

2013

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT BILL 2013

EXPLANATORY MEMORANDUM

**(Circulated by the authority of the
Minister for Social Services, the Hon Kevin Andrews MP)**

SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT BILL 2013

OUTLINE

Encouraging responsible gambling

As foreshadowed during the 2013 election campaign, this Bill will implement the first stage of a different approach to addressing problem gambling, reducing bureaucracy and the duplication of functions between the Australian Government and State and Territory Governments.

The Bill will repeal the position and functions of the National Gambling Regulator, along with those provisions relating to the supervisory and gaming machine regulation levies, the automatic teller machine withdrawal limit, dynamic warning provisions, the trial on mandatory pre-commitment, and matters for Productivity Commission review. The Bill will also amend the pre-commitment and gaming machine capability provisions, to express clearly the Government's commitment to the development and implementation of these measures in the near future, informed fully by consultations with industry, State and Territory Governments, and other stakeholders.

Continuing income management as part of Cape York Welfare Reform

The Bill amends the Social Security Administration Act to enable a two-year continuation of income management as part of the continuation of Cape York Welfare Reform. The continuation of income management until the end of 2015 as a key element of the reforms will continue to assist in stabilising people's circumstances and fostering behavioural change, particularly in the areas of school attendance, parental responsibility and increasing individual responsibility.

Family tax benefit and eligibility rules

From 1 January 2014, family tax benefit Part A will be paid to families only up to the end of the calendar year in which their teenager is completing school.

Youth allowance, with its 'learn or earn' provisions that require young people to participate in work, job search, study or training, will remain available as the more appropriate payment to help young people transition from school into work or post-secondary study.

Exemptions will continue to apply for children who cannot work or study due to physical, psychiatric, intellectual or learning disability.

Period of Australian working life residence

From 1 January 2014, age pensioners and certain other pensioners with unlimited portability, will be required to have been Australian residents for 35 years during their working life (from age 16 to age pension age) to receive their full means-tested pension after 26 weeks' absence from Australia. The current requirement is 25 years. The change will also apply to all pensioners paid under social security agreements outside Australia, except those with Greece and New Zealand due to the specific terms of those agreements.

The change recognises that Australia's social security system differs markedly from the contributory systems that operate overseas, and that payments are made from general tax revenue and based on the concepts of residence and need. Other countries generally require 35 to 45 years of pension contributions to receive a full pension.

Pensioners who are living overseas immediately before 1 January 2014 will continue to be paid under the current 25-year rule, unless they return to Australia for longer than 26 weeks and leave again, when the new rules will start to apply to their pension calculation.

In an associated change, members of a couple paid outside Australia under a social security agreement will now have their pensions calculated on the basis of their own Australian working life residence, rather than their partners' Australian working life residence, as already applies to pensioners paid outside Australia under domestic portability rules in non-agreement countries. Existing pensioners outside Australia immediately before 1 January 2014 are exempt from this change unless they would be eligible for a higher rate of pension under the new rules.

Interest charge

The Bill will allow for an interest charge to be applied to certain debts relating to austudy payment, fares allowance, youth allowance payments to full-time students and apprentices, and ABSTUDY living allowance payments. The interest charge will only be applied where the debtor does not have or is not honouring an acceptable repayment arrangement. Debtors who are already making repayments, or who come to a repayment agreement with the Department of Human Services following the implementation of the measure, will not be charged interest.

The key purpose of the interest charge is to encourage debtors to repay their debt, in a timely fashion, where they have the financial capacity to do so. At present, current recipients of income support with debts have their payments reduced until their debts are repaid. For former recipients of income support, on the other hand, there is no incentive to repay their debts. Once the interest charge is in place, debtors who have not been making repayments will have an incentive to engage with the Department of Human Services to make a repayment arrangement in order to avoid the interest charge.

The rate of the interest charge will be based upon on the 90-day Bank Accepted Bill rate, plus an additional seven per cent, as is currently applied by the Australian Taxation Office for tax debts under the *Taxation Administration Act 1953*. Over the last four years, this rate has averaged 11.07 per cent, and currently stands at 9.6 per cent.

