The percentage must be a multiple of 5%.

In **section 28**, a "child of a previous relationship" refers to a child who is the "immediate child" of one member of the couple but not the other. "Immediate child" is a natural or adopted child of the person or a child for whom the person has legal responsibility. A "child of the relationship of 2 individuals" is an immediate child of both members of the couple.

For the purposes of the rule in **section 28**, all the children of the blended family would be considered in working out the applicable rate of FTB for each member of the couple. Each member would then be entitled to the relevant percentage of that rate.

The above rule would not apply where either A or B had already been paid FTB for the period concerned. If, for example, A has been receiving instalments of FTB for the children of the blended family for an income year and B later claims a single payment of FTB for that period, then the rule in **section 28** would not apply to enable B to be eligible for FTB for any of the children in the blended family.

**Section 29** deals with the situation where 2 individuals (A and B) who are not members of a couple claim FTB for a past period during which A and B were members of the same couple with an FTB child or children. In this scenario, where A and B would both be eligible for FTB for the children but for **section 26**, then the Secretary has a discretion to determine that both A and B are to be eligible for FTB for the child or children and the percentage of each individual's FTB for the child or children. The percentage must be a multiple of 5%.

**Section 30** deals with the possibility of 2 or more individuals, none of whom are members of the same couple and none of whom are living together, being eligible for FTB in respect of a child at the same time. It may be arguable in some circumstances that a child is in the care of more than one individual at the same time despite the fact that the individuals do not live together. This provision makes it clear that in the scenario covered by **section 30**, only one individual can be eligible for FTB in respect of a child at any given time. The individual who is eligible is the one determined by the Secretary to be eligible having regard to the living arrangements for the child.

## **Subdivision B - Eligibility of individuals for family tax benefit where death occurs**

**Subdivision B** deals with eligibility for FTB where an FTB child dies or the eligible individual dies.

*What happens if an FTB child dies*

**Section 31** deals with the situation where an individual is eligible for FTB for an FTB child or children, an FTB child dies and, as a result of the death of the child, the individual would be entitled to a lower rate of FTB or would cease to be eligible for FTB (where the deceased child is the individual's only FTB child).

The general rule in this situation is that the individual continues to be eligible for FTB as if the child has not died for a period of 14 weeks beginning on the day that the child died.

The exception is where the calendar year in which the child would have turned 18 (if the child had not died) ends at some point within that 14 week period. Where this happens, the individual continues to be eligible for FTB until the end of the calendar year in which the child would have turned 18. This is consistent with the eligibility rule that prevents an individual from being an FTB child after the calendar year in which the individual turns 18.

If the individual has other FTB children, the 14 week deeming rule in **subsection 31(2)** (described above) applies to those other FTB children also (the rate of FTB is calculated by reference to all the FTB children of the individual). Therefore, the individual is not eligible for any other FTB children for the 14 week period other than by virtue of the deeming rule. This ensures that an individual cannot be eligible for FTB for the same FTB children under the deeming rule and normal eligibility rules.

The rules in **section 31** apply to individuals who receive FTB in fortnightly instalments and those who receive FTB as a single amount for a past period (eg, individuals who claim FTB when they lodge their tax returns for the previous income year).

**Section 32** outlines the situations in which an individual can be eligible for a single amount of FTB if an FTB child dies.

Under **subsection 32(1)**, individuals who are receiving FTB in instalments when the FTB child dies will have the option of converting their instalments of FTB in respect of the deceased child into a single amount of FTB. The individual will be able to exercise this option at any time during the 14 week period by claiming the single amount. Where this happens, the individual is eligible for a single amount of FTB worked out under **subsection 65(1)**. The method statement in **subsection 65(1)** identifies that part of the individual's rate of FTB, calculated from the "request day" (the day the individual claims the single amount), that is for the deceased child. In this way, the individual can be paid a single amount for the deceased child only.

Where the individual is eligible for a single amount in respect of a deceased child then, if the individual has other FTB children, the individual would be eligible for those other FTB children under the normal rules. The 14 week deeming rule referred to in **subsection 31(2)** would cease to apply to the individual in relation to those other FTB children from the “request day”.

Under **subsection 32(2)**, if an individual is not receiving FTB in instalments when the FTB child dies and the 14 week bereavement period extends over 2 income years, then the individual is eligible for a single amount of FTB for that part of the 14 week period that falls in the second income year. The single amount is worked out under **subsection 65(3)** by applying a modified form of the method statement in **subsection 65(1)** and on the assumption that the individual's adjusted taxable income for the period falling in the second income year is the same as the individual's adjusted taxable income in the first income year.

The rationale for the rule in **subsection 32(2)** is this. The rule is targeted at individuals who claim a single payment of FTB for the whole or part of a previous income year, at the same time as they lodge their tax return. Under this method of claiming FTB, an individual receives, in a lump sum, the individual's entitlement for the previous income year. Without the **subsection 32(2)** rule, an individual would need to claim FTB in respect of the same deceased child twice, at the end of each relevant income year. This could cause the individual unnecessary distress.

The provision avoids this outcome by dealing with the first income year under the general rule in **section 64** and then convert the individual's entitlement to FTB for the deceased child in the second income year into a single payment that can be paid at the same time as the individual's entitlement to FTB for the first income year.

Where the individual is eligible for a single amount in respect of a deceased child then, if the individual has other FTB children, the individual would be eligible for those other FTB children under the normal rules. The 14 week deeming rule referred to in **subsection 31(2)** would cease to apply to the individual in relation to those other FTB children from the first day in the second income year.

**Section 33** deals with situations where, due to the death of an eligible individual, there is an unpaid amount.

First, an individual's eligibility for an amount of FTB can be unpaid where the individual is eligible for FTB (other than in relation to the death of an FTB child) but dies before being paid the amount. This situation may arise, for example, where an individual who is a lone parent with an FTB child intends to claim FTB in a lump sum for the past period of eligibility but dies before doing so. In this scenario, the child may not be an FTB child of any other person during that period. Therefore, there would be an amount of FTB that is unpaid in relation to that period.

If another individual then claims that unpaid amount, the Secretary may make a determination that the other individual is eligible for that amount if the Secretary considers it appropriate. If the Secretary makes such a determination, no-one else is, or can become, eligible for, or entitled to be paid that amount.



Second, an individual's eligibility for an amount of FTB can be unpaid where the individual is eligible for FTB in relation to a deceased child under **section 31 or 32** but dies before being paid the amount or the individual dies at the same time as the child and would have been eligible for FTB for the deceased child had the individual not died. If another individual claims that unpaid amount, the Secretary may make a determination that the other individual is eligible for that amount if the Secretary considers it appropriate. If the Secretary makes such a determination, no-one else is, or can become, eligible for, or entitled to be paid that amount.

### **Subdivision C - Eligibility of approved care organisations for family tax benefit**

**Subdivision C** sets out the rules that apply to determine whether an approved care organisation is eligible for FTB.

An “approved care organisation” is, according to **section 3**, an organisation approved by the Secretary under **section 20**. **Section 20** provides that the Secretary may approve an organisation that co-ordinates or provides residential care services to young people in Australia as an approved care organisation. The Secretary may also, in writing, revoke such an approval.

The eligibility criteria applicable to an approved care organisation are listed in **subsection 34(1)**.

An approved care organisation is eligible for FTB in respect of an individual if:

- either the individual is under 18 or the calendar year in which the individual turned 18 has not ended; and
- the individual is a client of the organisation; and
- the individual is an Australian resident (as defined in the Social Security Act).

If an approved care organisation co-ordinates but does not provide residential services to young people, then the young people would still be clients of the approved care organisation so as to enable the approved care organisation to be eligible for FTB for them (**subsection 34(3)** refers).

However, an approved care organisation is not eligible for FTB for an individual in the situations set out in **section 35**. The rules in **section 35** are similar to those that apply in relation to an FTB child under **subsection 22(6)**.

To briefly recap - in relation to an individual who is aged between 5 and 16, an approved care organisation is not eligible for FTB in respect of the individual if the individual is not undertaking full-time study and the individual’s adjusted taxable income for the current income year equals or exceeds the “cut-out amount”.

The rule is similar for an individual aged between 16 and 19 except that the approved care organisation is not eligible if the individual is not undertaking full-time study or the individual’s adjusted taxable income for the current income year equals or exceeds the “cut-out amount” (as defined in **subsection 35(3)**).

An approved care organisation is not eligible for FTB for an individual if the individual or someone on behalf of the individual is receiving a social security pension or benefit, payments under a Labour Market Program or payments under a prescribed educational scheme. The terms “social security pension”, “social security benefit”, “receiving” and “prescribed educational scheme” are defined in **section 3** as having the same meaning as in the Social Security Act.

An approved care organisation is also not eligible for FTB for an individual if someone else is eligible for FTB in respect of the individual.

## **Division 2 - Eligibility for maternity allowance**

As part of the restructure of family assistance, maternity allowance (MAT), is being moved from the Social Security Act into **Division 2**. This transition involves only minor policy changes that are beneficial to families (ie, the addition of more generous provisions allowing MAT to be paid in relation to adopted children) and structural changes in keeping with the structure of the other payment types provided for in the Bill.

MAT is a one-off payment designed to assist families with meeting the additional costs at the time of the birth of a child, including reduced family income that may result from foregone wages.

### **Subdivision A – Eligibility of individuals for maternity allowance In normal circumstances**

**Subdivision A** deals with eligibility of individuals for MAT.

**Section 36** of the Bill outlines the situations in which an individual is eligible for MAT.

#### *Parent of a child*

A parent is eligible for MAT if the parent is also eligible for family tax benefit (FTB) consisting of a Part A rate at any time within 13 weeks of the date of the child's birth.

#### *Child entrusted to care of individual*

An individual entrusted with the care of a child is eligible for MAT providing the individual assumes care of the child within 13 weeks of the child's date of birth and is likely to have the care of the child for more than 13 weeks and the individual is eligible for FTB for the child consisting of a Part A rate at any time within 13 of the date of the child's birth.

#### *Stillborn child*

MAT is available in relation to a stillborn child. A "stillborn child" is defined in **new section 3** as meaning a child who weighs at least 400 grams at delivery or whose period of gestation was at least 20 weeks and who has not breathed and whose heart has not beaten since delivery. If an individual would have been eligible for FTB consisting of a Part A rate at any time within 13 of the date of the child's birth (assuming the child had not been stillborn) then that individual is eligible for MAT for the child.

### *Adoption*

An individual can also be eligible for MAT for a child who has been entrusted into the individual's care by an authorised party as part of the adoption process. The individual in this situation is eligible for MAT if the child is less than 26 weeks of age when the child entrusted into the individual's care and the individual is eligible for FTB for the child consisting of a Part A rate within 13 weeks of the date the child is entrusted in the individual's care.

An "authorised party" for the purposes of this rule is defined in **section 3** as 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.

### *Approved care organisations not eligible*

An "approved care organisation" cannot be eligible MAT.

**Section 37** ensures that only one individual can be eligible for MAT for a child. That individual can only receive the lump sum MAT payment once for the same child. MAT cannot be shared between two or more individuals.

If two or more individuals are eligible for MAT for the same child, then the Secretary determines which individual is eligible.

### **Subdivision B – Eligibility for maternity allowance where death occurs**

**Subdivision B**, which comprises **section 38**, deals with the situation where an individual who is eligible for MAT dies before being paid MAT. Where this happens and another individual claims the payment and the Secretary considers that the other individual should be eligible for the payment, then the Secretary can make a determination to that effect to the exclusion of anyone else.

## **Division 3 - Eligibility for maternity immunisation allowance**

As part of the restructure of family assistance, maternity immunisation allowance (MIA), is being moved from the Social Security Act into **Division 3**. This transition involves minor changes to the nature and coverage of the payment, including alignment of the immunisation exemption requirement with CCB and an extension of the age limit for which MIA can be paid in respect of a child who dies (from 18 months to 2 years).

MIA is primarily a payment made in relation to children who, having reached 18 months of age, have received age-appropriate immunisation up to that stage (unless otherwise exempted from the requirement). Its purpose is to encourage to the greatest extent possible age-appropriate immunisation. However, MIA can also be paid in respect of stillborn children or children who die before reaching the age of 2 without reference to immunisation requirements.

Payment of MIA is in addition to payment of MAT following the birth of a child.

### **Subdivision A – Eligibility of individuals for maternity immunisation allowance in normal circumstances**

**Subdivision A**, comprising of **section 39**, outlines the three situations in which an individual is eligible for MIA.

#### *Child alive within 18 months of birth*

An individual is eligible for MIA for a child that is alive 18 months after birth provided certain requirements are met.

First, the child must meet the immunisation requirements set out in **section 6** before the child turns 2 years of age.

A child meets the immunisation requirements under **section 6** if the child has been immunised. The concept of “immunised” is defined in **section 3** as meaning immunised in accordance with a standard vaccination schedule or catch up vaccination schedule as determined by the Minister under **section 4**. The Minister’s determination under **section 4** is a disallowable instrument.

For the purposes of MIA, a child will need to have received appropriate immunisation for an 18 month old child in accordance with the schedules determined by the Minister under **section 4**.

A child also meets the immunisation requirements under **section 6** in the following situations (where the child has not been immunised):

- a recognised immunisation provider (defined in **section 3** as having the same meaning as in section 46A of the *Health Insurance Act 1973*) has certified in writing that he or she

has discussed with the adult the benefits and risks of immunising the child and the adult has a conscientious objection to the child being immunised;

- the child is an FTB child of another individual, a recognised immunisation provider has certified in writing that he or she has discussed with the other individual the benefits and risks of immunising the child, and the other individual has a conscientious objection to the child being immunised;
- a recognised immunisation provider has certified in writing that the immunisation of the child would be medically contradicted under the specifications set out in the Australian Immunisation Handbook;
- a registered medical practitioner has certified in writing that the child has recovered from the relevant disease, has developed a natural immunity and does not require immunisation;
- the child is in a class of children that the Minister has exempted by determination under **subsection 7(1)**;
- the Minister has determined under **subsection 7(2)** that the child meets the immunisation requirement.

**Section 7** allows the Minister to determine classes of children that are exempted from the immunisation requirements and classes of children that meet the immunisation requirement in specified circumstances. Any determinations made under **section 7** by the Minister are disallowable instruments.

A “conscientious objection” is further defined in **section 5** to mean a personal, philosophical, religious or medical belief involving a conviction that immunisation should not take place.

“Australian Immunisation Handbook” is defined in **section 3** as meaning the latest edition of the Australian Immunisation Handbook published by the Australian Government Publishing Service.

“Medical practitioner” is also defined in **section 3** to mean a person registered or licensed as a medical practitioner under a State or Territory law that provides for the registration or licensing of medical practitioners.

Second, one of the following conditions must be satisfied on the day the child turns 18 months or meets the immunisation requirements (the “relevant day”), whichever is the latter:

- the child is an FTB child of the individual and MAT has been paid in respect of the child;
- the individual is eligible for FTB consisting of a Part A rate for the child;
- the Secretary is satisfied that there is a pattern of care for the child for a period starting before the relevant day and ending after that day.

“Maternity allowance” is defined in **section 3** as an allowance for which an individual is eligible under **Division 2 of Part 3**.

#### *Stillborn child*

A person can be eligible for MIA for a stillborn child (as defined in **section 3**) provided the individual is also eligible for MAT for the child.

#### *Child dies within 2 years of birth*

An individual is eligible for MIA in respect of a child that is born alive but dies within 2 year after birth if any one of the following conditions is satisfied:

- the child was an FTB child of the person at the time of the child’s death and someone has been paid, or is entitled to be paid, MAT for the child;
- the individual was eligible for FTB consisting of a Part A rate for the child at the time of the child’s death
- at the time of the child’s death, there is a pattern of care for a period that started before the child died and would have ended after that day such that the child was, or would have been, an FTB child of the individual.

There is no immunisation requirement for this eligibility category.

#### *Approved care organisations*

An approved care organisation cannot be eligible for MIA.

### **Subdivision B – Eligibility for maternity immunisation allowance where death occurs**

**Subdivision B**, which comprises **section 40**, deals with the situation where an individual who is eligible for MIA dies before being paid MIA. Where this happens and another individual who would otherwise not be eligible for MIA claims the payment and the Secretary considers that the other individual should be eligible for the payment, then the Secretary can make a determination to that effect to the exclusion of anyone else.

This provision allows the deceased person’s MIA payment to be directed to another person by deeming that other person to be eligible for the payment. That other person would not be required to establish eligibility for MIA under the rules described above.

## **Division 4 – Eligibility for child care benefit**

Currently, families who use child care services to care for their children may be assisted with child care costs by way of childcare assistance and/or child care rebate.

