

2004-2005

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**FAMILY AND COMMUNITY SERVICES AND VETERANS' AFFAIRS
LEGISLATION AMENDMENT (FURTHER 2004 ELECTION COMMITMENTS
AND OTHER MEASURES) BILL 2005**

EXPLANATORY MEMORANDUM

(Circulated by the authority of the

**Minister for Family and Community Services,
Senator the Hon Kay Patterson)**

**FAMILY AND COMMUNITY SERVICES AND VETERANS' AFFAIRS
LEGISLATION AMENDMENT (FURTHER 2004 ELECTION COMMITMENTS
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OUTLINE AND FINANCIAL IMPACT STATEMENT

Outline

This Bill amends the social security law, the family assistance law and the *Veterans' Entitlements Act 1986* to give effect to two further 2004 election commitments in respect of older Australians and families with children. The Bill will:

- increase the rate of family tax benefit (FTB) Part B by introducing a new FTB Part B supplement from 1 January 2005; and
- exempt aged care accommodation bonds from the operation of the social security and veterans' affairs assets test.

The Bill will also replace the existing formula for the child income cut-out amount for FTB with a specified cut-out amount of \$11 233. The new amount will apply from 1 July 2005 and will be indexed on 1 July 2006 and on each subsequent 1 July in accordance with movements in the Consumer Price Index.

Financial Impact

Schedule 1 (FTB Part B supplement)

Commencement: 1 January 2005

Financial impact:

Administered resourcing

2004-05	\$205.9 m
2005-06	\$423.8 m
2006-07	\$432.6 m
2007-08	\$443.7 m

Departmental resourcing

2004-05	\$6.5 m
2005-06	\$5.4 m
2006-07	\$3.4 m
2007-08	\$3.4 m

Schedule 2 (Cut-out amount)

Commencement: 1 July 2005

Financial impact:	Administered resourcing
	2005-06 \$0.2 m
	2006-07 \$0.2 m
	2007-08 \$0.5 m
	2008-09 \$0.6 m
	Departmental resourcing
	nil

Schedule 3 (Accommodation bonds)

Commencement: 1 July 2005

Financial impact:	Administered resourcing
	2004-05 nil
	2005-06 \$11.6 m
	2006-07 \$13.9 m
	2007-08 \$16.5 m
	Departmental resourcing
	2004-05 \$3.0 m
	2005-06 \$2.0 m
	2006-07 \$0.4 m
	2007-08 \$0.4 m

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NOTES ON CLAUSES

Clause 1 sets out how the Act is to be cited, that is, the *Family and Community Services and Veterans' Affairs Legislation Amendment (Further 2004 Election Commitments and Other Measures) Act 2005*.

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

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

This Explanatory Memorandum uses the following abbreviations:

- 'Social Security Act' means the *Social Security Act 1991*;
- 'Social Security Administration Act' means the *Social Security (Administration) Act 1999*;
- 'Family Assistance Act' means the *A New Tax System (Family Assistance) Act 1999*;
- 'Family Assistance Administration Act' means the *A New Tax System (Family Assistance) (Administration) Act 1999*;
- 'FTB' means family tax benefit; and
- 'Veterans' Entitlements Act' means the *Veterans' Entitlements Act 1986*.

Schedule 1 – FTB Part B supplement

Summary

From 1 January 2005, the rate of FTB Part B will be increased by the introduction of a new FTB Part B supplement. The new supplement will be an additional amount added to an individual's standard rate of FTB Part B and payable as a lump sum on income reconciliation after the end of the relevant income year. The annual amount of the new supplement will initially be set at \$302.95 (for the 2004-05 income year). The FTB Part B supplement will be subject to a one-off 6-month indexation arrangement on 1 July 2005 (which reflects its 1 January 2005 commencement) and then will be indexed on 1 July 2006 and each subsequent 1 July in accordance with annual movements in the Consumer Price Index (CPI).

Background

Prior to the 2004 Federal election, the Coalition announced a package of measures as part of its 2004 election policy that would provide extra assistance to families. One of these measures was an increase in the maximum rate of FTB Part B.

Schedule 1 gives legislative effect to this election commitment through the introduction of a new FTB Part B supplement.

Explanation of changes

Amendments of the A New Tax System (Family Assistance) Act 1999

Clause 29 of Schedule 1 to the Family Assistance Act provides for the calculation of an individual's FTB Part B rate. Under the current rules, if an individual is not a member of a couple, the individual's FTB Part B rate is the standard rate (subclause 29(1) refers). If the individual is a member of a couple, then the individual is subject to an income test based on the adjusted taxable income of the secondary earner and the individual's FTB Part B rate is the standard rate less any reduction for adjusted taxable income (subclause 29(2) refers). The standard rate is a specified amount that depends on the age of the individual's youngest FTB child.