Student start-up loans

The Bill establishes, from 1 January 2014, the student start-up loan. These loans will be income-contingent, and there will be a limit of two loans a year of \$1,025 each (indexed from 2017). The loans will be repayable under similar arrangements to Higher Education Loan Program debts. Students will only be required to begin repaying their start-up loan after their Higher Education Loan Program debt has been repaid.

The Bill also provides grandfathering arrangements so that recipients who received a student start-up scholarship or Commonwealth Education Costs Scholarship prior to 1 January 2014, and have remained continuously on student payments, will continue to be eligible to receive the student start-up scholarship, as a grant, until coming off student payments.

The student start-up loan and student start-up scholarship aim to assist students with the costs of study, including the purchase of text books, computers and internet access.

Paid parental leave

To ease administrative burdens on business, the Paid Parental Leave legislation will be amended to remove the requirement for employers to provide Government-funded parental leave pay to their eligible long-term employees.

From 1 March 2014, employees will be paid directly by the Department of Human Services, unless an employer opts in to provide parental leave pay to its employees and an employee agrees for their employer to pay them.

Pension bonus scheme

From 1 March 2014, the Bill will end late registrations for the closed pension bonus scheme.

The scheme provides a lump sum payment to people who are qualified for age pension, age service pension, partner service pension after reaching pension age, or income support supplement after reaching qualifying age – but who choose to defer their pension and remain in the workforce. The scheme was closed from 2009, although people remained able to register for the scheme if they were qualified for it, but had not registered, at the time of its closure.

However, the introduction around the same time of a work bonus for age pensioners with earnings from employment has been more effective in encouraging older Australians to continue contributing to the workforce past pension age. Ending late registrations for the pension bonus scheme will help ensure the pension system is simpler and more sustainable for older Australians into the future.

Indexation

This Bill will extend the indexation pauses on certain higher income limits for three further years until 30 June 2017.

This will apply to the family tax benefit Part B primary earner income limit, the parental leave pay and dad and partner pay individual income limits, and the higher income free area for family tax benefit Part A. In addition, the annual end-of-year family tax benefit supplements will remain at current levels for three years.

This Bill will also maintain the annual child care rebate limit at \$7,500 for three further income years starting from 1 July 2014, with the first indexation of this amount occurring on 1 July 2017. As a result, an individual will be able to receive up to the maximum amount of \$7,500 per child per financial year for out-of-pocket child care costs for those three income years.

Changes to the rules for receiving payments overseas

From 1 July 2014, the length of time that families can be temporarily overseas and continue to receive family and parental payments will reduce from three years to 56 weeks.

In some circumstances, (such as where certain Australian Defence Force and Australian Federal Police personnel are deployed overseas) a person will continue to be eligible for family and parental leave payments for up to three years while temporarily absent from Australia.

Extending the deeming rules to account-based income streams

The Bill will align the income test treatment of account-based superannuation income streams, for products assessed from 1 January 2015, with the deemed income rules applying to other financial assets. Account-based income streams held by income support recipients immediately before 1 January 2015 will continue to be assessed under the previous rules unless recipients choose to change to a product that is assessed under the new rules.

Other amendments

Other amendments include improving the administration of debt recovery under the Student Financial Supplement Scheme, clarifying the provisions relating to the time period for lodging tax returns for family assistance purposes, and ensuring that funding under the National Disability Insurance Scheme paid into a person's account, which is set up for the purpose of managing the funding for supports for a participant's plan, cannot be garnisheed for debt recovery purposes.