Childcare assistance is a regime established under the *Child Care Act 1972* under which child care services approved for the purposes of that Act are eligible to be paid, by the Department of Family and Community Services, an amount of “fee relief” which the services use to reduce child care fees of an individual whose child is in care (an individual whose child is in child care is not directly eligible for payment under the *Child Care Act 1972*). Childcare assistance is available in respect of child care provided by four types of services: centre based long day care services, family day care services, outside school hours care services and occasional care services.

Child care rebate is a cash amount paid under the *Childcare Rebate Act 1992* by the Health Insurance Commission to families who have used and paid for care provided by the carers registered for the purposes of that Act.

Child care benefit (CCB) replaces both childcare assistance and child care rebate and provides a system under which an individual whose child is in child care and who meets the CCB eligibility criteria is eligible for CCB (however, in special circumstances a child care service may become eligible for CCB in its own right). CCB will be available in respect of care provided by an approved child care service, that is, any of the four existing types of child care services (centre based long day care service, family day care service, outside school hours care service and occasional care service) and in respect of care provided by registered carers, that is, by individuals registered as carers.

In respect of CCB for care provided by an approved child care service, an individual will have a choice of having the CCB paid directly to the relevant child care service as an ongoing payment (referred to in this Act as “instalment”) or paid to the individual as a lump sum after the financial year in which the care was provided has ended.

In respect of CCB for care provided by a registered carer, an individual will be able to claim and be paid CCB as a lump sum for a past period.

In special circumstances, an approved child care service may be eligible for CCB which will be paid to the service.

**Division 4** sets out the eligibility conditions for CCB. **Subdivisions A to C** deal with conditions of eligibility for CCB in respect of care provided by an approved child care service. **Subdivision A** specifies conditions that an individual has to meet to be eligible for CCB paid by instalment to an approved child care service, **Subdivision B** specifies eligibility conditions for CCB paid to an individual as a lump sum and **Subdivision C** specifies conditions under which an approved child care service is eligible for CCB. **Subdivision D** deals with conditions of eligibility for CCB in respect of care provided by a registered carer and specifies conditions that an individual has to meet to be eligible for CCB paid to the individual as a lump sum. **Subdivision E** deals with limits on eligibility. **Subdivision F** deals with eligibility for CCB after the death of an eligible individual.



## **Subdivision A – Eligibility for child care benefit by instalment for care provided by approved child care service in normal circumstances**

**Subdivision A** deals with eligibility for CCB paid by instalment for care provided by an approved child care service in normal circumstances. The reference to “normal circumstances” distinguishes this subdivision from **Subdivision C** which applies to care provided in “special circumstances”.

The structure of **Subdivision A** reflects the process that applies when an individual’s eligibility for CCB paid by instalment is considered. The process is as follows. To have the benefit of an ongoing reduction of each periodic child care fee, the individual has to claim CCB paid by instalment. The individual’s eligibility for CCB paid by instalment is then determined by a dual determination process. First, the individual’s claim is determined under **section 41** which sets out the requirements of conditional eligibility for CCB. If the individual is eligible for CCB under **section 41**, the Secretary determines that the individual is conditionally eligible for ‘CCB by instalment’. The determination of conditional eligibility is given to both the individual and the relevant child care service. On the basis of that determination, the child care service reduces the individual’s periodic child care fees for the period of care during which the determination is in force (the reduction is in anticipation of the payment of CCB amounts in respect of the child, as no CCB amounts are paid to the service as a result of this determination). If the individual subsequently meets the conditions of eligibility for CCB by instalment set out in **section 42**, the Secretary determines that the individual is entitled to have the amount of CCB, determined at this stage, paid to the service. The trigger for that determination is a statement referred to in **paragraph 42(1)(b)** which the child care service gives the Secretary at the time determined by the Secretary (usually after a calendar quarter).

The claim and determination rules are included in the forthcoming [A New Tax System \(Family Assistance\) \(Administration\) Bill 1999](#).

When an individual is conditionally eligible for CCB by instalment for care provided by approved child care service in normal circumstances

**Section 41** provides two main requirements of conditional eligibility for CCB by instalment to an approved child care service (the rules dealing with approval of child care services are included in the forthcoming [A New Tax System \(Family Assistance\) \(Administration\) Bill 1999](#)).

First, **paragraph 41(1)(a)** provides that the individual or his or her “partner” must have an “FTB child”. “Partner” is defined in **section 3** and has the same meaning as in subsection 4(1) of the *Social Security Act 1991*. An “FTB child” is defined in **sections 3** and **22**. The FTB child definition is modified by **sections 23, 24 and 27** (there are further modifications that are not relevant for CCB purposes). However, section 24 dealing with a child’s FTB status while the child is overseas has no practical application for CCB as the CCB eligibility does not arise unless care is provided in Australia. Section 27 which makes an FTB child of one member of a couple the FTB child of the other member of the couple also has no practical application for CCB because under the CCB eligibility provisions an FTB child of an individual, or the individual’s partner, makes the individual eligible for CCB. **Sections 22, 23, 24 and 27** are explained in detail in the context of the eligibility of individuals for

family tax benefit (**Subdivision A, Division 1, Part 3** of this Bill). **Subsection 41(2)** allows the Secretary to determine for the purposes of **paragraph 41(1)(a)** that, in special circumstances, a child who is not an FTB child of an individual may be taken to be an FTB child of the individual.

Second, **paragraph 41(1)(b)** requires that the individual or his or her partner must be an “Australian resident”, or must be undertaking a course of study in Australia for which he or she is receiving financial assistance from the Commonwealth. “Australian resident” is defined in **section 3**, and has the same meaning as in section 7 of the *Social Security Act 1991*. This definition is extended by **section 8**, which contains a power for the Secretary to determine that a person may be taken to be an Australian resident for the purposes of child care benefit. Under **subsection 8(2)**, the Secretary may make such a determination if the Secretary is satisfied that hardship would occur to the individual if he or she was not treated as an Australian resident, or that the individual should be treated as an Australian resident because of special circumstances. **Subsection 8(4)** contains a power for the Minister to make guidelines (which are disallowable instruments) in relation to these determinations; the Secretary must comply with these guidelines in making the determination.

**Paragraphs 41(c) and (d)** prevent the individual from being conditionally eligible, at a particular time, for CCB by instalment to an approved child care service in respect of a child, if, at the time, the approved child care service is eligible for CCB for the child under **section 45** or is conditionally eligible for CCB by instalment under **section 46**.

**Subsection 41(3)** provides that eligibility conditions specified in **subsection 41(1)** are subject to the limitations specified in **Subdivision E** in **sections 50** (No multiple eligibility for same care), **51** (Person not eligible for CCB if child in care under a welfare law or child in exempt class of children), **52** (When eligibility for CCB for care provided by an approved child care service is limited to 20 hours per week) and **54** (When eligibility for CCB for care provided by an approved child care service is limited to 50 hours per week). The limitation provisions are explained in the context of **Subdivision E**.

When an individual is eligible for child care benefit by instalment to an approved child care service

**Section 42** deals with an individual’s actual eligibility for CCB by instalment in respect of session of care provided for a child by an approved child care service. The section provides that an individual is eligible for CCB by instalment to an approved child care service if:

- during the whole or part of an “instalment period”, a determination is in force that the person is conditionally eligible for CCB by instalment (**paragraph 42(1)(a)** refers); and
- during the next instalment period, the approved child care service gives the Secretary a statement of an amount of CCB in respect of the instalment period, details of the basis on which the statement of the amount was made and any other information that the Secretary requires (**paragraph 42(1)(b)** refers); and
- the Secretary is satisfied that the amount of CCB set out in the statement was correctly calculated (**paragraph 42(1)(c)** refers).

**Subsection 42(2)** specifies that the amount referred to in **paragraph 42(1)(b)** must be the amount of CCB the individual would be entitled to be paid in respect of the “sessions of care” covered by the instalment period if the individual had instead claimed eligibility for CCB paid as a lump sum under **section 43**. [The meaning of ‘session of care’ is explained below at the end of the explanation relating to this Subdivision.] In considering whether an individual would be eligible for a lump sum CCB, the immunisation requirement of **subparagraph 43(1)(d)(ii)** applicable to CCB payable as a lump sum would not apply (**paragraph 42(2)(a)** refers). The CCB amount in question must be calculated by the service using the CCB % specified by the Secretary in the determination of the individual’s conditional eligibility under **section 41** (the CCB % is used in the calculation of a CCB rate under **Schedule 2**).

**Subsection 42(3)** provides that the sessions of care referred to in **subsection 42(2)** are the sessions of care provided during the instalment period while the determination of the individual’s conditional eligibility was in force but excluding those sessions of care to which **Subdivision E** applies to make the individual not eligible for CCB. **Subdivision E, sections 50** (No multiple eligibility for same care), **51** (Person not eligible for CCB if child in care under a welfare law or child in exempt class of children), **52** (When eligibility for CCB for care provided by an approved child care service is limited to 20 hours per week) and **54** (When eligibility for CCB for care provided by an approved child care service is limited to 50 hours per week) limit eligibility for CCB in certain situations. These provisions are explained in the context of **Subdivision E**.

**Subsection 42(4)** defines “instalment period” as a quarter beginning on 1 January, 1 April, 1 July or 1 October, or an alternative period determined by the Secretary under the power in **subsection 42(5)**.

#### *Session of care*

An individual’s, or child care service’s actual eligibility for CCB is the eligibility in respect of a session of care.

The definition of “session of care” is in **section 9**, which provides that for the Minister must determine what constitutes a session of care; the determination is a disallowable instrument.

A child’s absence from a session of care that would otherwise have been provided for the child may affect the individual’s eligibility for CCB under **Subdivisions A, and B**, or the child care service’s eligibility under **Subdivision C**, in respect of that session of care. As specified in the definition of “absence” in **section 3**, “absence” does not include any period before a child care service has started providing care to the child, or any period after the service has permanently stopped providing the care. The provisions relating to the treatment of absences are contained in **sections 10 and 11**.

**Subsection 10(1)** provides that where a child is absent from part of a session of care, the approved child care service is taken to have provided the care for the whole session.

**Subsection 10(2)** provides that where a child is absent from a whole session of care that would otherwise provided by an occasional care service, the care is taken to have been provided if the reason for the absence is a permitted circumstance under **subsection 11(1)**.

Occasional care service is one of the kinds of child care service - the rules governing the approval of child care services are included in the forthcoming A New Tax System (Family Assistance) (Administration) Bill 1999.

**Subsection 10(3)** provides that where a child is absent from a whole session of care that would otherwise have been provided (other than one provided by an occasional care service), the care is taken to have been provided if one of the following applies:

- the absence is due to the illness of the child, the individual whose eligibility for CCB is to be determined under **Subdivisions A or B**, or the individual who has the care of the child in respect of whom a child care service is eligible for CCB under **Subdivision C**, or his/her partner, or another person with whom the child lives, and a medical certificate in respect of the illness is provided to the child care service;
- the absence is due to the child's attendance at a pre-school;
- the absence is due to other arrangements being made for the child because he or she does not have to be at school on a pupil-free day;
- the absence is a permitted circumstance under **subsection 11(1)**;
- the absence occurs on a "permitted absence day" under **subsection 10(4)**.

**Subsection 10(4)** provides that where a child is absent from a session of care and the absence is not for one of the first four reasons specified in **section 10(3)(b)**, absence is permitted for up to 30 days in a calendar year; these are "permitted absence days".

**Section 11(1)** contains a power for the Minister to determine that specified circumstances are permitted circumstances for the purposes of **subsection 10(2)** (absences from sessions of care in occasional care service) or **subparagraph 10(3)(b)(iv) ()** (absences from sessions of care in other kind of child care services). The determination will be a disallowable instrument.

## **Subdivision B – Eligibility for child care benefit for past periods for care provided by approved child care service in normal circumstances**

**Subdivision B** deals with eligibility for CCB for past periods for care provided by an approved child care service in normal circumstances. The reference to ‘normal circumstances’ distinguishes this subdivision from **Subdivision C** which applies to care provided in ‘special circumstances’. This provision applies when an individual claims CCB as a lump sum. An individual will be able to lodge a claim for a lump sum payment after the end of the financial year in which sessions of care have occurred (the relevant claim provisions are included in the forthcoming A New Tax System (Family Assistance) (Administration) Bill 1999).

**Section 43** sets out the conditions of eligibility for CCB for past periods when “sessions of care” are provided by an approved child care service (the rules dealing with registration of carers are included in the forthcoming A New Tax System (Family Assistance) (Administration) Bill 1999). “Session of care” is defined in **section 9**. The explanation relating to the meaning of session of care (**section 9**) and the treatment of “absences” from sessions of care (under **section 10**) is provided under the heading “session of care” at the end of explanation concerning **Subdivision A**.

The conditions that an individual must satisfy to be eligible for CCB for past periods in these circumstances are as follows.

- The child for whom care is provided must be an “FTB child” of the individual or his or her “partner” during the session of care. An “FTB child” is defined in **sections 3** and **22**. The FTB child definition is modified by **sections 23, 24 and 27** (there are further modifications that are not relevant for CCB purposes). However, section 24 dealing with a child’s FTB status while the child is overseas has no practical application for CCB as the CCB eligibility does not arise unless care is provided in Australia. Section 27 which makes an FTB child of one member of a couple the FTB child of the other member of the couple also has no practical application for CCB because under the CCB eligibility provisions an FTB child of an individual, or the individual’s partner, makes the individual eligible for CCB. **Sections 22, 23, 24 and 27** are explained in detail in the context of the eligibility of individuals for family tax benefit (**Subdivision A, Division 1, Part 3** of this Bill). **Subsection 43(2)** contains a power for the Secretary to determine that a child may be taken to be an FTB child of an individual in special circumstances. “Partner” is also defined in **section 3** and has the same meaning as in subsection 4(1) of the *Social Security Act 1991*.
- The care must be provided in Australia by the approved child care service.
- The individual or his or her partner must incur a liability to pay for the session of care. It is not necessary for the liability to have been discharged before the claim is made.
- At the time the claim for child care benefit is determined, the individual making the claim, or his or her partner, must be an “Australian resident” or must be undertaking a course of study in Australia for which he or she is receiving financial

assistance from the Commonwealth. “Australian resident” is defined in **section 3** and is explained in more detail in this memorandum in the notes on **section 41**.

- Where the child is aged under 7 at the time the claim is determined, the child must meet the immunisation requirements. The meaning of meeting the immunisation requirements is set out in **section 6** and related provisions are contained in **sections 3** (definitions) and **4, 5** and **7**. The immunisation requirements are described in detail in this memorandum in the notes on **section 39** (maternity immunisation allowance).

The immunisation requirements do not apply in respect of a session of care that is a “school holiday session”. “School holiday session” is defined in **section 3**, and is a session of care provided by an outside school hours care service during school holidays. While the term “school holidays” takes its ordinary meaning, **section 13** contains a power for the Secretary to issue a notice to an outside school hours care service determining that specified days that are not school holidays in the State or Territory where the service is located may be taken to be school holidays. Outside school hours care service is one of the kinds of approved child care services - the rules governing the approval of child care services are included in the forthcoming A New Tax System (Family Assistance) (Administration) Bill 1999.

- An individual cannot be eligible for CCB in respect of any session of care which started before the commencement of this Act.
- An individual cannot be eligible for CCB paid as a lump sum in respect of any session of care during which the individual was conditionally eligible under **Subdivision A** for CCB by instalment.

The above provisions are subject to the limits on eligibility in **section 44** and **Subdivision E**.

**Section 44** provides that an individual cannot be eligible for CCB under **Subdivision B** if an approved child care service is eligible for CCB under **Subdivision C** (special circumstances) in respect of the same session of care. **Subsection 44(3)** provides that the Minister may make a determination that this limitation does not apply in specified circumstances; the determination will be a disallowable instrument.

**Subdivision E**, **sections 50** (No multiple eligibility for same care), **51** (Person not eligible for CCB if child in care under a welfare law or child in exempt class of children), **52** (When eligibility for CCB for care provided by an approved child care service is limited to 20 hours per week) and **54** (When eligibility for CCB for care provided by an approved child care service is limited to 50 hours per week) limit eligibility for CCB in certain situations. These provisions are explained in the context of **Subdivision E**.

**Subdivision C – Eligibility for child care benefit for care provided  
by an approved child care service in special circumstances**

*When an approved child care service is eligible for CCB for an initial 13 week period*

**Section 45** provides that an approved child care service is eligible for CCB in respect of a “session of care” provided to a child if

- at the time the care is provided, the service believes the child is at risk of serious abuse or neglect; or
- the child was in an individual’s care immediately before the care was provided and the service believes that the individual is in hardship within the meaning of **section 48**. **Section 48** provides that the Minister may specify kinds of hardship for the purposes of **paragraph 45(1)(b)** and **46(1)(b)(ii)** via a disallowable instrument. The hardship contemplated in this provision refers to the situation where, due to a particular event or a circumstance, the individual’s ability to pay normal child care fees is reduced.