Item 1 repeals subclauses 29(1) and 29(2) and substitutes new provisions that add the new FTB Part B supplement into the rate calculation process for FTB Part B.

New subclause 29(1) provides, for an individual who is not a member of a couple, that the individual's FTB Part B rate is the sum of the individual's standard rate and the individual's FTB Part B supplement.

New subclause 29(2) inserts a new method statement that applies in working out the FTB Part B rate of an individual who is a member of a couple. Step 1 in the process is to determine the individual's 'maximum rate' by adding the individual's standard rate and the individual's FTB Part B supplement. The income test remains unchanged. The individual's Part B rate is the maximum rate less any reduction for adjusted taxable income.

Under subclause 29(3) of Schedule 1, FTB Part B is not available in respect of an FTB child who has turned 16 unless the child is undertaking full-time study and the calendar year in which the child turns 18 has not ended. **Item 2** makes a consequential amendment to ensure that, if a child is disregarded under subclause 29(3), that child cannot attract the FTB Part B supplement.

Item 3 inserts a new Division 2A (new clause 31A) into Part 4 of Schedule 1 to the Family Assistance Act. The amount of the new FTB Part B supplement to be added in working out an individual's rate of FTB Part B is determined under new clause 31A.

The various possible scenarios and corresponding amounts of FTB Part B supplement are set out in new subclause 31A(1).

The amount of an individual's FTB Part B supplement where the individual has one or more FTB children and at least one of the FTB children is not covered by a percentage determination under subsection 59(1) of the Family Assistance Act is the 'FTB (B) gross supplement amount'.

In broad terms, subsection 59(1) enables payment of FTB in respect of a particular child to be apportioned between two or more individuals who are not members of the same couple and who share the care of the child. The term 'FTB (B) gross supplement amount' is defined in subclause 31A(2) as the amount of \$302.95 (an annual amount).

The annual amount of \$302.95 equates to a daily amount of 83 cents. As the FTB Part B supplement commences from 1 January 2005 and there are 181 days in the period 1 January 2005 to 30 June 2005, the maximum FTB Part B supplement for that period would be \$150.23 (ie, 181 days x \$0.83).

The amount of an individual's FTB Part B supplement where the individual has only one FTB child who is covered by a percentage determination under subsection 59(1) of the Family Assistance Act is that percentage of the FTB (B) gross supplement amount.

The amount of an individual's FTB Part B supplement where the individual has more than one FTB child and each child is covered by a percentage determination under subsection 59(1) of the Family Assistance Act is the highest of those percentages of the FTB (B) gross supplement amount. For example, if an individual has 50% care of one FTB child and 80% care of another and these caring arrangements are reflected in a percentage determination under

subsection 59(1) for each child, then the individual's FTB Part B supplement is 80% x FTB (B) gross supplement amount.

New subclause 31A(3) makes it clear that, when the FTB (B) gross supplement amount is indexed on 1 July, the amount, as it stood before that indexation, continues to apply in working out an individual's rate of FTB Part B for the income year ending just before that 1 July.

Items 4, 5, 6 and 7 provide for the indexation of the FTB (B) gross supplement amount.

The table in clause 2 of Schedule 4 to the Family Assistance Act lists the amounts that are indexed or adjusted under Schedule 4, provides an abbreviation (which is then used in clause 3) and indicates the relevant provision in the family assistance law where the amount is found.

Item 4 inserts a new item 9A into the table in clause 2. New item 9A of the table describes the new amount as the 'FTB (B) gross supplement amount for family tax benefit (Part B)', provides an appropriate abbreviation ('FTB gross supplement amount (B)') and cross references subclause 31A(2) of Schedule 1 to the Family Assistance Act, which specifies the amount of the new supplement.

The table in subclause 3(1) of Schedule 4 lists the amounts that are subject to CPI indexation on each indexation day, using a specified reference quarter and base quarter and rounded to the nearest multiple of the rounding base.

Item 7 inserts new clause 3A into Schedule 4. New clause 3A sets out a one-off 6-month indexation arrangement for the FTB gross supplement amount (B) that would apply on 1 July 2005 for the 2005-06 income year. On 1 July 2005, the FTB gross supplement amount (B) is to be indexed in accordance with the CPI, using the December quarter 2004 as the reference quarter and the June quarter 2004 as the base quarter. This is a one-off arrangement that reflects commencement of the FTB Part B supplement on 1 January 2005, which is 6 months before the first indexation on 1 July 2005. The one-off indexation will result in the initial amount from 1 January 2005 of \$302.95, increasing on 1 July 2005 to \$306.60.