Financial impact statement

MEASURE	FINANCIAL IMPACT
<i>Encouraging responsible gambling</i>	Abolition of the National Gambling Regulator may result in savings.
<i>Continuing income management as part of Cape York Welfare Reform</i>	Cost of \$4.2 million over two years.
<i>Family tax benefit and eligibility rules</i>	Saving of \$76.6 million over four years.
<i>Period of Australian working life residence</i>	Saving of \$50.8 million over four years.
<i>Interest charge</i>	Saving of \$33.5 million over three years.
<i>Student start-up loans</i>	Saving of \$1,214.0 million over five years.
<i>Paid parental leave</i>	Cost of \$7.0 million over five years.
<i>Pension bonus scheme</i>	Saving of \$80.5 million over three years.
<i>Indexation – child care rebate</i>	Saving of \$105.8 million over three years.
<i>Indexation – remaining amendments</i>	Saving of \$1,213.7 million over four years.
<i>Reduction of period for temporary absence from Australia</i>	Saving of \$18.8 million over four years.
<i>Extending the deeming rules to account-based income streams</i>	Saving of \$161.7 million over four years.
<i>Other amendments</i>	Nil

REGULATION IMPACT STATEMENT

The regulation impact statement for the paid parental leave measure appears at the end of this explanatory memorandum.

STATEMENTS OF COMPATIBILITY WITH HUMAN RIGHTS

The statements of compatibility with human rights appear at the end of this explanatory memorandum.

SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT BILL 2013

NOTES ON CLAUSES

Abbreviations used in this explanatory memorandum

- **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*
- **Paid Parental Leave Act** means the *Paid Parental Leave Act 2010*
- **Social Security Act** means the *Social Security Act*
- **Social Security Administration Act** means the *Social Security (Administration) Act 1999*
- **Student Assistance Act** means the *Student Assistance Act 1973*
- **Taxation Administration Act** means the *Taxation Administration Act 1953*

Clause 1 sets out how the new Act is to be cited – that is, as the *Social Services and Other Legislation Amendment Act 2013*.

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

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

Schedule 1 – Encouraging responsible gambling

Summary

As foreshadowed during the 2013 election campaign, this Schedule will implement the first stage of a different approach to addressing problem gambling, reducing bureaucracy and the duplication of functions between the Australian Government and State and Territory Governments.

The Schedule will repeal provisions no longer required and make amendments to express clearly the Government's commitment to the development and implementation of appropriate measures in the near future, informed fully by consultations with industry, State and Territory Governments, and other stakeholders.

Background

In broad terms, this Schedule repeals the position and functions of the National Gambling Regulator, along with provisions relating to the supervisory and gaming machine regulation levies, the automatic teller machine withdrawal limit, dynamic warning messages on gaming machines, the trial of mandatory pre-commitment, and matters for Productivity Commission review. All related compliance and enforcement provisions are also repealed.

This Schedule also replaces existing provisions relating to pre-commitment systems with provisions that recognise the Government's commitment to responsible gambling and its support for voluntary pre-commitment as a part of a broader plan to assist all gamblers.

Explanation of the changes

Amendments to the *National Gambling Reform Act 2012*

Item 1 repeals the long title of the Act and substitutes a new title, 'An Act in relation to measures to encourage responsible gambling, and for related purposes'. This new title reflects the new object of the Act, as described in new section 4 (inserted by item 6).

Item 2 repeals the Chapter 1 heading, consistent with the revised structure of the Act.

Item 3 omits the words, 'National Gambling Reform', from the short title of the Act set out in section 1, and substitutes the words, 'Gambling Measures'. This amendment reflects the substituted long title of the Act (referred to in item 1).

Item 4 repeals the note from section 2. The note refers the reader to Part 2, which deals with the application of the Act. As Part 2 is also repealed, the note becomes redundant.

Item 5 repeals section 3, setting out the Guide to the Act.

Item 6 repeals and substitutes section 4 to provide the new object of the Act, which is to recognise the Commonwealth's commitment to the development and implementation of voluntary pre-commitment in venues nationally in order to encourage responsible gambling by all gamblers.

Item 7 repeals and substitutes section 5 to remove redundant definitions and provide definitions of *Australian Institute of Family Studies* and *Director of the Australian Institute of Family Studies*.

Item 8 is a technical amendment.

Item 9 repeals subsections 6(2) to (4) to simplify the definition of *gaming machine*.

Item 10 repeals sections 7 to 12, which are no longer required due to the other changes made by this Schedule.

Item 11 repeals Part 2 (Application of the Act), which is also not required due to the other changes made by this Schedule.