“Session of care” is defined in **section 9**, which contains power for the Minister to determine what constitutes a session of care; the determination is a disallowable instrument. The explanation relating to the meaning of session of care and the treatment of “absences” from sessions of care is provided under the heading “session of care’ at the end of explanation concerning **Subdivision A**.

**Subsections 45(2) and (3)** provide that a service is not eligible for CCB under this section if:

- in the same calendar year, there have been 13 weeks (which do not have to be continuous) in which the service has provided a session of care for the child in respect of which:
  - either the service was eligible for the CCB in respect of the child, or an individual was eligible for CCB in respect of the child and the service; and
  - a certificate was in force under **section 71** in relation to the service and the child or the individual and the child (this certificate evidences a period during which the service was eligible for CCB under **section 45**, or the individual was eligible for CCB under **section 41** and received a special circumstance’ rate of CCB); or
- when the session is provided, a determination is in force that an individual is conditionally eligible under **Subdivision A** for CCB in respect of the child.

The above provisions are subject to the limitations on eligibility in **Subdivision E**.

**Subdivision E, sections 50** (No multiple eligibility for same care), **51** (Person not eligible for CCB if child in care under a welfare law or child in exempt class of children), **52** (When eligibility for CCB for care provided by an approved child care service is limited to 20 hours of care per week) and **54** (When eligibility for CCB for care provided by an approved child care service is limited to 50 hours of care per week) limit eligibility for CCB in certain situations. These provisions are explained in the context of **Subdivision E**.

*When an approved child care service is conditionally eligible for CCB by instalment*

**Sections 46 and 47** apply to determine the eligibility for CCB of a child care service for care provided to a child when the child is at risk of serious abuse or neglect, or the individual in whose care the child is is experiencing hardship of the kind specified by determination under **subsection 48(1)**, after the 13-week time limit on the eligibility for CCB in those circumstances (set out in **paragraph 45(2)(a)**) has been exhausted.

In that situation, the service would have to claim conditional eligibility for CCB and, if the requirements set out in **section 46** are met, the Secretary would determine that the service is conditionally eligible for CCB under this section for a specified period. If the service subsequently meets the conditions of eligibility for CCB by instalment set out in **section 47**, the Secretary will determine that the service is entitled to have the amount of CCB, determined at this stage, paid to the service. The trigger for that determination is a statement referred to in **paragraph 47(1)(b)** which the child care service gives the Secretary at the time determined by the Secretary (usually after a calendar quarter). The relevant claims and determination rules are included in the forthcoming A New Tax System (Family Assistance) (Administration) Bill 1999.

Under **subsection 46(1)**, in the situation to which **section 46** applies, a child care service is conditionally eligible for CCB by instalment if a determination made by the Minister under **subsection 48** does not operate to limit the service's eligibility and if the individual whose child is in care is not conditionally eligible under **section 41** for CCB by instalment in respect of the child. These provisions are subject to the limitations on eligibility in **Subdivision E**. **Subdivision E**, **sections 50** (No multiple eligibility for same care), **51** (Person not eligible for CCB if child in care under a welfare law or child in exempt class of children), **52** (When eligibility for CCB for care provided by an approved child care service is limited after 20 hours per week) and **54** (When eligibility for CCB for care provided by an approved child care service is limited after 50 hours per week) limit eligibility for CCB in certain situations. These provisions are explained in the context of **Subdivision E**.

**Subsection 48(2)** gives a power for the Minister to make a determination limiting the period of eligibility of an approved child care service to CCB under **section 46** in specified circumstances. This determination is a disallowable instrument.

*When an approved child care service is eligible for CCB by instalment*

**Section 47** deals with a child care service's actual eligibility for CCB. The section provides that a child care service is eligible for CCB by instalment if:

- during the whole or part of an "instalment period", a determination is in force that the service is conditionally eligible for CCB by instalment (**paragraph 47(1)(a)** refers); and
- during the next instalment period, the service gives the Secretary a statement stating
  - that the service provided sessions of care of a specified number of hours while the determination of conditional eligibility was in force;



- the total amount of CCB that would be applicable for all those hours under **Division 4 of Part 4** (dealing with the calculation of a CCB rate) in respect of the instalment period;
  - details of the basis on which the statement of the amount was made; and
  - any other information that the Secretary require (the statement requirements are referred to in **paragraph 47(1)(b)** refers); and
- the Secretary is satisfied that the amount of CCB set out in the statement was correctly calculated (**paragraph 47(1)(c)** refers).

**Subsection 47(2)** defines ‘instalment period’ as a quarter beginning on 1 January, 1 April, 1 July or 1 October, or an alternative period determined by the Secretary under the power in **subsection 47(3)**.

The eligibility for CCB under **section 47** is subject to the limitations on eligibility in **Subdivision E. Subdivision E, sections 50** (No multiple eligibility for same care), **51** (Person not eligible for CCB if child in care under a welfare law or child in exempt class of children), **52** (When eligibility for CCB for care provided by an approved child care service ceases after 20 hours of care per week) and **54** (When eligibility for CCB for care provided by an approved child care service ceases after 50 hours of care per week) limit eligibility for CCB in certain situations. These provisions are explained in the context of **Subdivision E**.

## **Subdivision D – Eligibility for child care benefit for care provided by registered carers**

**Section 49** sets out the conditions of eligibility for CCB when care is provided by a registered carer. This concerns cases where care is provided by an individual on a relatively informal basis, rather than the more formal situation where care is provided by an approved child care service. The conditions that an individual must satisfy to be eligible for CCB in these circumstances are as follows.

- The child for whom care is provided must be an “FTB child” of the individual or his or her “partner”. An “FTB child” is defined in **sections 3 and 22**. The FTB child definition is modified by **sections 23, 24 and 27** (there are further modifications that are not relevant for CCB purposes). However, section 24 dealing with a child’s FTB status while the child is overseas has no practical application for CCB as the CCB eligibility does not arise unless care is provided in Australia. Section 27 which makes an FTB child of one member of a couple the FTB child of the other member of the couple also has no practical application for CCB because under the CCB eligibility provisions an FTB child of an individual, or the individual’s partner, makes the individual eligible for CCB. **Sections 22, 23, 24 and 27** are explained in detail in the context of the eligibility of individuals for family tax benefit (**Subdivision A, Division 1, Part 3** of this Bill). **Subsection 49(2)** contains a power for the Secretary to determine that a child may be taken to be an FTB child of an individual in special circumstances. “Partner” is also defined in **section 3** and has the same meaning as in subsection 4(1) of the *Social Security Act 1991*.
- The care must be provided in Australia by a registered carer. The rules governing the registration of carers are contained in the forthcoming A New Tax System (Family Assistance) (Administration) Bill 1999.
- The child must not be an FTB child of the carer or the carer’s partner. The effect of this is that a person cannot be eligible for CCB for caring for his or her own child.
- The care for which benefit is being claimed must have already been paid for.
- Both the individual and his or her partner must “satisfy the work/training/study test”. This is set out in **section 14**, which states that the test is satisfied if an individual has “recognised work or work-related commitments”, or “recognised training commitments”, or “recognised study commitments”. There is a power for the Minister to determine that an individual is exempt from the requirement to satisfy the test; a determination under this section is a disallowable instrument.

“Recognised work-related commitments” are defined in **section 15**: an individual must be in paid work, or “receive” a carer payment or carer allowance under the *Social Security Act 1991*. (“Receive”, in respect of “social security payment” is defined in **section 3** as having the same meaning as in the *Social Security Act 1991* and “social security payment” is defined in **section 3** as having the same meaning as in the *Social Security Act 1991*.) There is a power for the Minister to determine that an individual in a specified class may be taken to

have recognised work or work-related commitments; a determination under this section is a disallowable instrument.

“Recognised training commitments” are defined in **section 16**, which states that an individual must be undertaking a training course for the purpose of improving his or her work skills and/or employment prospects.

“Recognised study commitments” are defined in **section 17**. An individual has recognised study commitments if he or she is receiving youth allowance under the *Social Security Act 1991* and is undertaking full-time study, or receives austudy payment or a pensioner education supplement under that Act, or receives assistance under the ABSTUDY scheme, or is undertaking any other course of education for the purposes of improving his or her work skills and/or employment prospects.

- At the time the claim for child care benefit is determined, the individual making the claim, or his or her partner, must be an “Australian resident” or must be undertaking a course of study in Australia for which he or she is receiving financial assistance from the Commonwealth. “Australian resident” is defined in **section 3** and is explained in more detail in this memorandum in the notes on **section 41**.

- Where the child is aged under 7 at the time the claim is determined, the child must “meet the immunisation requirements”; this requirement does not apply on the first occasion that the individual claims child care benefit in respect of that child. The meaning of meeting the immunisation requirements is set out in **section 6** and related provisions are contained in **sections 3** (definitions) and **4, 5 and 7**. The immunisation requirements are described in detail in this memorandum in the notes on **section 39** (maternity immunisation allowance).

- A person cannot be eligible for CCB in respect of any period of care which started before the commencement of this Act.

The above provisions are subject to the limitations on eligibility in **Subdivision E**. The relevant limitation provisions of **Subdivision E**, **sections 50** (No multiple eligibility for same care) and **51** (Person not eligible for CCB if child in care under a welfare law or child in exempt class of children) are explained in the context of **Subdivision E**.

**Section 12** in **Part 2, Division 3** of this Bill is an interpretation provision for the purposes of **section 49** dealing with eligibility for CCB for care provided by registered carers and for the purposes of **Division 4** of **Part 4** dealing with the relevant CCB rate. **Section 12** provides that if a child is absent from a period of child care that would otherwise have been provided by the registered carer, the care is taken to have been provided for the period of absence. The effect of this is that if the child does not attend the arranged child care (for example because of illness), provided that the individual is required to pay for the child care and has paid for it (and the other conditions of eligibility are satisfied), the individual may still be eligible for CCB for that care.

### **Subdivision E – Limitations on eligibility for child care benefit**

*No multiple eligibility for the same care*

**Section 50** limits an individual's eligibility that would otherwise have arisen under **Subdivision A** (eligibility for CCB by instalment), **Subdivision B** (eligibility for CCB paid as a lump sum in respect of care provided by an approved child care service) or **Subdivision D** (eligibility for CCB paid as a lump sum in respect of care provided by a registered carer).

**Section 50** provides that where more than one individual would be eligible for child care benefit in respect of a session of care provided for the same child by an approved child care service or in respect of a period of care of the same child provided by a registered carer under the subdivisions referred to above, the Secretary may determine which individual should be eligible. **Subsection 50(3)** provides that the Minister may make guidelines in relation to the determination of eligibility; the guidelines are disallowable instruments. If guidelines are made, the Secretary must make his or her determination in accordance with them.

Person not eligible for child care benefit if child in care under a welfare law or child in exempt class of children

**Section 51** provides that a person (an individual or an approved child care service) is not eligible for CCB in respect of a child who is under the care of a person under a child welfare law of a State or Territory of Australia. **Subsection 51(2)** contains a power for the Minister to determine that a specified law is taken to be a child welfare law of a State or Territory.

**Section 51** also provides that person is not eligible for child care benefit in respect of a child who is a member of a class of children specified in a determination under **subsection 51(3)**; **subsection 51(3)** contains a power for the Minister to determine that there may be no eligibility for child benefit in respect of a specified class of children.

The effect of this provision is that a child to whom this section applies will not qualify a person for CCB even if the child is the child referred to in the eligibility provisions of **Subdivision A** (eligibility for CCB by instalment), **Subdivision B** (eligibility for CCB paid as a lump sum in respect of care provided by an approved child care service), **Subdivision C** (Eligibility for CCB for care provided by an approved child care service in special circumstances) or **Subdivision D** (eligibility for CCB paid as a lump sum in respect of care provided by a registered carer).

Determinations under **section 51** are disallowable instruments.

*When eligibility for child care benefit for care provided by an approved child care service is limited to 20 hours per week*

**Section 52** provides a rule that limits the eligibility for child care benefit for care provided by an approved child care service in a week to a particular number of hours. Whether it is the service or the individual who is eligible for child care benefit, a limit of 20 hours per week applies unless one of several exceptions operates.

The Secretary stipulates in each case the hours that constitute those 20 hours, in accordance with rules set down by the Minister in the form of a disallowable instrument.

The exceptions to this rule are:

- if the responsible person (as defined - essentially, the individual who is eligible or the individual in whose care the child last was before the first session of care in the week in question) and that person's partner (if any) satisfy the work/training/study test;
- if carer allowance under section 953 of the *Social Security Act 1991* is payable to the responsible person or partner in respect of an FTB child of the person or partner, as long as the claim for that allowance was determined before the week;
- if the responsible person and partner are disabled persons (the meaning of which will be provided by a disallowable instrument under **section 53**) and the child is an FTB child of the responsible person; or
- if a determination is in force under **section 53** (other than **subsection 53(1)**).

*Determinations for the purposes of section 52*

**Section 53** provides for the various determinations that may come into force for the purposes of **section 52**. All except for that provided by **subsection (1)** (which is to define "disabled person" for the purposes of one of the exceptions covered by **section 52**) relate to further exceptions from the 20 hour per week limit rule. These further exceptions are:

- if the Secretary determines, in accordance with rules set down by the Minister in the form of a disallowable instrument, that exceptional circumstances exist that cause the child to need care for more than 20 hours per week for a specified period;
- if the Minister determines, in accordance with rules set down by the Minister in the form of a disallowable instrument, that the 20 hour limit should not apply (or should not apply as long as certain conditions are satisfied) because the service concerned is the sole provider in the area of the relevant kind of care and the service would be likely to close if the exemption were not granted;
- if the service determines, in accordance with rules set down by the Minister in the form of a disallowable instrument, that the child is at risk of serious abuse or neglect and that the child needs or needed care for more than 20 hours per week for a specified period (which period must not, when added to any one or more periods previously determined by the service under this rule in relation to the child and the same calendar year, exceed 13 weeks); or
- if the Secretary determines, in accordance with rules set down by the Minister in the form of a disallowable instrument, that the child is at risk of serious abuse or neglect (and the above 13 week period has expired) and that the child needs or needed care for more than 20 hours per week for a specified period.

Should one of the exceptions listed above apply, then the 20 hour per week limit does not apply. However, the 50 hour per week limit provided by **section 54** will generally apply instead.

*When eligibility for child care benefit for care provided by an approved child care service is limited to 50 hours per week*

**Section 54** provides a complementary rule to the 20 hour per week limit imposed by **section 52**. The section imposes a 50 hour per week limit on eligibility for child care benefit for care provided by an approved child care service in cases in which the 20 hour per week limit does not apply because of one of the exceptions mentioned above in relation to the preceding two sections.

The 50 hour per week limit is also subject to certain exceptions if a determination is in force under **section 55**.

*Determinations for the purposes of section 54*

**Section 55** provides for the Secretary to make determinations providing for exceptions to the 50 hour limit imposed by **section 54**. These exceptions are the same as for the 20 hour per week limit in relation to the child at risk and exceptional circumstances cases, including that the service makes this decision for the first 13 weeks of a child at risk case and that the Secretary makes it beyond this point (see **section 53** above for more details on this).

A further exception may be made by the Secretary if satisfied that the responsible person (also defined here as, essentially, the individual who is eligible or the individual in whose care the child last was before the first session of care in the week in question) needs or needed care for the child for more than 50 hours in the week because of work related commitments. In this respect, the Secretary must act in accordance with the rules determined by the Minister in the form of a disallowable instrument.

*Rules about the making of determinations under sections 52, 53, 54 and 55*

**Section 56** provides that determinations under **sections 52, 53, 54** and **55** must be in accordance with rules determined by the Minister for the purpose.

It also provides the power for the Minister to determine such rules and stipulates that such a determination is a disallowable instrument.

When a determination is made under one of these sections, the determination applies for the period stipulated in the determination, whether it is a period starting before or after the determination is made. Also, it should be noted that the period specified in each relevant case will be a number of complete weeks.

### **Subdivision F – Eligibility for child care benefit after death**

**Section 57** deals with eligibility for CCB amounts for which an individual is eligible but the individual has died before the amount of CCB has been paid (whether or not the claim for entitlement to be paid had been made).

Where an individual is eligible for child care benefit under **Subdivision B or D** (eligibility for past periods of care provided by an approved child care service or a registered carer, respectively), and dies before the benefit is paid, and another individual applies to have the benefit paid to him or her, the other individual is eligible for that benefit if the Secretary considers that the individual should be eligible for the amount. No other individual can then become eligible for that benefit.

## **Part 4 – Rate of Family Assistance**

This Part of the Act sets the rate of family assistance.

### **Division 1 – Family tax benefit**

This Division sets the rate of family tax benefit.