Item 5 inserts a new item 9A into the table in subclause 3(1). This new item sets out the ongoing annual indexation arrangements and ensures that the FTB gross supplement amount (B) is CPI indexed on 1 July, using a December reference quarter, a base quarter that is the highest December quarter before the reference quarter (but not earlier than the December quarter 2004) and a rounding base in column 5 of \$3.65. This ongoing annual indexation arrangement is consistent with the way in which the FTB Part A supplement is indexed.

Item 6 makes it clear that the first ongoing annual indexation of the FTB gross supplement amount (B) takes place on 1 July 2006 (for 2006-07) after

the one-off 6-month indexation on 1 July 2005 provided for by new clause 3A of Schedule 4 (inserted by **item 7**).

Amendments of the A New Tax System (Family Assistance) (Administration) Act 1999

Section 32A of the Family Assistance Administration Act ensures that the FTB Part A supplement is not taken into account in determining an individual's rate of FTB unless and until the relevant FTB reconciliation conditions for the individual are satisfied. Section 32B defines when the FTB reconciliation conditions are satisfied. The FTB reconciliation conditions are set out in sections 32C to 32Q inclusive.

When the individual has satisfied the relevant FTB reconciliation conditions, the Secretary is required to review the individual's entitlement determination, factoring in the FTB Part A supplement. The relevant provision is section 105A of the Family Assistance Administration Act. In practice, this process occurs at the same time as income reconciliation (that is, reviewing entitlement on the basis of the individual's actual adjusted taxable income).

Item 8 amends subsection 32A(2) of the Family Assistance Administration Act to ensure that the new FTB Part B supplement is not added into an individual's FTB Part B rate until the individual has satisfied the relevant reconciliation conditions. The relevant cross references are added after paragraph 32A(2)(b) to achieve this effect.

The note at the end of **item 8** alters the heading to section 32A to reflect the amendment made by the item. A reference to the new FTB Part B supplement is added to the heading.

Item 9 amends subsection 105A(2) of the Family Assistance Administration Act to ensure that, when an individual's entitlement to FTB is reviewed due to the individual satisfying the relevant reconciliation conditions, the new FTB Part B supplement is taken into account in that process. The relevant cross references are added after subparagraph 105A(2)(a)(ii) to achieve this effect.

The note at the end of **item 9** alters the heading of section 105A to reflect the amendment made by the item. A reference to the new FTB Part B supplement is added to the heading.

Application provisions

Item 10 sets out the application provisions for the amendments made by Schedule 1. The amendments that insert the provisions relating to the FTB Part B supplement (except for the indexation provisions) apply on or after 1 January 2005 in relation to the 2004-05 income year or a later income year. The one-off 6-month indexation arrangement that occurs on 1 July 2005 applies in relation to the 2005-06 income year. The ongoing annual

indexation arrangements that first occur on 1 July 2006 apply in relation to the 2006-07 income year or a later income year.

The retrospective commencement of this Schedule is purely beneficial to customers.

Schedule 2 – Child income cut-out amount

Summary

This Schedule replaces the existing formula for the child income cut-out amount for FTB with a specified amount of \$11 233. The new amount will apply from 1 July 2005 and will be indexed on 1 July 2006 and on each subsequent 1 July in accordance with movements in the Consumer Price Index (CPI).

Background

An individual cannot be an FTB child if, among other things, the individual has adjusted taxable income for the relevant income year that equals or exceeds the 'cut-out amount'. The relevant eligibility rules and definition of 'cut-out amount' are in sections 22A and 35 of the Family Assistance Act.

The current definition of child income cut-out amount is replaced with the amount of \$11 233 from 1 July 2005. This amount will be subject to annual CPI indexation to maintain its value in real terms.

The new amount is higher than the amount of \$11 218 that would have been applicable from 1 July 2005 under the existing formula.

Explanation of changes

Amendments of the A New Tax System (Family Assistance) Act 1999

Items 1 and 2 repeal the existing definitions of 'cut-out amount' in subsections 22A(2) and 35(3) of the Family Assistance Act and replace them with a specified amount of \$11 233 from 1 July 2005. This figure represents annual indexation of the existing amount for 2004-05 of \$10 948.