Item 12 repeals Chapter 2 and substitutes a new Part 2, which sets out the measures that are to be taken to encourage responsible gambling.

Under new section 19, the Commonwealth recognises the importance of meaningful measures to encourage responsible gambling. The provision also acknowledges the Commonwealth support for venue-based voluntary pre-commitment (which allows a person to set voluntarily a limit on the amount they are prepared to lose from playing gaming machines).

New section 20 sets out the Commonwealth's commitment to work with State and Territory Governments and relevant stakeholders including the gaming industry to:

- develop and implement a voluntary pre-commitment system in venues nationally and to develop a realistic implementation timeframe for this measure; and
- ensure that gaming machines are capable of supporting a venue-based voluntary pre-commitment system and to develop a realistic implementation timeframe.

In new section 21, the Commonwealth commits to working with State and Territory Governments on the most appropriate way of administering the voluntary pre-commitment measure.

Item 13 repeals Chapters 3 to 8.

Item 14 repeals the heading Chapter 9, consistent with the revised structure of the Act.

Item 15 repeals Part 1 of Chapter 9, setting out the Guide to Chapter 9.

Item 16 repeals the heading of Part 2 of Chapter 9 and substitutes a new heading for new 'Part 3 – Research and other provisions,' consistent with the revised structure of the Act.

Item 17 repeals the heading of Division 1 of Part 2 of Chapter 9, consistent with the revised structure of the Act.

Item 18 repeals sections 193 to 195 to remove provisions relating to the Productivity Commission review.

Item 19 repeals subsection 196(2) to remove the limitation in use of the supervisory levy. This amendment is consequential to the repeal of the supervisory levy provisions by item 13.

Item 20 repeals the heading of Division 2 of Part 2 of Chapter 9, consistent with the revised structure of the Act.

Item 21 repeals sections 198 to 200 and substitutes a new section 198 to provide that the Act does not create rights or duties that are legally enforceable in judicial or other proceedings.

Item 22 makes a technical amendment subsection 201(1).

Item 23 repeals subsection 201(2), to remove the express power to make regulations prescribing offences and civil penalty provisions.

Item 24 repeals the *National Gambling Reform (Related Matters) Act (No. 1) 2012*. This Act becomes redundant with the repeal of the supervisory levy.

Item 25 repeals the *National Gambling Reform (Related Matters) Act (No. 2) 2012*. This Act becomes redundant with the repeal of gaming machine regulation levy.

Schedule 2 – Continuing income management as part of Cape York welfare reform

Summary

This Schedule amends the Social Security Administration Act to enable a two-year continuation of income management as part of the continuation of Cape York Welfare Reform. The continuation of income management until the end of 2015 as a key element of the reforms will continue to assist in stabilising people's circumstances and fostering behavioural change, particularly in the areas of school attendance, parental responsibility and increasing individual responsibility.

Background

Cape York welfare reform is a partnership between the communities of Aurukun, Coen, Hope Vale and Mossman Gorge, the Australian Government, the Queensland Government and the Cape York Institute for Policy and Leadership. It aims to restore local Indigenous authority, rebuild social norms, encourage positive behaviours, and improve economic and living conditions.

To date, Cape York welfare reform has made a real difference in the lives of Indigenous people in the four communities. Since it began in July 2008, the Cape York welfare reform communities have seen improved school attendance, care and protection of children and community safety.

A 2012 evaluation of Cape York welfare reform found that progress has been made at the foundational level in stabilising social circumstances and fostering behavioural change, particularly in the areas of sending children to school, caring for children and increasing individual responsibility.

The Family Responsibilities Commission, which is established under Queensland Government legislation, is a key plank of Cape York welfare reform. Local Commissioners hold conferences with community members, refer people to support services and, when necessary, arrange income management. Income management acts both as a means to ensure financial stability for families and as an incentive for the individual to engage with support services and observe behavioural obligations.

Currently, a person can be subject to income management under Cape York welfare reform only after a decision by the Family Responsibilities Commission made before 1 January 2014.