#### **Section 58 - Rate of family tax benefit**

This section provides that the rate of family tax benefit for individuals is set in accordance with the Rate Calculator in Schedule 1 – **subsection (1)**;

**Subsection (2)** provides that an approved care organisation's annual rate of family tax benefit for an individual is \$956.30 per year;

- **clause 8, Part 4 of Schedule 4** provides for transitional indexation of this amount;

**Subsection (3)** provides that the daily rate of family tax benefit is worked out by dividing the annual rate by 365 and rounding to the nearest cent (rounding 0.5 cents upwards);

**Subsection (3)** also provides that, where the amount before rounding is above NIL and below half a cent, then the amount is to be rounded upwards to 1 cent.

#### **Section 59 - Secretary may make determination where individual is FTB child of 2 people who are not members of the same couple**

In the case of an *FTB child* of 2 people who are not members of the same couple, and who are living together, this section enables the Secretary to determine the percentage of family tax benefit for the child, for the purposes of working out the rate of family tax benefit - **subsection (1)**;

- for *FTB child* see section 22;

**Subsection (2)** provides that, in addition, if the child is one of 3 or more children who were born during a multiple birth, the Secretary may specify in the determination the manner in which multiple birth allowance is to be dealt with;

In this regard **subsection (3)** provides that the Secretary may specify that the whole of the multiple birth allowance is to be paid to one of the two people involved;

- for the effect of a determination under this section on the calculation of family tax benefit rates see **clause 11, Schedule 1**, (Sharing family tax benefit) and **clause 38, Schedule 1** (Sharing multiple birth allowance);

#### **Section 60 - Sharing family tax benefit between members of a couple in a blended family**

This section provides that, if the Secretary determines under **subsection 59(1)** an individual's percentage of the family tax benefit for FTB children of the individual, the individual's annual rate of family tax benefit is the rate that would otherwise apply, multiplied by that percentage;



- for *FTB child* see **section 22**;

**Section 61 - Sharing family tax benefit between separated members of a couple for period before separation**

This section provides that, if the Secretary determines under **subsection 59(1)** an individual's percentage of the family tax benefit for and FTB child or FTB children of the individual for a period, the individual's annual rate of family tax benefit for that period is the rate that would otherwise apply, multiplied by that percentage.

**Section 62 - Effect on individual's rate of the individual's absence from Australia**

This section deals with the situation an individual is absent overseas from Australia.

**Subsection (2)** provides that an individual who is absent overseas for a continuous period of 26 weeks becomes an *absent overseas recipient*;

**Subsection (3)** provides that where an *absent overseas recipient* returns to Australia, and that individual leaves Australia again less than 26 weeks after returning to Australia, that an individual again becomes an *absent overseas recipient* during the period of that latter absence;

**Subsection (4)** provides that the family tax benefit of an *absent overseas recipient* is to be modified as set out in the Table in that subsection, as follows:

Standard Rate for Part A METHOD 1 (Clause 7, Schedule 1)	Limited to what would be the standard rate if it was worked out under METHOD 2 – see clause 26 of Schedule 1
Calculation of Part A rate – METHOD 1 (Clause 3 Schedule 1)	No rent assistance added
Part B rate (Part 4 Schedule 1)	the individual's <i>Part B rate</i> is NIL

**Section 63 - Effect on family tax benefit rate of FTB child's absence from Australia**

This section deals with the situation where an *FTB child* is absent overseas from Australia.

- for *FTB child* see **section 22**;

**Subsection (2)** provides that an *FTB child* who is absent overseas for a continuous period of 26 weeks (or who is born overseas and remains overseas for a continuous period of 26weeks) becomes an *absent overseas FTB child*;

**Subsection (3)** provides that where an *absent overseas FTB child* comes to Australia, and that person leaves Australia again less than 26 weeks after coming to Australia, that person again becomes an *absent overseas FTB child* during the period of that latter absence;

**Subsection (4)** provides that the family tax benefit payable in respect of an *absent overseas FTB child* is to be modified as set out in the Table in that subsection, as follows:

Standard Rate Clause 7, Schedule 1	the FTB child rate for the child is the <i>base FTB child rate</i> – Clause 8, Schedule 1
Part B rate Clause 30, Schedule 1	the FTB child is disregarded in assessing the individual's <i>Part B rate</i>

#### **Section 64 - Calculation of rate of FTB for death of FTB child**

**Section 64** specifies how the rate of FTB is to be worked out where **subsection 31(1)** applies. In broad terms, **subsection 31(2)** deems an individual to be eligible for FTB for 14 weeks beginning on the death of an FTB child, as if the child had not died. This deeming rule applies irrespective of whether the person is receiving FTB in instalments when the child dies or claims a single payment of FTB for a past period during which an FTB child of the person died.

The rate of FTB for the 14 week bereavement period is worked out by applying the rate calculator in **Schedule 1** as if the deceased child had not died and by having regard to the actual circumstances of any other FTB child of the individual during that period. This method of calculation ensures that if the deceased child would have had a birthday during the 14 week period but for the child's death, then the rate of FTB for which the individual is entitled would reflect that change.

#### **Section 65 - Calculation of single amount for death of FTB child**

**Section 65** outlines the rules for calculating a single amount of FTB for a deceased child. The situations in which a person can, or is to, be paid a single amount of FTB are described in **section 32**.

Where **subsection 32(1)** applies (ie, the individual was receiving instalments of FTB when the FTB child died and the individual has claimed a single amount of FTB), the method statement in **subsection 65(1)** would work as follows.

The first step is to work out the rate of FTB the individual would be entitled to be paid for the period beginning on the day the individual claimed the single amount (the request day) and ending on the last day of the 14 week period (the lump sum period). This rate is worked out by applying the rate calculator in **Schedule 1** on the assumption that:

- the deceased child had not died and was an FTB child for the lump sum period; and

- if the individual had any other FTB children on the request day, each of these children are FTB children on each day in the lump sum period, other than an excluded day; and
- if the lump sum period extends over 2 income years - the individual's adjusted taxable income for the period falling in the second income year is the same as the individual's adjusted taxable income in the first income year.

Step 2 would then apply where the individual has other FTB children on the request day.

Step 2 applies to work out the rate of FTB the individual would be entitled to be paid for each day in the same period, other than an excluded day, for the individual's other children.

A day in a lump sum period is an "excluded day" if the lump sum period starts in one calendar year and ends in the next, the child turns 18 in the first calendar year and the day occurs in the second calendar year (**subsection 65(2)** refers). This definition is consistent with the rule that an individual cannot be an FTB child if the calendar year in which the individual turns 18 has ended.

The difference between the Step 2 and Step 1 amounts is the single amount to which the individual is entitled. This amount is effectively that part of the individual's rate of FTB for the lump sum period, that is for the deceased child.

Where Step 2 does not apply (ie, the deceased child is the individual's only FTB child) then the amount in Step 1 is the single amount.

**Subsection 32(2)** applies where an individual was not receiving instalments of FTB when the FTB child died and the 14 week bereavement period covers two income years. In this situation, the single amount of FTB for the deceased child for the second of those years is worked out using a modified form of the method statement in **subsection 65(1)** and on the assumption that the individual's adjusted taxable income for the period falling in the second income year is the same as the individual's adjusted taxable income in the first income year (**subsection 65(3)** refers). The single amount is calculated as follows.

The first step is to work out the rate of FTB the individual would be entitled to be paid for the period beginning on the first day of the second income year and ending on the last day of the 14 week period (the lump sum period). This rate is worked out by applying the rate calculator in **Schedule 1** on the assumption that:

- the deceased child had not died and was an FTB child for the lump sum period; and
- if the individual had any other FTB children on the first day in the second income year, each of these children are FTB children on each day in the lump sum period.

Step 2 applies where the individual has other FTB children on the first day in the second income year. Step 2 applies to work out the rate of FTB the individual would be entitled to be paid for the same period for the individual's other children.

The difference between the Step 2 and Step 1 amounts is the single amount to which the individual is entitled. This amount is effectively that part of the individual's rate of FTB for the lump sum period, which is for the deceased child.

Where Step 2 does not apply (ie, the deceased child is the individual's only FTB child) then the amount in Step 1 is the single amount.

## **Division 2 –Maternity allowance**

**Section 66** provides that the amount of MAT in respect of a child is the greater of:

- \$780; or
- 2.4 times the amount stated in column 3 of item 1 in Table C in point 1068B-C2 in Module C of the PP(partnered) Rate Calculator in section 1068B of the Social Security Act.

The latter amount is based on the partnered rate of parenting payment, the income support payment available under the Social Security Act for the parent who remains substantially out of the workforce to care for children.

MAT is a one-off lump sum payment.

### **Division 3 –Maternity immunisation allowance**

**Section 67** provides that the amount of MIA in respect of a child is the greater of:

- \$208; or
- 0.6 times the amount stated in column 3 of item 1 in Table C in point 1068B-C2 in Module C of the PP(partnered) Rate Calculator in section 1068B of the Social Security Act.

The latter amount is based on the partnered rate of parenting payment, the income support payment available under the Social Security Act for the parent who remains substantially out of the workforce to care for children.

MIA is a one-off lump sum payment. However, the payment can be shared between two individuals if the conditions in **section 68** are satisfied.

If two or more individuals are eligible for MIA in respect of the same child, then the Secretary can determine the percentage of MIA that each individual is eligible for, such that the sum of the percentages equals 100% (**subsection 68(1)** refers).

More than one individual can be eligible for MIA in the circumstances outlined in **subsections 39(2) or (4)** of this Bill (ie, there is a pattern of care for a period that spans the day on which eligibility for MIA is determined and the child is an FTB child of more than one individual during that period).

The exception to this rule is if two individuals are eligible for MIA for the same child and the Secretary has determined each individual's percentage of FTB under **subsection 59(1)**. In this situation, each individual will be eligible to the same percentage of MIA.

## **Division 4 – Child care benefit**

### **Subdivision A – Care provided by approved child care service**

#### *Application of Subdivision to parts of sessions of care*

**Section 69** makes a rule that, in cases in which an individual is eligible for child care benefit for only a part of a session of care, this Subdivision applies to the rate for that part of the session as if references here to a full session included reference to a part of a session. This is to make it clear in the relevant provisions that references to a session of care do not override the limitations imposed by the eligibility provisions on the number of hours for which an individual may be eligible (eg, the 20 hour per week limitation that generally applies if the work/training/study test is not satisfied).

#### *Rate of child care benefit for care provided by approved child care service*

**Section 70** sets down which provisions apply to work out the rate of child care benefit in the two distinct cases of eligibility in relation to care provided by an approved child care service.

In the first case, of an individual being eligible, the child care benefit rate calculator in **Schedule 2** is the primary authority. (However, **section 71** may govern the rate calculation, rather than **Schedule 2**, in cases in which the individual is eligible and, in the service's view, then starts experiencing hardship or when the child then becomes at risk of serious abuse or neglect.) Furthermore, the rate reached through either **Schedule 2** or **section 71** is subject to a limit, imposed by **section 72**, to the amount actually charged by the service for the week concerned.

In the second case, of the service being eligible, **section 71** is the provision under which the rate is worked out. Again, **section 72** limits that rate to the amount actually charged for the week.

This section also includes a rule to make it clear that the hourly rate calculated, in either of the two cases, may be applied if necessary on a pro-rata basis to parts of hours.

#### *Rate of child care benefit in special circumstances*

**Section 71** provides the rate calculation rules in the following cases:

- when an individual is eligible for child care benefit and then starts experiencing hardship or when the child then becomes at risk of serious abuse or neglect (these two criteria being judged by the approved child care service for up to 13 weeks and by the Secretary thereafter); or
- when the service is eligible for child care benefit (this may occur if no individual is eligible for child care benefit and the service forms the view, for up to 13 weeks and the Secretary forms the view thereafter, that one of the same two criteria mentioned above applies).

The rate calculation is achieved in the first of the above cases by providing for an approved child care service to certify that a special hourly rate of child care benefit should apply, if the service is satisfied that the child is at risk of serious abuse or neglect or that the individual who is eligible for child care benefit is in hardship. Hardship in this sense is as determined by the Minister in a disallowable instrument under the eligibility provisions.

In the second of the above cases, the rate calculation is achieved by providing that the service must certify the hourly rate for sessions of care that it provides. The same measurement of hardship applies.

Whether it is the service or the individual who is eligible, the rate certified would be a special, higher than usual rate.

A rate specified in a certificate in either case will apply for a specified period. This period must be a number of complete weeks (although the number of hours per week to attract the special rate may well be less than a full week's worth), may start before or after the certificate is given and may go for no longer than 13 weeks, in conjunction with any other periods similarly specified for the child by the service.

Beyond these 13 weeks, the Secretary may similarly determine that a special, higher than usual rate should apply for the child, if satisfied that one of the same two criteria applies, whether it is the service or the individual who is eligible. The Secretary's determination must also specify the period for which the special rate is to apply, the period also being for a number of complete weeks and starting either before or after the determination is made.

Should such a special rate be certified by a service or determined by the Secretary, then that is the rate for the period specified. However, the rate is limited by **section 72** to the amount that actually was or would have been charged by the service for the week in question.

Should a service or the Secretary exercise this power, it must be exercised in accordance with rules determined by the Minister for the purpose, which determination is a disallowable instrument under the *Acts Interpretation Act 1901*.

*Weekly limit on benefit for care provided by approved child care service*

**Section 72** limits all provisions that stipulate the rate of child care benefit in relation to care provided by an approved child care service, whether it is the service or the individual who is eligible. The limit is the amount that actually was or would have been charged by the service for the week in question (and may be a total of both if the individual were eligible for part of the week and the service for the balance of the week). In this provision, a week nominally begins on a Monday.

### **Subdivision B – Care provided by registered carer**

*Rate of child care benefit for care provided by registered carer*

**Section 73** provides the rule for the rate of child care benefit for care provided by a registered carer. The hourly rate in this case is simply the amount specified in the numerator in the



formula in **clause 12 of Schedule 2**. (The amount in question is currently 40.2 cents, the minimum hourly rate in relation to care provided by an approved child care service.)

However, this rate is limited for a week to the amount specified in **section 74**.

An extra rule makes it clear that the hourly rate may be applied if necessary on a pro-rata basis to parts of hours.

*Weekly limit on benefit for care provided by registered carer*

**Section 74** provides that the limit on the total amount of child care benefit for a week in relation to care provided by a registered carer is the amount reached by multiplying by 50 the amount specified in the numerator in the formula in **clause 12 of Schedule 2**. (The amount in question is currently 40.2 cents, the minimum hourly rate in relation to care provided by an approved child care service. Accordingly, the current weekly limit in these cases is \$20.10.) In this provision, a week nominally begins on a Monday.

## **Division 5 – Indexation**

*Indexation of amounts used in rate calculations*

**Section 75** states that **Schedule 4** provides for the indexation of various amounts relevant to working out the rate of family assistance.

# Schedule 1 – Family Tax Benefit Rate Calculator

## Part 1 – Overall rate calculation process

This Part sets out in overview the rate calculation process, which is arrived at by combining the individual's **Part A** and **Part B** rates.

The individual's **higher income free area**, which is involved in the calculations, is also set out in the Table to this Part.

### The Part A rate

There are **2 methods** of calculating the Part A rate. The method used depends on whether the individual's income exceeds the *higher income free area*.

METHOD 1 is used if the individual's income does **not** exceed the higher income free area. METHOD 1 is contained in **Part 2 of Schedule 1**.

METHOD 2 is used if the individual's income **exceeds** the higher income free area. Part 3 of Schedule 1 contains METHOD 2.

- the *higher income free area* is the basic amount of \$73,000 plus \$3,000 for each FTB child of the individual (after the first) - **clause 2 of Schedule 1**;
- for *FTB child* see section 22;

### *What are the differences between METHOD 1 and METHOD 2?*

METHOD 2 does not include a component for rent assistance, and does not require any reduction in respect of the MAINTENANCE INCOME TEST

### The Part B rate

The Part B rate is calculated using **Part 4 of Schedule 1**.

### **Clause 1 - Overall rate calculation process**

This clause sets out the process by which an individual's family tax benefit is calculated, as set out above.

### **Clause 2 – Higher income free area**

This clause provides that an individual's **higher income free area** is the basic amount of \$73,000 plus \$3,000 for each FTB child of the individual (after the first).

## Part 2 – Part A rate (Method 1)

This Part sets out the means of calculating an individual's Part A rate of family tax benefit using METHOD 1.

METHOD 1 is used if the individual's income does **not** exceed the *higher income free area*.

### Division 1 – Overall rate calculation process

#### Clause 3 - Method of calculating Part A rate

This section sets out the Method Statement for of calculating an individual's Part A rate of family tax benefit using METHOD 1.