The table in clause 2 of Schedule 4 to the Family Assistance Act lists the amounts that are indexed or adjusted under Schedule 4, provides an abbreviation (which is then used in clause 3) and indicates the relevant provision in the family assistance law where the amount is found.

Item 3 inserts a new item 14A into the table in clause 2. New item 14A of the table describes the new amount as the 'Child income cut-out amount', provides an appropriate abbreviation ('cut-out amount') and cross references subsections 22A(2) and 35(3) of the Family Assistance Act, which define the cut-out amount.

The table in subclause 3(1) of Schedule 4 lists the amounts that are subject to CPI indexation on each indexation day, using a specified reference quarter and base quarter and rounded to the nearest multiple of the rounding base.

Item 4 inserts a new item 14A into the table in subclause 3(1). This new item ensures that the cut-out amount is CPI indexed on 1 July, using a December reference quarter, a base quarter that is the highest December quarter before the reference quarter (but not earlier than the December quarter 2004) and a rounding base in column 5 of \$1.00. This ongoing indexation arrangement for the cut-out amount is consistent with the usual CPI indexation arrangements applicable to most indexed FTB amounts.

Item 5 makes it clear that the first indexation of the new cut-out amount of \$11 233 takes place on 1 July 2006 (in respect of 2006-07).

Application provisions

Item 6 sets out the application provisions for the amendments made by Schedule 2. The amendments that insert the new definition of cut-out amount apply for the 2005-06 income year or a later income year. The ongoing indexation arrangements that first occur on 1 July 2006 apply in relation to the 2006-07 income year or a later income year.

Schedule 3 – Accommodation bonds

Summary

From 1 July 2005, an accommodation bond paid to an aged care facility will no longer be an assessable asset for the purposes of the Social Security Act and Veterans' Entitlements Act.

Background

As part of the 2004 Federal election campaign, the Coalition announced that accommodation bonds paid to an aged care facility would be exempt from the Social Security Act and Veterans' Entitlements Act assets tests.

Explanation of changes

Part 1 – Amendment of the Social Security Act 1991

Currently, accommodation bonds are assessed as assets of social security customers for the purposes of determining their rate of a social security payment. These amendments will exempt accommodation bonds from the assets test. These amendments will also allow a customer, who pays their accommodation bond by periodic payments, to rent out their former home, without the rental payments affecting their rate of payment.

Item 1 inserts new paragraph 8(8)(zna) into the Social Security Act.

New paragraph 8(8)(zna) provides that, where a social security customer is a resident of an aged care facility, still owns what was their principal home prior to moving to the aged care facility, is renting out that home, and is liable to pay an accommodation bond by periodic payments, then that customer will have any income generated by that rental exempted from the social security income test.

Item 2 amends the definition of *exempt assets* in subsection 11(1).

This amendment will mean that an accommodation bond balance, which will be included at new paragraph 1118(1)(u) (see **item 7**) as an asset that is disregarded from the social security assets test, will fall within the definition of *exempt assets* for the purposes of the Social Security Act.

Item 3 amends subsection 11(3B).

This amendment makes it clear that, even though new paragraph 1118(1)(u) provides that an accommodation bond balance is disregarded for assets testing purposes, the accommodation bond balance is still otherwise regarded as an asset for social security purposes. This may be relevant for other parts of the Social Security Act, including the disposal of assets rules in Division 2 of Part 3.12.

Item 4 inserts new paragraph 11(6A)(aa).

New paragraph 11(6A)(aa) provides that, where a residence was previously a customer's principal home for the purposes of the Social Security Act but the customer has moved into a care situation, where the customer is liable to pay an accommodation bond, in whole or part, by periodic payments, and where the former home is being rented out, then the former home will continue to be regarded as the customer's *principal home* for means test purposes. This means that the principal home will be a disregarded asset.

Item 5 amends paragraph 11(6A)(b) to include a reference to new paragraph 11(6A)(aa) (see **item 4** above).

Item 6 repeals and substitutes paragraphs 1118(1)(a) and (b).

This item makes a formatting amendment to the existing paragraphs 1118(1)(a) and (b).

Item 7 inserts new paragraph 1118(1)(u).

New paragraph 1118(1)(u) adds a new category of disregarded asset to those already existing in subsection 1118(1). This provision disregards a customer's accommodation bond balance from the operation of the social security assets test.

Item 8 provides for the application of this Schedule.

The provisions of this Schedule apply to the asset testing of a customer's accommodation bond balance from 1 July 2005, or Royal Assent to this Act, whichever is the later, and applies regardless of when the relevant accommodation bond was paid. This partly retrospective effect is beneficial to customers.