This Schedule amends the Social Security Administration Act to extend this date to 1 January 2016, enabling income management to continue in the four Cape York welfare reform communities for two further years.

Explanation of the changes

Amendments to the Social Security Administration Act

Paragraphs 123UF(1)(g) and 123UF(2)(h) of the Social Security Administration Act currently provide that a person can be subject to income management under section 123UF only after a decision by the Family Responsibilities Commission made before 1 January 2014.

Item 2 omits the references to 1 January 2014 in paragraph 123UF(1)(g) and paragraph 123UF(2)(h), and substitutes references to 1 January 2016.

Schedule 3 – Family tax benefit and eligibility rules

Summary

From 1 January 2014, family tax benefit Part A will be paid to families only up to the end of the calendar year in which their teenager is completing school.

Youth allowance, with its 'learn or earn' provisions that require young people to participate in work, job search, study or training, will remain available as the more appropriate payment to help young people transition from school into work or post-secondary study.

Exemptions will continue to apply for children who cannot work or study due to physical, psychiatric, intellectual or learning disability.

Background

Currently, family tax benefit Part A can be payable to a parent or guardian, or an approved care organisation, for children aged 0 to 15, children aged 16 to 17 who are still undertaking or have completed secondary study, and dependent full-time secondary students aged 18 until the end of the calendar year they turn 19.

From 1 January 2014, this Schedule limits eligibility for family tax benefit Part A to families with children aged 0 to 15 and teenagers aged 16 to 19 (until the end of the calendar year they turn 19) who are in full-time secondary study to attain their Year 12 qualification or equivalent. Eligibility for children aged 16 to 17 who have already completed their Year 12 qualification will be removed. This Schedule also makes similar changes to eligibility for family tax benefit for approved care organisations.

Exemptions will still continue to apply for a child who lacks capacity to undertake the course due to physical, psychiatric, intellectual or learning disability so that these children may still be eligible for family tax benefit.

This Schedule also removes the child 'cut-out amount' or income limit, which is currently \$14,078 per annum, as family tax benefit will no longer be paid for children who have completed school and entered the workforce.

The amendments made by this Schedule commence on 1 January 2014.

Explanation of the changes

Amendments to the Family Assistance Act

Items 1 and 2 repeal the definitions of *exempt from the FTB activity test* and *satisfies the FTB activity test* in subsection 3(1). These items are consequential to item 3.

Item 3 repeals the FTB activity test in section 17B. This concept will no longer be used as the family tax benefit participation requirements will instead be incorporated in the definition of *senior secondary school child*.

Item 4 repeals paragraph 22(3)(e) to remove the reference to the FTB activity test, and substitutes new paragraph 22(3)(e), containing the requirement for an FTB child aged 16 to 17 to be a senior secondary school child (defined in section 22B).

Item 5 is consequential to item 8.

Item 6 repeals and substitutes a cell at table item 1 in subsection 22A(1), to remove the concept of the ‘cut-out amount’, which applies to a child aged from 5 to less than 16 who is not undertaking education, but retain other current requirements before the child is considered to be an FTB child.

Item 7 repeals paragraph (a) of the cell at table item 2 in subsection 22A(1), to remove the concept of the cut-out amount for a child aged 16 or more who is not in secondary study.

Item 8 repeals subsections 22A(1A) and (2), to remove the definition of **cut-out amount** for an FTB child and the concept of undertaking primary education for the purposes of the cut-out amount.

Item 9 repeals and substitutes subparagraph 22B(1)(b)(ii) to provide that an individual may be a senior secondary school child if the individual has an exemption from the full-time study requirement in new subsection 22B(2), inserted by item 10.

Item 10 repeals subsection 22B(2), and substitutes new subsections 22B(2) and (2A). New subsection 22B(2) incorporates the exemptions from the full-time study requirement for a senior secondary school child that were incorporated in section 17B, now repealed by item 3. Under new subsection 22B(2), an individual may be exempt from satisfying the family tax benefit participation requirements and still be a senior secondary school child if:

- there is no locally accessible course (including a distance education course); or
- if there is a course:
 - there is no place available on the course; or
 - the individual is not qualified to undertake the course; or
 - the individual lacks the capacity to undertake the course because they have a physical, psychiatric or intellectual disability or a learning disability, such as for example attention deficit disorder; or
- in the Secretary’s opinion, special circumstances exist that make it unreasonable to require the individual to undertake an approved course of education or study.