In overall terms, METHOD 1 calculates an individual's family tax benefit as follows:

<b>ADD:</b>		the individual's STANDARD RATE	(Division 2 of this Part)
	plus	the individual's LARGE FAMILY SUPPLEMENT (if any)	(Division 1 of Part 5 of this Schedule)
	plus	the individual's MULTIPLE BIRTH ALLOWANCE (if any)	(Division 2 of Part 5 of this Schedule)
	plus	the individual's RENT ASSISTANCE (if any)	(Division 3 of this Part)
	=	<b>MAXIMUM RATE</b>	
<b>SUBTRACT from the Maximum Rate:</b>	minus	any amount required to be deducted by reason of the application of the <b>Income Test</b>	(Division 4 of this Part)
	minus	any amount required to be deducted on account of <b>Maintenance Income</b>	(Division 5 of this Part)
	=	<b>INCOME AND MAINTENANCE TESTED RATE</b>	

**COMPARE:** the **Income And Maintenance Test Rate** with the **Base Rate**; the individual's Part A rate is the greater of the two.

#### Clause 4 - Base rate

This clause provides that the individual's base rate is the rate that would apply if the rate were worked out under METHOD 2 (below – **Part 3 of the Schedule**).

### **Clause 5 - Family tax benefit advance to individual**

This clause provides for the reduction in the rate of family tax benefit to recover an advance of family tax benefit paid to the individual.

### **Clause 6 - Family tax benefit advance to partner**

In the case of an individual is a member of a couple, the clause provides for the reduction in the rate of family tax benefit to recover an advance of family tax benefit paid to an individual's partner, in circumstances where the partner dies or has his/her family tax benefit cancelled.

## **Division 2 – Standard rate**

This Division sets out how to calculate the STANDARD RATE for the purpose of calculating an individual's **Part A Rate** using **Method 1** (ie see the overall summary of the calculation in Division 1 of this Part).

- the rate in clause 1 of the Table (FTB child who is under 13 years of age) is adjusted annually so that the family tax benefit for children covered by this clause does not fall below 16.6% of the combined pensioner couple maximum basic rate (**clause 7 of Schedule 4**);
- the rate in clause 2 of the Table (FTB child who has reached 13, but is under 16, years of age) is adjusted annually so that the family tax benefit for children covered by this clause does not fall below 21.6% of the combined pensioner couple maximum basic rate (**clause 7 of Schedule 4**);
- if a determination has been made under **Division 1 of Part 4** of the Act applying a sharing percentage to an individual's FTB child or children, the part of the individual's family tax benefit rate that applies to that child or each of those children may be reduced;
- for *FTB child* see **section 22**.

### **Clause 7 - Standard rate**

The Table in this clause sets out an individual's standard rate of family tax benefit. In accordance with the Table, the individual's entitlement in respect of each child is worked out according to the age of each child.

The total is the individual's STANDARD RATE for the purposes of this Part unless the following clauses apply.

### **Clause 8 - Base FTB child rate**

### **Clause 9 - FTB child rate – recipient of other periodic payments**

### **Clause 10 - Effect of maintenance rights**

**Clauses 8, 9 and 10** provide that the FTB Child rate is the *base FTB child rate* where:

- the individual or the individual's partner are receiving a periodic payment under a law of the Commonwealth, and that payment contains a component in relation to the *FTB child*;

- the individual or the individual’s partner are entitled to apply for maintenance in respect of the child, the Secretary considers it reasonable to do so, but neither has taken that action;
- for *FTB child* see section 22;

**Clause 11 - Sharing family tax benefit (determination under subsection 59(1))**

This clause provides for a reduction in the standard rate where the Secretary has determined that the care of the child is shared. In this care, the rate is reduced according to the percentage of the care shared by the individual.

**Division 3 – Rent assistance**

This Division sets out how to calculate an individual’s RENT ASSISTANCE for the purpose of calculating an individual’s **Part A Rate** using **Method 1** (ie see the overall summary of the calculation in **Division 1 of this Part**).

**Clause 12 - Rent assistance children**

This clause provides that rent assistance is only available in respect of an *FTB child* where the rate of family tax benefit payable in respect of that child exceeds *the base FTB child rate*.

- the *base FTB child rate* is the rate that would be payable in respect of the child if the benefit were calculated under METHOD 2;
- for *FTB child* see section 22.

**Clause 13 - Eligibility for rent assistance**

This clause sets out the eligibility conditions for receiving rent assistance. To be eligible the individual must have at least one rent assistance child, and satisfy the other self-explanatory residential and financial requirements set out in this clause.

Importantly, **paragraph (1)(b)(ii)** provides a discretion for the Secretary to determine whether it is appropriate to include rent assistance for a past period. Under **subclauses (2) to (4)** the determination must be made in accordance with guidelines determined by the Minister. These guidelines would be a disallowable instrument

**Clause 14 - Rate of rent assistance**

The Table to this section sets out the rate of rent assistance.

- the amounts in the Table are indexed 6 monthly in line with CPI increases (**Schedule 4**)

**Clause 15 - Annual rent**

This section defines the term “annual rent” as used in the Table in the previous section, as being the annual rent of the individual who rate is being calculated.

### **Clause 16 - Rent paid by a member of a couple**

This section provides that a claim made by an individual who is a member of a couple may take into account rent paid by the individual's partner.

## **Division 4 –Income test**

This Division sets out the INCOME TEST for the purpose of calculating an individual's **Part A Rate** using **Method 1** (ie see the overall summary of the calculation in **Division 1 of this Part**).

### **Clause 17 - Application of income test to pension and benefit recipients and their partners**

This clause provides that if the individual, or the individual's partner, is receiving a social security pension, a social security benefit or a service pension, then the income test effectively does not apply.

### **Clause 18 - Income test**

This clause sets out the INCOME TEST for the purpose of calculating an individual's **Part A Rate** using **Method 1**.

The reduction arrived at as a result of the application of the income test is **30%** of the amount by which the individual's *adjusted taxable income* exceeds the individual's *income free area*.

- the individual's *adjusted taxable income* is calculated under **Schedule 3**;

### **Clause 19 - Income free area**

This clause sets the individual's *income free area* at \$28,200.

## **Division 5 – Maintenance income test**

This Division sets out the MAINTENANCE INCOME TEST for the purpose of calculating a **reduction** to an individual's **Part A Rate** using **Method 1** (ie see the overall summary of the calculation in Division 1 of this Part).

The reduction arrived at as a result of the application of the maintenance income test is **50%** of the amount by which the individual's *maintenance income* exceeds the individual's *maintenance income free area*.

- maintenance income received in respect of an FTB child is not counted if the *FTB child rate* for that child does not exceed the *base FTB child rate*;
- for *FTB child* see section 22.

### **Clause 20 - Effect of maintenance income on family tax benefit rate**

This clause sets out a method statement for the purposes of working out the reduction to be applied to an individual's **Part A Rate** using **Method 1**.

**Method Statement, Step 2:** an individual's *maintenance income free area* is the maximum amount of maintenance income that the individual may have without any deduction being made for maintenance income from an individual's Part A rate.

#### **Clause 21 - Maintenance income of members of couple to be added**

In relation to members of a couple, this clause provides that the maintenance income of both members is to be totalled and taken into account for the purposes of this Division.

#### **Clause 22 - How to calculate a individual's maintenance income free area**

This clause includes a Table for the purpose of working out an individual's *maintenance income free area*. The maintenance free area of an individual is the appropriate amount in Column 2 of the Table (depending on whether the individual is a member of a couple, and whether one or both have maintenance income), plus an additional amount specified in Column 3 for each FTB Child after the first.

- the amounts in the Table are indexed in line with CPI increases (**Schedule 4**).

#### **Clause 23 - Only maintenance actually received taken into account in applying clause 22**

This clause provides that in determining whether **item 2** or **item 3** in the above Table (ie in determining whether only one or both of a partnered couple have maintenance income) the rule in **clause 21** of the Schedule (above) is to be disregarded ie only maintenance actually received by the individual is to be taken into account for this purpose.

#### **Clause 24 - Apportionment of capitalised maintenance income**

This clause sets out the procedure to apply where an individual receives capitalised maintenance (eg a lump sum). In such a case the clause endeavours to spread the capitalised maintenance over a capitalisation period, for the purpose of taking it into account under these provisions.

The capitalisation period is:

- if the capitalised maintenance relates to a period specified in a Court order or registered maintenance agreement – that period, **subclause (3)** unless (in the case of a maintenance agreement), the Secretary considers that the period is not appropriate, in which case the Secretary may determine the capitalisation period **subclause (5)**;
- if there is no Court order or maintenance agreement, and the capitalised maintenance relates to an FTB child of the individual – the period commencing on the day the income is received and ending on the day before the child turns 18 **subclause (4)**;
- if there is no Court order or maintenance agreement, and the capitalised maintenance relates the maintenance of the individual by the individual's former partner – the period commencing on the day the income is received and ending on the day before the individual turns 65 **subclause (5)**.

## Part 3 – Part A rate (Method 2)

METHOD 2 is used if the individual's income exceeds the *higher income free area*.

### Division 1 – Overall rate calculation process

#### Clause 25 - Method of calculating Part A rate

This section sets out the Method Statement for of calculating an individual's Part A rate of family tax benefit using METHOD 2.

In overall terms, METHOD 2 calculates an individual's family tax benefit as follows:

<b>ADD:</b>	the individual's STANDARD RATE	<b>(Division 2 of this Part)</b>
plus	the individual's LARGE FAMILY SUPPLEMENT (if any)	<b>(Division 1 of Part 5 of this Schedule)</b>
plus	the individual's MULTIPLE BIRTH ALLOWANCE (if any)	<b>(Division 2 of Part 5 of this Schedule)</b>
=	MAXIMUM RATE	

METHOD 2 does not include a component for rent assistance; those individuals in respect of whom that method might be used are by definition (ie on income grounds) excluded from access to rent assistance.

<b>SUBTRACT from the Maximum Rate:</b>	minus any amount required to be deducted by reason of the application of the <b>Income Test</b>	<b>(Division 3 of this Part)</b>
=	PART A RATE	

METHOD 2 does not require any reduction in respect of the MAINTENANCE INCOME TEST.



## Division 2 – Standard rate

### Clause 26 - Standard rate

This Division sets out how to calculate the STANDARD RATE for the purpose of calculating an individual's **Part A Rate** using **Method 2** (ie see the overall summary of the calculation in **Division 1 of this Part**).

- the rate in **subclause (2)** is adjusted annually so that the family tax benefit for children covered by this clause does not fall below 16.6% of the combined pensioner couple maximum basic rate;
- if a determination has been made under **Division 1 of Part 4 of the Act** applying a sharing percentage to an individual's FTB child or children, the part of the individual's family tax benefit rate that applies to that child or each of those children may be reduced;
- for *FTB child* see **section 22**;
- the *FTB child rate* is adjusted annually in line with CPI increases;

### Clause 27 - Sharing family tax (determination under subsection 59(1))

This clause provides for a reduction in the standard rate where the Secretary has determined that the care of the child is shared. In this case, the rate is reduced according to the percentage of the care shared by the individual.

## Division 3 – Income test

This Division sets out the INCOME TEST for the purpose of calculating an individual's **Part A Rate** using **Method 2** (ie see the overall summary of the calculation in **Division 1 of this Part**).

### Clause 28 - Income test

This clause sets out the INCOME TEST for the purpose of calculating an individual's **Part A Rate** using **Method 2**.

The reduction arrived at as a result of the application of the income test is **30%** of the individual's *income excess* ie the amount by which the individual's *adjusted taxable income* exceeds the individual's *higher income free area* (as to which see **clause 2 of the Schedule**).

- the individual's *adjusted taxable income* is calculated under **Schedule 3**.

## **Part 4 – Part B rate**

### **Division 1 – Overall rate calculation process**

This Division sets out the method for calculating an individual's Part B rate of family tax benefit.

If the individual is **not** a member of a couple then the individual's *Part B rate* is simply the standard rate set out in **clause 30**.

- there is no income testing applied where the individual is not a member of a couple.

If the individual is a member of a couple then the individual's *Part B rate* is the standard rate set out in **clause 30**, less a reduction in respect of the income test **clauses 32 and 33**.

### **Clause 29 – Method of calculating Part B rate**

This section sets out the Method Statement for of calculating an individual's Part b rate of family tax benefit.

## **Division 2 – Standard rate**

### **Clause 30 - Standard rate**

This clause sets out the STANDARD RATE, by reference to the Table set out in that clause. There are only 2 potential rates set out in the table, according to whether the youngest *FTB child* is under 5 years or not.

- for *FTB child* see **section 22**;
- if a determination has been made under **Division 1 of Part 4 of the Act** applying a sharing percentage to an individual's FTB child or children, the part of the individual's family tax benefit rate that applies to that child or each of those children may be reduced.

### **Clause 31 - Sharing family tax (determination under subsection 59(1))**

This clause provides for a reduction in the standard rate where the Secretary has determined that the care of the child is shared. In this case, the rate is reduced according to the percentage of the care shared by the individual.

### **Division 3 – Income test**

This Division sets out the INCOME TEST for the purpose of calculating an individual's **Part B Rate**.

- the income test only applies to the **Part B rate** where the individual is a member of a couple. (ie see the overall summary of the calculation in **Division 1 of this Part**).

#### **Clause 32 – Income test**

This clause sets out the INCOME TEST for the purpose of calculating an individual's **Part B Rate**.

The reduction arrived at as a result of the application of the income test is **30%** of the individual's *income excess* ie the amount by which the individual's *adjusted taxable income* exceeds the individual's *income free area* (as to which see **clause 33**, which sets the *income free area* at \$1,616).

- the individual's *adjusted taxable income* is calculated under **Schedule 3**;

#### **Clause 33 – Income free area**

This clause sets the income free area at \$1,616 for the purposes of this Part.

- an individual's income free area is indexed in line with CPI increases (**Schedule 4**).

## **Part 5 – Common provisions**

### **Division 1 – Large family supplement**

This Division establishes **eligibility** and **rate of payment** for large family supplement, for the purposes of inclusion in an individual's Part A rate (both METHOD 1 and METHOD 2 - as to which see **Part 2 and Part 3 of the Schedule**).

#### **Clause 34 - Eligibility for large family supplement**

This clause provides that an individual is eligible for large family supplement if the individual has 4 or more FTB children.

#### **Clause 35 - Rate of large family supplement**

This clause sets the rate of large family supplement at \$204 for each FTB child after the first.

- the rate of large family supplement is indexed in line with CPI increases (Schedule 4).

### **Division 2 – Multiple Birth Allowance**

This Division establishes **eligibility** and **rate of payment** for multiple birth allowance, for the purposes of inclusion in an individual's Part A rate (both METHOD 1 and METHOD 2 - as to which see **Part 2 and Part 3 of the Schedule**), and sets out rules for sharing multiple birth allowance between 2 people.

#### **Clause 36 - Eligibility for multiple birth allowance**

This clause provides that an individual is eligible for multiple birth allowance if the individual has 3 or more FTB children, and at least 3 of those children were born during the same multiple birth and are under the age of 6 years.

#### **Clause 37 - Rate of multiple birth allowance**

This clause sets the rate of multiple birth allowance at:

- if the number of FTB children born during the same multiple birth is 3 - \$2,467.40;
- if the number of FTB children born during the same multiple birth is 4 - \$3,292.30.

- the rate of multiple birth allowance is indexed in line with CPI increases (**Schedule 4**).

#### **Clause 38 - Sharing multiple birth allowance between 2 people (determination under subsection 59(1))**

This clause provides for a reduction in the rate of multiple birth allowance where the Secretary has determined that the care of the child is shared. In this case, the rate is reduced according to the percentage of the care shared by the individual.

## Schedule 2 – Child care benefit rate calculator

This Schedule provides the rate calculator for the new child care benefit in relation to care provided by an approved child care service.

The new child care benefit is essentially a merger of the former child care payments under the Child Care Assistance Scheme and the Childcare Cash Rebate Scheme. The rate calculator contained in this Schedule describes how to work out the rate of child care benefit in relation to care provided by an approved child care service. The benefit is worked out on an hourly basis per child. It is income tested down to a certain minimum level. The rate worked out also varies depending on the kind of care, the hours of care used, the number of children in the family in care of the one kind and whether the child is a school child or not.

The rules contained in the rate calculator are complemented, and sometimes limited, by the rate provisions contained in **Division 4 of Part 4** of the Bill. For example, the rate of child care benefit in cases of an individual in hardship or a child at risk of serious abuse or neglect are not provided by the rate calculator but by the Division 4 rate provisions. Those provisions also provide that, however the rate of child care benefit is worked out and in whatever case, the total amount of benefit paid for a week of care may not exceed the amount that actually was or would have been charged by the approved child care service for that week.

### Part 1 – Overall rate calculation process

#### *Method of calculating rate of child care benefit*

**Clause 1** describes the overall method of calculating the hourly rate of an individual's child care benefit.

First, the standard hourly rate is worked out using **Part 2**. Then, the adjustment percentage is worked out using **clause 2**. These two factors multiplied together produce the *rate of child care benefit* for the hour.