Item 9 provides transitional rules in relation to the start day of a customer's social security payment.

This item provides that, where a customer makes a claim for a social security payment between 1 July 2005 and 30 September 2005 and a social security payment is payable to that customer because of the changes made by this Schedule, then the start day for that social security payment will be 1 July 2005, or the day on which the payment becomes payable to the customer, whichever is the later.

This item also provides that, where a customer makes a claim for a social security payment between 1 October 2005 and 30 June 2006, where the Secretary is satisfied that special circumstances exist in respect of the person, and where a social security payment is payable to that person because of the changes made by this Schedule, then the start day for that social security payment will be 1 July 2005, or the day on which the payment became payable to the customer, whichever is the later. The special circumstances in question would mean that it was unreasonable for the customer to have necessarily made a claim for payment between 1 July 2005 and 30 September 2005.

Part 2 – Amendment of the Veterans’ Entitlements Act 1986

Currently, accommodation bonds are assessed as an asset of a person in receipt of a service pension or income support supplement for the purposes of determining the rate of the service pension or income support supplement payable to the person.

Item 10 inserts new paragraph 5H(8)(nd) into the Veterans’ Entitlements Act.

New paragraph 5H(8)(nd) provides that, where a person in receipt of a service pension or income support supplement is a resident of an aged care facility, still owns what was his or her principal home prior to moving to the aged care facility, is renting out that home, and is liable to pay for an accommodation bond by periodic payments, then that person will have any income generated by that rental exempted from the income test under the Veterans’ Entitlements Act.

Item 11 amends subsection 5L(3B).

This amendment makes it clear that, even though new paragraph 52(1)(p) provides that an accommodation bond balance is disregarded for assets testing purposes, the accommodation bond balance is still otherwise regarded as an asset for the purposes of the Veterans’ Entitlements Act. This may be relevant for other provisions in the Act, including the disposal of assets rules in Subdivision B of Division 11 of Part IIIB.

Item 12 inserts new paragraph 5L(6A)(aa).

New paragraph 5L(6A)(aa) provides that, where a residence was previously a person’s principal home, for the purposes of the Veterans’ Entitlements Act, but the person has moved into a care situation then, where the person is liable to pay an accommodation bond, in whole or part, by periodic payments and the former home is being rented out, then the former home will continue to be regarded as the person’s *principal home* for the purposes of the assets test. This means that the principal home will be a disregarded asset.

Item 13 amends paragraph 5L(6A)(b) to include a reference to new paragraph 5L(6A)(aa) (see **item 12** above).

Item 14 refers the reader to the definition of *accommodation bond* in Note 1 to subsection 5L(6A).

Item 15 clarifies Note 4 to subsection 5L(6A) by referring the reader to Division 57 of the *Aged Care Act 1997* for the rules concerning accommodation bonds.

Item 16 makes a formatting amendment to paragraph 52(1)(o) to allow for the insertion of new paragraph 52(1)(p) (see **item 17** below).

Item 17 inserts new paragraph 52(1)(p).

New paragraph 52(1)(p) adds a new category of disregarded asset to those already existing in subsection 52(1). This provision disregards a person's accommodation bond balance from the operation of the assets test.

Item 18 provides for the application of Part 2 of this Schedule.

The provisions of this Schedule apply to the asset testing of a person's accommodation bond balance from 1 July 2005, or Royal Assent to this Act, whichever is the later, and applies regardless of when the relevant accommodation bond was paid. As with the social security changes, this retrospective effect is purely beneficial.

Item 19 provides transitional rules in relation to the start day of a person's service pension or income support supplement.

This item provides that, where a person makes a claim for a service pension or income support supplement between 1 July 2005 and 30 September 2005 and a service pension or income support supplement is payable to that person because of the changes made by Part 2 of this Schedule, then the start day for that service pension or income support supplement will be 1 July 2005, or the day on which the service pension or income support supplement becomes payable to the person, whichever is the later.

This item also provides that, where a person makes a claim for a service pension or income support supplement between 1 October 2005 and 30 June 2006, the Repatriation Commission is satisfied that special circumstances exist in respect of the person, and a service pension or income support supplement is payable to that person because of the changes made by Part 2 of this Schedule, then the start day for that service pension or income support supplement will be 1 July 2005, or the day on which the service pension or income support supplement became payable to the person, whichever is the later. The special circumstances in question would

mean that it was unreasonable for the person to have necessarily made a claim for the payment between 1 July 2005 and 30 September 2005.