However, it should be noted that the overall rate of child care benefit is limited by **section 72** in **Division 4 of Part 4** of the Bill to the amount actually charged by the service for the week concerned.

This clause includes a rule that, in cases in which an individual is eligible for child care benefit for only a part of a session of care, this Schedule applies to the rate for that part of the session as if references here to a full session included reference to a part of a session

#### *Adjustment percentage*

**Clause 2** provides how to work out the *adjustment percentage*, which is to be applied under **clause 1** to the standard hourly rate to reach the rate of child care benefit. The adjustment percentage incorporates all of the various elements that may modify the standard hourly rate for an individual.

The adjustment percentage is reached through the following formula:

$$\text{CCB \%} \times \text{Schooling \%} \times \text{Part-time \%}$$

**CCB %** is itself a product of another formula:

$$\text{Multiple child \%} \times \text{Taxable income \%}$$

**Multiple child %** is worked out using **Part 3** of the rate calculator. It is one of the components that ensures additional funding if there are additional children in the family.

**Taxable income %** is worked out using **Part 4** of the rate calculator. As the name suggests, it is the percentage produced by the child care benefit income test. It is the CCB % that is the figure most meaningful to the child care industry in working out the Government subsidy for a particular child, and, by deduction, what fee it should charge the individual for that child's care.

**Schooling %** takes account of the cheaper cost of care provided to a school child as opposed to a child who is not a school child. The percentage is 85% for a school child and 100% otherwise.

**Part-time %** is a 10% loading that applies in relation to care provided by a centre based long day care service. The loading applies if the child concerned is not a school child and is in any kind of care by one or more approved child care services, for which the family has a payment liability, for less than 34 hours in the week concerned. The reason for this is that higher hourly fees apply where children are in long day care centres part-time.

*Number of children in care of a particular kind*

**Part 3** relating to an individual's multiple child % and **Part 4** relating to an individual's taxable income % must each have regard to the number of children an individual has in care of a particular kind. **Clause 3** provides the meaning of that term. The two kinds of care that may be involved are care provided by an occasional care service and care other than that. The number of children is worked out accordingly to reach the *number of children in care of that kind*.

## **Part 2 – Standard hourly rate**

*Standard hourly rate – basic meaning*

**Clause 4** lays down the meaning of *standard hourly rate*, which is the starting point for the child care benefit rate calculation process and to which the individual's adjustment percentage is applied – see **clause 1** above.

Item 1 in the table in **subclause (1)** stipulates that the rate for care other than part-time family day care or non-standard hours family day care is \$2.40.

Item 3 provides that the rate for non-standard hours family day care is one and a third times the item 1 rate.

Item 2 provides that the rate for part-time family day care is the lesser of one and a third times the item 1 rate and the ceiling rate provided by **subclause (2)**. That *ceiling rate* is worked out using a formula that involves multiplying by 50 the rate stipulated by item 1 and dividing the result by the number of eligible hours of part-time family day care in the week concerned. Because of this formula, the total benefit for a person using part-time family day care will be limited, for hours of that kind of care beyond a certain point, to the amount that would apply for 50 hours' care in the less expensive kinds of care covered by item 1.

In **subclause (1)**, any amount mentioned in the table that is not the directly stipulated item 1 \$2.40 is to be rounded to the nearest cent, with 0.5 of a cent to be rounded upwards.

### **Part 3 – Multiple child %**

#### *Multiple child %*

**Clause 5** deals with *multiple child %*. Multiple child % is one of the components of CCB%, which in turn forms part of an individual's adjustment percentage under **clause 2**. Thus, multiple child % is one of the factors that may modify an individual's rate of child care benefit under **clause 1**.

The method of working out the multiple child % takes account of loadings for additional children in the family so that, for example, a family with one child in care will generally receive a lesser rate of child care benefit than a family in exactly the same circumstances with two children in care.

First, the number of children the individual has in the relevant kind of care is worked out using **clause 3**. Then, the individual's maximum weekly benefit (part of the child care benefit income test) is worked out using **clause 11**. This rate (the *multiple child rate*) is based on the number of children the person actually has in care of that kind, incorporating, if applicable, the loadings built into the maximum weekly benefit formulation for multiple children.

Then, the individual's maximum weekly benefit is worked out as if the individual had only one child in that kind of care and the result multiplied by the actual number of children. This rate (the *single child rate*) translates the unloaded child rate into one that may be compared with the loaded rate for the relevant number of children.

The last step is to divide the multiple child rate by the single child rate and to express the result as a percentage. The result is the multiple child %.

### **Part 4 – Taxable income %**

This Part provides the child care benefit income test. The income measured for this purpose is adjusted taxable income, as is the case for family tax benefit. Accordingly, the rules in **Schedule 3** to the Bill, relating to adjusted taxable income, apply equally to child care benefit as to family tax benefit.

### *Income thresholds*

As **clause 6** states, two income thresholds are relevant in working out an individual's taxable income %. The **lower income threshold** is \$28,200 (which is the same as the family tax benefit income free area) and the **upper income threshold** is \$66,000.

### *Method of calculating taxable income %*

**Clause 7** provides how to work out an individual's **taxable income %**. There is a free area type rule in that an individual's taxable income % is automatically 100% if his or her adjusted taxable income for the tax year does not exceed the lower income threshold under **clause 6** (\$28,200). Similarly, it will be 100% if the individual or the individual's partner is on a specified type of income support. These criteria are the same as for the family tax benefit income test.

Otherwise, taxable income % is to be worked out using **clause 8**.

### *Taxable income % if adjusted taxable income exceeds lower income threshold and if neither individual nor partner on income support*

**Clause 8** provides for the taxable income % if the adjusted taxable income exceeds the lower income threshold and if neither the individual nor the partner is on income support. The method statement for working out the taxable income % of an individual who is not automatically allowed 100% under **clause 7** starts with working out the relevant income threshold using **clause 9**.

This is then taken away from adjusted taxable income to produce the **income excess**, which is converted to a **weekly income excess**. When the individual's taper % is worked out using **clause 10**, it is multiplied by the weekly income excess to produce the **weekly taper amount**. This is the amount by which the maximum benefit is reduced as a result of the income test.

The weekly taper amount is divided by the individual's maximum weekly benefit under **clause 11** and the result expressed as a percentage, rounded to two decimal places. This gives the **provisional taxable income %**. This figure is compared with the minimum taxable income % under **clause 12** and the greater figure of the two becomes the individual's **taxable income %**.

### *Income threshold*

**Clause 9** provides a table to work out an individual's **income threshold**. This will depend on the number of children the individual has in care of the relevant kind and also on income. Only an individual with two or more children in that kind of care and whose income exceeds the upper income threshold (\$66,000) will have that upper income threshold as his or her income threshold. Anyone else will have the lower income threshold (\$28,200).



### *Taper %*

**Clause 10** provides a table to work out an individual's *taper %*. As with the income threshold (**clause 9**), this will depend on the number of children the individual has in care of the relevant kind and also on income.

### *Maximum weekly benefit*

**Clause 11** deals with *maximum weekly benefit*. Apart from being relevant in the child care benefit income test, an individual's maximum weekly benefit for a session of care for a child is applied in **clause 5**, relating to the multiple child %.

It is based on the standard hourly rate for care other than part-time family day care or non-standard hours family day care (\$2.40). As a general principle, this is multiplied by the usual maximum number of weekly hours of care (50) and then by the number of children in the family in care of that kind. Families with two children in care of that kind then add a loading of \$11 and families with three or more children add a loading of \$32.

### *Minimum taxable income %*

**Clause 12** provides for the *minimum taxable income %* which is compared in the method statement in **clause 8** with the individual's provisional taxable income % so that the higher of the two figures becomes the individual's taxable income %. Thus, a person's rate of child care benefit will be based on a taxable income figure that never falls below a certain minimum rate (ie, a certain minimum benefit will be paid regardless of income).

The way to calculate this percentage is to divide \$0.402 by the standard hourly rate for care other than part-time family day care or non-standard hours family day care (\$2.40). The result is to be expressed as a percentage and rounded to two decimal places. Thus, the minimum taxable income % will be 16.75% on commencement.

## Schedule 3 – Adjusted taxable income

This Schedule set out the matters which combine to arrive at an individual's *adjusted taxable income*, as used throughout the Act.

### Clause 1 – Adjusted taxable income relevant to family tax benefit and child care benefit

This clause is a self-explanatory note to the reader that the term *adjusted taxable income* is relevant to the rate of family tax benefit and child care benefit.

### Clause 2 – Adjusted taxable income

This clause sets out the components which combine to make up an individual's *adjusted taxable income*, which is the total of the following *income components*:

- the individual's taxable income for that year **clause 3**;
- the individual's *adjusted fringe benefits total* for that year **clause 4**;
- the individual's *target foreign income* for that year **clause 5**;
- the individual's *net rental property loss* for that year **clause 6**; and
- the individual's tax free pension or benefit for that year **clause 7**;

**LESS** the amount of the individual's *deductible child maintenance expenditure* for that year **clause 8**.

### Clause 3 – Adjusted taxable of members of a couple

This clause provides that for the purposes of the Act, if an individual is a member of a couple, the individual's *adjusted taxable income* includes the *adjusted taxable income* of the individual's partner **subclause (1)**.

**Subclause (2)** provides an exception to this rule in for the application **Part 4 of Schedule 1**, which provides for the calculation of a person's Part B rate of family tax benefit.

- the reason for this exception is that the income test only applies to the *Part B rate* where the individual is a member of a couple. (ie see the overall summary of the calculation in **Division 1 of Part 4, Schedule 1**).

### Clause 4 – Adjusted fringe benefits total

This clause sets out how to work out an individual's *adjusted fringe benefits total*.

The fringe benefits rate is arrived at according to that set out in the *Fringe Benefits Act 1986*.

Since that Act operates by reference to yearly periods commencing on 1 April, the Secretary is given the discretion to apportion the individual's fringe benefits for the year of income that is the tax year in question (ie the *reportable fringe benefits total*), for the purposes of the application of this Act.

## **Clause 5 – Target foreign income**

This clause sets out how to work out an individual's *target foreign income*.

**Subclause (1)** defines the target foreign income as the individual's foreign income (as defined in s10A of the *Social Security Act 1991*), that is not taxable income, or received as a fringe benefit.

*foreign income* in s10A of the *Social Security Act 1991* is defined as:

"*foreign income*", in relation to a person, means:

- (a) an income amount earned, derived or received by the person from a source outside Australia for the person's own use or benefit; or
- (b) a periodical payment by way of gift or allowance from a source outside Australia; or
- (c) a periodical benefit by way of gift or allowance from a source outside Australia.

**Subclause (2)** provides that, where it necessary for the purposes of this Schedule to work out an amount of foreign income expressed in a foreign currency, the amount is to be worked out using the market exchange rate for 1 July in that income tax year.

## **Clause 6 – Net rental property loss**

This clause sets out how to work out an individual's *net rental property loss* for the purposes of the Schedule.

## **Clause 7 – Tax free pension or benefit**

This clause lists pension or benefits payable under the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986* which are tax-free for the purposes of this Schedule.

## **Clause 8 – Deductible child maintenance expenditure**

This clause sets out how to work out an *individual's deductible child maintenance expenditure* for the purposes of the Schedule.

**Subclause (1)** provides that an *individual's deductible child maintenance expenditure* is 50% of the individual's *child maintenance expenditure*;

**Subclause (2)** defines *child maintenance expenditure* for this purpose, being a payment that is paid by an individual or the individual's partner to a third party, in respect of the natural or adopted child of the individual making the payment, for the maintenance of the child;

**Subclause (3)** defines the amount of *child maintenance expenditure* to be the amount or *value of the benefits* paid by the individual making the payment;

**Subclause (4)** provides that *value of the benefits* is defined in **subclauses (5) and (6)** for this purpose;

**Subclause (5)** defines *value of the benefits* where the individual providing the benefit is a party to a child support agreement under the *Child Support (Assessment) Act 1989*, and pursuant to that agreement the individual provides support to an individual for a child otherwise than in the form of a periodic payment;

In such a case **subclause (5)** provides that *value of the benefits* means the value of the amount or benefit provided by the individual.

**Subclause (6)** defines *value of the benefits* where the benefit provided is not made pursuant to a child support agreement under the *Child Support (Assessment) Act 1989*;

In such a case **subclause (6)** provides that *value of the benefits* means the cost of the benefit to the individual.

## **Schedule 4 – Indexation and adjustment of amounts**

### **Part 1 – Preliminary**

#### **Clause 1 – Analysis of Schedule**

This Schedule provides for CPI indexation of amounts listed in the Schedule, being amounts referred to throughout the Act.

- **Clause 2** includes a Table identifying the amounts to be indexed, and their location in this Act.
- **Clause 3** includes a Table setting out how those amounts are to be indexed.

#### **Clause 2 – Indexed and adjusted amounts**

This clause includes a Table identifying the amounts to be indexed under this Schedule, and indicates the location of those amounts in this Act.

### **Part 2 – Indexation**

This Part provides for the indexation of the amounts specified in **clause 2**.

#### **Clause 3 – CPI Indexation Table**

This clause provides indexation procedures for each of the amounts listed in a CPI Indexation Table.

#### **Clause 4 – Indexation of amounts**

This clause provides a method statement for applying the indexation procedure listed in the CPI Indexation Table in clause 3.

#### **Clause 5 – Indexation factor**

This clause sets out how to work out the indexation factor to be used in applying indexation to the amounts in the CPI Indexation Table, including procedures for applying a specified number of decimal places to the results of the indexation.

#### **Clause 6 – Rounding off indexed amounts**

This clause provides for rounding-off of indexed amount that are subject to a rounding base.

- a rounding base (eg \$3.65) is often chosen to facilitate the division of the amount into a daily rate, that is to say to enable it to be divided by 365 (days) without the need for subsequent rounding.

### **Part 3 – Adjustment of other rates**

#### **Clause 7 – Adjustment of FTB child rates**

This clause provides an additional indexation procedure to be applied to *FTB child rates*, to ensure that proportional parity is maintained between those rates and the combined pensioner couple maximum basic rate.

- for *FTB child* see section 22.

## **Part 4 – Transitional indexation provision**

### **Clause 8 – Transitional indexation of amounts used to calculate family assistance rates**

**Clause 8** provides for transitional indexation of amounts in the Table in this clause.

This clause provides a special transitional rule to allow the replacement of certain amounts in the Table with higher amounts determined by the Secretary and for the replacement amounts to apply from the commencement of the Schedule. This may be necessary if certain indexation related factors mean that the amounts predicted at this time as applicable on commencement on 1 July 2000 should in fact be increased and thus favour the customer.

The amounts that may be replaced in this way if necessary for child care benefit are the \$2.40 standard hourly rate for care other than part-time family day care or non-standard hours family day care, the \$28,200 and \$66,000 income thresholds and the \$0.402 figure (that represents the minimum hourly rate) used in the minimum taxable income % formula.

Should the Secretary need to make such a determination, it would be a disallowable instrument under the *Acts Interpretation Act 1901*.

**A NEW TAX SYSTEM (FAMILY ASSISTANCE)  
(CONSEQUENTIAL AND RELATED MEASURES) BILL (NO. 1) 1999**

**Clause 1** of the A New Tax System (Family Assistance) (Consequential and Related Measures) Bill (No. 1) 1999 sets out how the amending Act is to be cited.

**Clause 2** provides for the commencement of the amending Act and the Schedules in the amending Act.

The amendments set out in **Schedule 1**, **item 3** of **Schedule 2** and **Schedules 3 to 8** (family assistance consequential amendments) commence, or are taken to have commenced, immediately after the commencement of the *A New Tax System (Family Assistance) Act 1999* and Schedules 1, 2 and 3 of the *A New Tax System (Compensation Measures Legislation Amendment) Act 1999* (ie, 1 July 2000)

**Items 1, 2, 4 and 5** of **Schedule 2** commence immediately before the day that is the payment commencement day for the purposes of the *Child Care Payments Act 1997*.

The amendments made by **Schedule 9** (fringe benefits and youth allowance) commence on 1 January 2001.

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

**Clause 4** is a regulation making power that enables the Governor-General to make regulations concerning transitional matters in respect of the following Acts:

- *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999*
- *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*
- *A New Tax System (Family Assistance) Act 1999*; and
- *A New Tax System (Family Assistance) (Administration) Act 1999*.

## **Schedule 1 – Parenting payment ordinary income test taper amendments**

### **Background**

This schedule amends the means test arrangements that will apply to parenting payment (partnered) from 1 July 2000. The amendments extend the income range over which the 50 per cent income taper applies to recipients of parenting payment (partnered). The measure is designed to increase financial support to working families with dependents earning low levels of income.

### **Explanation of the amendments**

**Item 1** repeals points 1068B-D30 and 1068B-D31 and substitutes **new points 1068B-D30 and 1068B-D31**, which increase from \$80 to \$183 the income range over which the 50 per cent income taper applies to recipients of parenting payment (partnered). The effect of this amendment is to allow the recipient to earn an increased level of income before their parenting payment (partnered) ceases to be payable.



## Schedule 2 – Child care assistance and childcare rebate: repeals and related transitional issues

### Background

Two forms of assistance with the costs of child care are currently available: child care assistance, which is paid under the *Child Care Act 1972*, and childcare rebate, which is paid under the *Childcare Rebate Act 1993*. Under the A New Tax System (Family Assistance) Bill 1999, these two payments are to be replaced by one new payment for help with the costs of child care, child care benefit. As a consequence of these changes, three Acts are to be repealed and some transitional provisions are required.

### Explanation of the amendments

**Item 1** repeals the *Child Care Payments Act 1997*. This Act contains new provisions for the payment of child care assistance and childcare rebate, which were to replace the payment of child care assistance under the *Child Care Act 1972* and childcare rebate under the *Childcare Rebate Act 1993*. Payments under this Act have not yet commenced. The *Child Care Payments Act 1997* is to be repealed from the day before payments were to have commenced, which is the first Monday following the first family payment payday after 8 June 2000.

**Item 2** repeals the *Child Care Payments (Consequential Amendments and Transitional Provisions) Act 1997*. This Act contains provisions consequential on the *Child Care Payments Act 1997*. The Act has not yet fully commenced.

**Item 3** repeals the *Childcare Rebate Act 1993*.

**Items 4 and 5** contain transitional provisions consequent on the repeal of the *Child Care Payments Act 1997* (the 1997 Act). As the 1997 Act is to be repealed before the commencement date for the child care benefit provisions in the A New Tax System (Family Assistance) Bill 1999 (1 July 2000), transitional provisions are required to cover the period between the repeal of the 1997 Act and the commencement of child care benefit.

Subsection 4(1) of the *Child Care Act 1972* (the 1972 Act) contains a definition of “immunised” which cross-refers to provisions in the 1997 Act. **Item 4** amends the definition in subsection 4(1) of the 1972 Act to provide a freestanding provision which reproduces the equivalent provision of the 1997 Act. **Item 5** inserts a **new section 4H** into the 1972 Act: this section contains a power for the Minister to determine vaccination schedules for the purposes of the definition of “immunised” in subsection 4(1). This is similar to the power in subsection 18(1) of the 1997 Act. The new subsection also provides that determinations in force under subsection 18(1) of the 1997 Act will continue to have effect.

## Schedule 3 – Amendment of the Child Care Act 1972

### Background

Two forms of assistance with the costs of child care are currently available: child care assistance, which is paid under the *Child Care Act 1972*, and childcare rebate, which is paid under the *Childcare Rebate Act 1993*. Under the A New Tax System (Family Assistance) Bill 1999, these two payments are to be replaced by one new payment for help with the costs of child care, child care benefit.

As a consequence of these changes, the *Child Care Act 1972* requires substantial amendment. The Act includes provision for payments to child care centres so that the centres can reduce the child care fees paid by families (this is referred to in the Act as “fee relief”, but is commonly known as “child care assistance”.) All the provisions in the Act concerning child care assistance and related matters are to be repealed.

### Explanation of the amendments

**Items 1 to 29** amend the Child Care Act 1972 as follows.

**Items 1 to 15** repeal definitions in subsection 4(1). The definitions are not necessary because the defined terms will no longer be used in the Act when the child care assistance provisions are removed.

**Items 16 and 17** amend subsection 4(2) to remove a provision which cross-refers to section 12A; section 12A is being repealed by **item 24**.

**Item 18** amends subsection 4B(1). The amendment removes a cross-reference to section 12A, which is being repealed by **item 24**.

**Item 19** repeals subsections 4B(2), (3) and (4). These provisions relate to the approval of child care centres for the purposes of section 12A, which is being repealed by **item 24**.

**Item 20** repeals and replaces subsection 4C(1). The amended subsection omits a cross-reference to section 12F, which is being repealed by **item 26**.

**Item 21** repeals subsection 4C(1A). This subsection concerns the making of guidelines in relation to the approval of child care centres and the allocation of child care places. The provisions in respect of which the guidelines may be made are being repealed by **items 19 and 26**.

**Item 22** repeals sections 4D, 4E, 4F, 4G and 4H. Sections 4D to 4G concern the sanctions for breaching the conditions of approval of child care centres under subsection 4B(3), which is being repealed by **item 19**. Section 4H is a transitional provision which is inserted by **item 5 of Schedule 1**.

**Item 23** amends the heading to Division 1 of Part III to remove references to fee relief.

**Item 24** repeals section 12A; this section contains the main provisions relating to the grant of fee relief (child care assistance). The provision is no longer required because child care assistance is being replaced by child care benefit in the A New Tax System (Family Assistance) Bill 1999.

**Item 25** repeals Division 2 of Part III. This Division permits tax file numbers to be required from child care assistance beneficiaries, and is no longer required as child care assistance is being removed from the Act.

**Item 26** repeals Division 3 of Part III. This Division relates to the allocation of child care places for the purposes of subsection 4B(2), which is being repealed by **item 19**.

**Item 27** repeals Division 4 of Part III. This Division imposes immunisation requirements on children in respect of whom child care assistance may be payable, and is no longer required as child care assistance is being removed from the Act.

**Item 28** repeals subsection 21(2). This provision was inserted to allow the Minister to delegate powers when Centrelink took over the payment of child care assistance. It is no longer required as child care assistance is being removed from the Act.

**Item 29** repeals section 21A. This provision was inserted to allow the Secretary to delegate powers when Centrelink took over the payment of child care assistance. It is no longer required as child care assistance is being removed from the Act.

## Schedule 4 – Amendments relating to Family Allowance

### **Background**

Family allowance is currently paid under the Social Security Act to assist families with the direct costs of raising children, and includes guardian allowance as a payment for lone parent families.

Under the new family assistance regime provided for in the A New Tax System (Family Assistance) Bill 1999, family tax benefit (Part A rate) will replace family allowance (apart from guardian allowance) as a payment to assist with these costs. Guardian allowance will be subsumed within family tax benefit (Part B rate).

### **Explanation of amendments**

Section 3 of the Social Security Act is an index of definition used in that Act. **Item 1** omits from section 3 references to family allowance related definitions.

Section 6 of the Social Security Act primarily contains family allowance definitions. The exceptions are the definitions of “approved care organisation” which is also relevant for the purposes of double orphan pension and the definition of “double orphan”.

**Item 2** repeals section 6 and reinstates the definitions of “approved care organisation” and “double orphan” in their existing form. These definitions have continuing application to double orphan pension.

Part 2.17 of the Social Security Act sets out the qualification and payability rules that must be satisfied by a person before family allowance can be paid and deals with other administrative matters relevant to that payment type. **Item 3** repeals Part 2.17.

Part 3.7 of the Social Security Act is the family allowance rate calculator. **Item 4** repeals this Part.

## Schedule 5 – Amendments relating to Family Tax Payment

### **Background**

Family tax payment (Part A and Part B) is currently paid under the Social Security Act to assist families with children, including lone parents.

Under the new family assistance regime provided for in the A New Tax System (Family Assistance) Bill 1999, family tax benefit (Part A and Part B) will replace family tax payment as a payment to assist these families.

### **Explanation of amendments**

Section 3 of the Social Security Act is an index of definition used in that Act. **Item 1** omits from section 3 references to family tax payment related definitions.

Section 6AA of the Social Security Act contains definitions relevant to family tax payment. **Item 2** repeals section 6AA.

Part 2.17AA of the Social Security Act sets out the qualification and payability rules that must be satisfied by a person before family tax payment can be paid and deals with other administrative matters relevant to that payment type. **Item 3** repeals Part 2.17AA.

Part 3.8 of the Social Security Act is the family tax payment rate calculator. **Item 4** repeals this Part.

## **Schedule 6 – Amendments relating to Maternity Allowances**

### **Background**

Maternity allowance (MAT) is currently paid under the Social Security Act to assist families with the additional costs incurred at the time of the birth of a baby, including the reduced family income that may result from forgone wages. Maternity allowance is a one-off payment in addition to family allowance.

Maternity immunisation allowance (MIA) is also paid under the Social Security Act, in addition to both maternity allowance and family allowance.

MAT and MIA will be provided for in the new A New Tax System (Family Assistance) Bill 1999. These payment types are therefore no longer required in the Social Security Act.

### **Explanation of amendments**

Part 2.17A of the Social Security Act provides for the payment of maternity allowance and maternity immunisation allowance. **Item 1** repeals this Part.

## Schedule 7 – Amendments relating to Parenting Payment

### Background

This schedule makes consequential amendments to the Social Security Act flowing from the removal of basic parenting payment. Basic parenting payment refers to both non-benefit PP (partnered) and the amount of benefit PP (partnered) that relates to the maximum basic component of parenting payment.

Under the new family assistance regime provided for in the A New Tax System (Family Assistance) Bill 1999, family tax benefit (Part B) will replace basic parenting payment.

### Explanation of the changes

**Item 1** omits four terms in section 3 (index of definitions) as they will cease to exist.

**Items 2 and 3** amend subsection 4(6A) to ensure that a person who is a member of a couple of which one person is receiving or has claimed youth allowance and is not independent within the meaning of Part 3.5 of the Social Security Act, will *not* be taken to be a member of a couple for the purpose of section 500Q.

**Item 4** omits references to “non-benefit PP (partnered)” from subsections 7(6) and 7(6AA) as this term will cease to exist.

**Item 5** repeals note 4 to the definition of “ordinary income” in subsection 8(1). The note is no longer relevant as it refers to point 1068B-D3, which is repealed by **item 61**.

**Item 6** repeals existing paragraph 8(8)(zm) and substitutes **new paragraph 8(8)(zm)**. The new paragraph omits the reference to a person receiving non-benefit PP (partnered), as this payment will cease to exist.

**Item 7** repeals existing paragraph 12C(5)(ba) and substitutes **new paragraph 12C(5)(ba)**. The new paragraph refers to a couple’s assets deeming provisions for benefit PP (partnered) from 1 July 2000.

**Items 8, 9 and 14** repeal the definitions for “seasonal work non-benefit period” and “subject to a seasonal work non-benefit period”, as these terms will cease to exist.

**Items 10 and 11** amend steps 5 and 6 in the method statement of subsection 16A(6). Currently, the method statement for the calculation of a seasonal work preclusion period is modified for claimants of parenting payment. In particular, the income of the person’s partner is not added to the person’s seasonal work earnings. This arises out of the policy that a person’s entitlement to non-benefit PP (partnered) should not be affected by the level of their partner’s income. As non-benefit PP (partnered) will cease to exist from 1 July 2000, the amendments ensure that the partner’s income is included in the calculation of a person’s seasonal work preclusion period.

**Items 12 and 13** amend steps 4 and 7 in the method statement of subsection 16A(7). Currently, the method statement for the calculation of a seasonal work preclusion period is modified for claimants of parenting payment. In particular, the income of the person's partner is not added to the person's seasonal work earnings. This arises out of the policy that a person's entitlement to non-benefit PP (partnered) should not be affected by the level of their partner's income. As non-benefit PP (partnered) will cease to exist from 1 July 2000, the amendments ensure that the partner's income is included in the calculation of a person's seasonal work preclusion period.

**Items 15 and 18** substitute new definitions for two terms in section 18. The new definitions reflect the fact that non-benefit PP (partnered) will cease to exist from 1 July 2000.

**Items 16, 17 and 19** repeal the definitions of two terms in section 18, as they will cease to exist.

**Item 20** substitutes a new definition for "maximum payment rate" in paragraph 19C(8)(e).

**Item 21** amends paragraph 500I(1)(e) by omitting references to sections 500T and 500U, as these provisions will cease to exist.

**Items 22 to 25 inclusive** amend section 500Q. The amendments to section 500Q ensure that benefit PP (partnered) will not be payable to those persons who would have received non-benefit PP (partnered) prior to 1 July 2000, on account of their assets value level. Point 1068B-B3, in module B of the PP (Partnered) Rate Calculator as it exists prior to 1 July 2000, specifies the assets value limit of a person that will result in the person receiving non-benefit PP (partnered). Points 1068B-B4 and 1068B-B5 specify how the assets level of the person is calculated. Section 500Q is amended to maintain the effect of these three points.

**Item 22** amends subsection 500Q(1) so that it applies to both persons who are or are not members of a couple. **Item 23** amends subsection 500Q(2) so that it applies to a person who is not a member of a couple. Subsection 4(6A) as amended by **items 2 and 3**, however, states that, in specific circumstances, for the purposes of section 500Q, a person who is a member of a couple may be deemed to not be a member of a couple. This reflects the existing policy of the Social Security Act. **Item 25** inserts **new subsection 500Q(3)**, which includes a table that sets the assets value limit for a person who is a member of a couple. The table in **new subsection 500Q(3)** is currently contained in point 1068B-B3 of the Social Security Act as it exists before 1 July 2000. Under that provision, if a person's assets value limit exceeds the values in the table, then they would receive non-benefit PP (partnered). In **new subsection 500Q(3)**, if the person's assets value limit exceeds the values in the table, then benefit PP (partnered) is not payable to the person.

**Item 25** also inserts **new subsections 500Q(4), (5), (6) and (7)**. **New subsection 500Q(4)** specifies the assets that are to be included in the calculation of a person's assets level for the purposes of **new subsection 500Q(3)**, if the person's partner is getting neither a pension nor a benefit. **New subsection 500Q(4)** reflects the policy in point 1068B-B4 of the Social Security Act, as it exists before 1 July 2000. **New subsection 500Q(5)** specifies the assets that are to be included in the calculation of a person's assets level for the purposes of **new subsection 500Q(3)**, if the person's partner is getting a pension or a benefit. **New**



**subsection 500Q(5)** reflects the policy in point 1068B-B5 of the Social Security Act, as it exists before 1 July 2000.

**New subsections 500Q(6) and (7)** allow for the amounts in the table in **new subsection 500Q(3)** to be adjusted on 1 July 2000.

**Item 26** repeals existing section 500S and inserts a **new section 500S**, which relates to multiple entitlement exclusions for parenting payment. It extends the scope of existing section 500S by applying to persons who are or are not members of a couple.

**Item 27** repeals section 500T, which dealt with multiple entitlement exclusions for persons who are a member of a couple. Section 500T has been superseded by **new section 500S**, which also deals with multiple entitlement exclusions for persons who are a member of a couple.

**Item 28** repeals section 500U, which applied in cases where a person was receiving non-benefit PP (partnered).

**Item 29** inserts **new subsection 500V(3)**, which states that parenting payment is not payable to the person if the person's partner is receiving a payment under the ABSTUDY scheme that includes a dependant spouse allowance. **New subsection 500V(3)** maintains the effect of point 1068B-B2(c) as it exists in the Social Security Act prior to 1 July 2000.

**Item 30** repeals note (2) to subsection 500Z(2), which refers to a situation where a person is subject to a seasonal work non-benefit period. This term will cease to exist.

**Items 31 and 32** amend the terms "PP (Partnered) Rate Calculator" and "PP (partnered)" in paragraph 503(b) and subsection 504A(3) respectively, as a consequence of the omission of the term "non-benefit PP (partnered)".

**Item 33** repeals the note to subsection 504F(5) as the references contained in the note are incorrect as a result of the consequential amendments brought about by this schedule.

**Item 34** repeals paragraph 504F(5)(b) and inserts **new paragraph 504F(5)(b)**. The new paragraph reflects changes made to the rate calculation for benefit PP (partnered).

**Item 35** repeals existing section 508 and inserts **new section 508** which reflects the amendments made to the payability provisions for benefit PP (partnered). **New section 508** applies an automatic termination of parenting payment to persons who are or are not members of a couple, and reflects the multiple entitlement exclusion in **new subsection 500S(2)**.

**Item 36** repeals section 508A, which has been superseded by the amendments made to section 508.

**Item 37** amends section 508B, so that it reflects **new subsection 500V(3)**. Section 508B applies an automatic termination of parenting payment in cases where payment under the ABSTUDY scheme that includes a dependent spouse allowance becomes payable to the person's partner.



**Item 38** repeals sections 509D and 509E. These provisions specify circumstances that will cause a rate reduction in the amount of parenting payment that is payable to a person. However, one of the effects of **new section 500S** is that in the circumstances specified by sections 509D and 509E, parenting payment will not be payable to the person. Therefore, the provisions will have no application.

**Item 39** omits non-benefit PP (partnered) from paragraph 512(1)(a), as it will cease to exist.

**Item 40** repeals the note to subsection 512(1) as it provides a cross-reference for a term that will cease to exist.

**Item 41** repeals section 512A, which deals with the continuation of the payment of non-benefit PP (partnered) in cases of the death of a PP child. Section 512A is repealed because non-benefit PP (partnered) will cease to exist.

**Items 42, 45, 46, 47 and 48** omit “PP (partnered)” in various provisions and substitute it with “benefit PP partnered”.

**Items 43, 44 and 50** omit “PP (Partnered) Rate Calculator” in various provisions and substitute it with “Benefit PP (Partnered) Rate Calculator”.

**Item 49** repeals subsections 1068B(3) and (4), which allow the Secretary to determine the amounts referred to in subsection 1068(4), from 20 March 1998. As no determination was made, the subsections are now redundant.

**Item 51** repeals “Module A – Overall rate calculation process”, which is unique due to its need to limit the reduction of a person’s rate of parenting payment that is caused by income of the person’s partner. **Item 51** substitutes new “Module A – Overall rate calculation process”, which does not limit the reduction caused by income of the person’s partner on a person’s rate of parenting payment. New Module A omits the method statement for calculating the rate of non-benefit PP (partnered), and omits other references to non-benefit PP (partnered) in the repealed Module A, as this payment will cease to exist. As the rate calculation for benefit PP (partnered) is no longer unique, the format of the method statements for its rate calculation have been modified so that they are consistent with Benefit Rate Calculator B in “Module A – Overall rate calculation process”, in section 1068.

**Item 52** repeals “Module B – Non-benefit and benefit PP (partnered)” in section 1068B. Module B has the effect of distinguishing when a person will receive non-benefit PP (partnered) as opposed to benefit PP (partnered). As non-benefit PP (partnered) will cease to exist, there is no longer a need to make the distinction. However, in specifying that non-benefit PP (partnered) is payable to a person, Module B simultaneously specifies that benefit PP (partnered) is *not* payable to the person. In this respect, the effect of Module B has been maintained by amendments to the payability provisions for parenting payment. That is, where Module B specified that non-benefit PP (partnered) is payable to the person, the new payability provisions for parenting payment will specify that benefit PP (partnered) is *not* payable to the person.

**Item 53** repeals point 1068B-C1, which applies only in cases where non-benefit PP (partnered) is payable to a person. As non-benefit PP (partnered) will cease to exist,

point 1068B-C1 has no further application.

**Item 54** amends point 1068B-C2 so that it reflects the fact that non-benefit PP (partnered) will cease to exist.

**Item 55** amends point 1068B-D1 by omitting the words “(if applicable)” and substituting “maximum basic rate” with “maximum payment rate”. The words “(if applicable)” no longer apply because the ordinary income of the person’s partner will always be taken into consideration.

**Items 56 to 59 inclusive** amend the method statement in point 1068B-D1. The amendments are consequential to amendments made to “Module D – Income test” in section 1068B, and to the benefit PP (partnered) method statement at point 1068B-A2.

**Item 60** repeals the note to point 1068B-D2, as it makes a cross-reference to a provision that will cease to exist.

**Item 61** repeals point 1068B-D3, which includes in the calculation of a person’s income any payment to the person of a social security pension or a service pension (other than any part of such a payment by way of rent assistance, pharmaceutical allowance or remote area allowance), or, if the person is an armed services widow, a payment of a social security benefit (other than any part of such a payment by way of rent assistance, pharmaceutical allowance or remote area allowance). Point 1068B-D3 has been superseded by **new section 500S**, which states that in the above circumstances, parenting payment is not payable to the person.

**Item 62** repeals paragraph 1068B-D23(a), which has no further application because non-benefit PP (partnered) will cease to exist.

**Item 63** amends point 1068B-D24 by omitting the reference to point 1068B-D25, which will cease to exist.

**Item 64** repeals points 1068B-D25 and 1068B-D26. These points limit the effect that income of a person’s partner can have on their rate of parenting payment. By limiting the effect of the partner’s income, a person is currently able to receive parenting payment at a rate that relates to the maximum basic component of parenting payment. With the removal of basic parenting payment from the Social Security Act, there will be no limitation on the effect that income of a person’s partner can have on the rate of parenting payment. Consequently, points 1068B-D25 and 1068B-D26 will have no further application.

**Item 65** repeals the note to point 1068B-D29, as it makes a cross-reference to a provision that will cease to exist.

**Item 66** repeals point 1068B-D32. Point 1068B-D32 has the effect of providing an alternative income reduction for a person if the ordinary income reduction would result in the person receiving a rate of parenting payment that is less than the maximum basic component of parenting payment. It ensures that basic parenting payment, that is, the rate of benefit PP (partnered) that relates to the maximum basic component of parenting payment, is not

reduced by income of the person's partner. Given the removal of basic parenting payment from the Social Security Act, point 1068B-D32 no longer has any application.

**Items 67, 70 and 72** amend various provisions to reflect changes made to the method statements in points 1068B-A2 and 1068B-A3.

**Item 68** repeals paragraph 1068B-E1(a), which has no further application because non-benefit PP (partnered) will cease to exist.

**Item 69** repeals the definition for “pharmaceutical allowance rate” in subpoint 1068B-E5(2) and inserts a new definition that reflects changes made to the method statements in points 1068B-A2 and 1068B-A3.

**Items 71 and 73** repeal paragraphs 1068B-F1(a) and 1068B-G1(a), which have no further application, as non-benefit PP (partnered) will cease to exist.

**Items 74 to 78 inclusive** omit references to terms and provisions that will cease to exist.

**Item 79** repeals subsection 1131(2A), which has no further application because non-benefit PP (partnered) will cease to exist.

**Items 80 to 99 inclusive** amend various provisions in “Part 3.14 – Compensation Recovery” of the Social Security Act. In relation to compensation payments received by a person's partner, the compensation provisions in Part 3.14 do not currently enforce the recovery of or preclude the payment of that component of a person's parenting payment (partnered) that does not exceed the maximum basic component of parenting payment. This effect is currently achieved in two ways. First, in cases where a person's rate of parenting payment is equal to the maximum basic component of parenting payment, their parenting payment remains payable despite their partner's receipt of a compensation payment. Second, the compensation provisions affect only that part of a person's PP (partnered) that exceeds the maximum basic component of parenting payment. These provisions affect only the rate of a person's PP (partnered) that exceeds the maximum basic component of parenting payment. This may have the effect that a person receiving benefit PP (partnered) is, for compensation purposes, affected only for the amount that they receive above the maximum basic component of parenting payment. That is, their entitlement to basic parenting payment is currently unaffected. These protections will no longer be relevant as basic parenting payment will be removed from the Social Security Act.

**Items 100 to 119 inclusive** make various amendments to the indexations and adjustment provisions, that are consequential to the removal of basic parenting payment from the Social Security Act.

**Items 120 to 122 inclusive** amend various provisions to give effect to changes in terminology that are consequential to the removal of basic parenting payment from the Social Security Act.

## Schedule 8 – Consequential Amendments of Income Tax Law

### Background

Family tax benefit A and family tax benefit B, known collectively as family tax benefit (FTB), will replace a number of taxation benefits. FTB Part A will replace family tax assistance part A. FTB Part B will replace family tax assistance part B and the dependent spouse (with child) and sole parent rebates. The dependent spouse (without child) rebate will still be available.

Eligibility to the FTB will also affect entitlement to the housekeeper and child-housekeeper rebates. This is because these rebates are generally alternatives to the sole parent rebate. Since the sole parent rebate is being rolled into FTB, effectively the housekeeper and child-housekeeper rebates will also be rolled in. Therefore, a taxpayer cannot generally claim the FTB and one of these rebates for the same period.

Taxpayers will be unable to claim the dependent spouse (with child) and sole parent rebates and may be unable to claim the housekeeper and child-housekeeper rebates in their assessments for the 2000-2001 year and later years of income. However, a taxpayer's entitlement to these rebates will be notionally retained for the purposes of the calculation of zone and overseas forces rebates, as well as for determining eligibility to the Medicare levy family income threshold.

### Explanation of amendments

#### *Income Tax Assessment Act 1936 (ITAA36)*

#### *Repeal of the dependent spouse (with child) and sole parent rebates*

**Items 19, 21, 23 and 24** repeal the dependent spouse (with child) and sole parent rebates. These rebates will be replaced by FTB and will no longer be available in assessments in relation to the 2000-2001 year and all later years of income.

#### *Entitlement to family tax benefit and other rebates*

**Item 20** inserts **new subsection 159J(1AA)** to prevent a taxpayer from claiming a dependent spouse (without child) or child-housekeeper rebate for a year of income in which they, or their spouse, are eligible for FTB.

Where a taxpayer, or their spouse, is eligible for FTB for only part of the year of income, the taxpayer is able to claim an entitlement to a dependent spouse (without child) or child-housekeeper rebate for that part of the year of income in which they, or their spouse, were ineligible for FTB (**item 22**).

**Item 25** provides that a taxpayer will generally not be able to claim a housekeeper rebate during any period in which they or their spouse were eligible for FTB. Under the current arrangements, a taxpayer may claim the housekeeper rebate in addition to the dependent spouse rebate where the housekeeper is wholly engaged in caring for the taxpayer's invalid spouse and in keeping house for the taxpayer. In line with these arrangements, a taxpayer will be able to claim the housekeeper rebate even though they, or their spouse, are eligible for FTB, if the housekeeper cares for the taxpayer's invalid spouse.

*Notional retention of certain rebates for the calculation of zone and overseas forces rebates*

A taxpayer's entitlement to the dependent spouse (with child) and sole parent rebates is used in working out the following three rebates (collectively referred to as the zone and overseas forces rebates):

- persons serving with an armed force under the control of the United Nations (section 23AB of the ITAA36);
- residents of isolated areas (section 79A of the ITAA36); and
- members of defence force serving overseas (section 79B of the ITAA36).

While the dependent spouse (with child) and sole parent rebates are being repealed and the child-housekeeper and housekeeper rebates may be unavailable to people receiving the new FTB, these rebates are being notionally retained for the purpose of working out zone and overseas forces rebates. Notional retention of these rebates will retain the amount of zone or overseas forces rebates a taxpayer would have been entitled to receive but for the amendments (**items 1 to 18**).

The effect of **items 1, 7 and 13** is to notionally retain a taxpayer's entitlement to the sole parent rebate for the purposes of working out zone or overseas forces rebates.

**Items 2, 3, 4, 8, 9, 10, 14, 15 and 16** ensure that a taxpayer's entitlement to the housekeeper or child-housekeeper rebate is notionally retained for the purpose of working out zone or overseas forces rebates despite the taxpayer or their spouse being entitled to FT B.

**Items 5, 11 and 17** allow a taxpayer to include his/her entitlement to the dependent spouse rebate when working out the zone or overseas forces rebates despite the repeal of dependent spouse (with child) rebate and any eligibility to FTB.

The notes inserted in the ITAA36 by **items 6, 12 and 18** assist readers with understanding the notional retention of the dependent spouse, child-housekeeper and housekeeper rebates for working out zone or overseas forces rebates, despite the repeal of dependent spouse (with child) rebate and any eligibility to FTB.

### ***Income Tax Rates Act 1986***

**Item 26** repeals family tax assistance. This concession will be replaced by FTB and will no longer be available in assessments in relation to the 2000-2001 year and all later years of income.

### ***Medicare Levy Act 1986 (MLA)***

Section 8 of the MLA provides relief to certain low income earners from the Medicare levy. Married taxpayers or sole parents entitled to a housekeeper, child-housekeeper or sole parent rebate whose family income is below the applicable family income threshold are entitled to an exemption from, or reduction in, the Medicare levy.

**Items 27 and 28** ensure a taxpayer's entitlement to sole parent, child-housekeeper or housekeeper rebate is notionally retained for determining eligibility to the Medicare levy family income threshold, despite the repeal of sole parent rebate and any eligibility FTB.

### **Application**

**Item 29** provides that these amendments apply to assessments in relation to the 2000-2001 year of income and all later years of income.



## Schedule 9 – Fringe Benefits and Youth Allowance

### Background

As part of the Government reforms to the Fringe Benefit Tax provisions, it is intended that, for the purposes of the parental means test for youth allowance, the non-grossed up value of a person's fringe benefits (as that term is used in the *Fringe Benefits Tax Assessment Act 1986*) will be included in assessing a dependent young person's entitlement. Amendments are made to the *Social Security Act 1991* to achieve this result.

### Explanation of amendments

#### *Social Security Act 1991*

Section 10A of the Social Security Act contains definitions which are currently relevant to the family allowance income test and the youth allowance parental means test. As these will no longer be relevant to those tests, **item 1** makes necessary amendments to section 10A.

**Item 1** removes from subsection 10A(2) of the Social Security Act, references to the youth allowance rate calculator as the definitions in subsection (2) is no longer relevant to that rate calculator. It also substitutes a new heading to section 10A as the current heading inappropriately states that the definitions in that section are relevant to the parental means test.

**Items 2 to 9** inclusive makes changes to Module F of the Youth Allowance Rate Calculator which deals with the Parental Income Test. At present, that test (which is used in determining the rate of youth allowance payable to a dependent young person) includes a consideration of the value of a parent's fringe benefits, as that latter term is defined in the Act. While the relevance of a parent's fringe benefits is retained, the changes made by these items ensure that the meaning of the term 'fringe benefits' is the same as in the *Fringe Benefits Tax Assessment Act 1986* (the FBTA). This aligns the treatment of fringe benefits for youth allowance purposes with the treatment that is to apply to family allowance.

**Item 2** substitutes the word "total" for the word "value" in paragraph 1067G-F10(b). It will be the non-grossed up total of all fringe benefits that will be required for the parental means test.

**Item 3** amends Notes 3 and 4 at the end of point 1067G-F10 so that those Notes advise the reader where the definitions of terms used in that point can be found.

**Item 4** substitutes new subpoints 1067G-F11(2) and (3). Subpoint (2) inserts a definition of the term "adjusted fringe benefits total". It is the non-grossed up amount of a person's fringe benefits that will be relevant for the youth allowance parental means test. However, the figure that will be shown on group certificates will be the grossed up amount. New subpoint (2) provides the formula (and relevant definitions) for converting the grossed up amount (as disclosed on a person's group certificate) into the non-grossed up amount.

New subpoint 1067G-F11(3) provides a new definition of the term ‘target foreign income’ and reflects the fact that the term ‘fringe benefit’, when used in the youth allowance context, now takes its meaning from the *Fringe Benefits Tax Assessment Act 1986*.

**Items 5 and 6** amend the definition of what constitutes an ‘accepted estimate’ in point 1067G-F13. The effect of the amendment is that an accepted estimate can now also be made in respect of an amount described in subpoint 1067G-F11(3).

**Item 7 and 8** amend point 1067G-F14 (which is concerned with who may give a notice setting out an estimate of a person’s income) so that a notice setting out an estimate may now also be given in respect of an amount described in subpoint 1067G-F11(3).

**Item 9** repeals points 1067G-F16, 1067G-F17, 1067G-F18 and 1067G-F19 which contain definitions of terms which are no longer relevant.

Changes are also made to Part 3.12A which currently contains provisions relevant to the family allowance income test, the parental means test and the seniors health card taxable income test. In effect, Part 3.12A sets out what benefits constitute fringe benefits for the purposes of those tests and how to calculate the value of those benefits. For family allowance and youth allowance, the term ‘fringe benefits’ will now derive its meaning from the FBTAA. Accordingly, **items 10 to 15 inclusive** make necessary changes to Part 3.12A to compliment that new approach.

**Item 10** substitutes a new heading to Part 3.12A. That heading provides that the provisions of Part 3.12A apply in relation to the seniors health card taxable income test.

**Item 11** amends subsection 1157A(1) which outlines the purpose of Part 3.12A. The amendment removes the reference in subsection (1) to the family allowance income test and the parental means test which are no longer relevant in Part 3.12A.

**Item 12** omits the word ‘also’ from subsection 1157A(1).

**Item 13** repeals Note 1 at the end of subsection 1157A(1) as it is no longer relevant.

**Items 14 and 15** renumber Notes 2 and 3 at the end of subsection 1157A(1).

**Item 16** provides that the amendments made by this Schedule are to apply when working out the rate of a youth allowance payable in respect of a payment period which ends after the commencement of this Schedule.

The amendments made **Schedule 9** commence on 1 January 2001. This date is used because the parental income test for youth allowance relies on income from the tax year that ended on 30 June in the calendar year before the calendar year in which the youth allowance pay period ends (the base tax year). Accordingly, the 1999-2000 tax year will become the base tax year from 1 January 2001. Using a commencement date of 1 January 2001 allows the other changes in relation to fringe benefits to commence (ie the group certificates will display

a parent's fringe benefit amount) and that base tax year information will be able to be used to assess entitlement for youth allowance pay periods ending 1 January 2001 or later.