New subsection 22B(2A) incorporates the capacity, repealed under item 3, for the Secretary to determine, for the purposes of subparagraph 22B(1)(b)(i) or (ia), that the normal amount of full-time study for the individual in respect of a course is a number of hours averaged over the duration of the period for which the individual is enrolled in the course.

Items 11 and 12 are technical amendments that insert new headings before subsections 22B(3) and (4).

Items 13 and 14 are consequential amendments to paragraphs 31(3)(a), (b) and (c) to lower the age limits for continued eligibility for family tax benefit if an FTB child or regular care child dies.

Item 15 repeals subparagraphs 34(1)(a)(ii) and (iii), and substitutes new paragraph 34(1)(a)(ii), to change an approved care organisation's eligibility for family tax benefit in respect of children who have turned 16 so that eligibility is restricted to children who are senior secondary school children.

Item 16 repeals table item 1 in subsection 35(1), consistent with the change made in item 6.

Item 17 repeals and substitutes a cell at table item 2 in subsection 35(1), consistent with the change made in item 7.

Item 18 repeals subsections 35(2A) and (3), consistent with the change made in item 8.

Items 19 to 22 are consequential amendments to the single income family supplement and family tax benefit rate calculation provisions, consistent with the changes made in items 13 and 14.

Item 23 omits the words, 'but is under 16', in table item 2 in clause 7 of Schedule 1, which sets out the family tax benefit Part A standard rates per child.

Item 24 repeals table items 3 and 4 in clause 7 of Schedule 1, consequential to item 23.

Item 25 omits the words, 'but is under 16', in table item 2 in subclause 38AA(1) of Schedule 1, which sets out the family tax benefit Part A clean energy supplement rates per child.

Item 26 repeals table items 3 and 4 in subclause 38AA(1) of Schedule 1, consequential to item 25.

Item 27 repeals and substitutes subclause 38B(3) of Schedule 1 to provide that a regular care child of an individual is a **rent assistance child** of the individual if the regular care child is not an absent overseas regular care child.

Items 28, 29 and 30 repeal table item 14A in clause 2 of Schedule 4, table item 14A in subclause 3(1) of Schedule 4, and subclause 3(4) of Schedule 4. These amendments are consequential to items 8 and 18.

Amendments to the Family Assistance Administration Act

Item 31 amends subsection 29(2B), and is consequential to items 3 and 4.

Schedule 3 – Family tax benefit and eligibility rules

Item 32 removes the requirement in paragraph 32J(1)(b) to consider the income of an FTB child or regular care child in working out an individual's entitlement to family tax benefit, and is consequential to item 8.

Item 33 repeals sections 32K and 32L, and is consequential to item 8.

Item 34 amends subparagraph 32P(1)(c)(ii), and is consequential to item 35.

Item 35 repeals paragraph 32P(1)(d), and is consequential to item 8.

Item 36 sets out the application and savings provisions for this Schedule.

Schedule 4 – Period of Australian working life residence

Summary

From 1 January 2014, age pensioners and certain other pensioners with unlimited portability, will be required to have been Australian residents for 35 years during their working life (from age 16 to age pension age) to receive their full means-tested pension after 26 weeks' absence from Australia. The current requirement is 25 years. The change will also apply to all pensioners paid under social security agreements outside Australia, except those with Greece and New Zealand due to the specific terms of those agreements.

Pensioners who are living overseas immediately before 1 January 2014 will continue to be paid under the current 25-year rule, unless they return to Australia for longer than 26 weeks and leave again, when the new rules will start to apply to their pension calculation.

In an associated change, members of a couple paid outside Australia under a social security agreement will now have their pensions calculated on the basis of their own Australian working life residence, rather than their partners' Australian working life residence, as already applies to pensioners paid outside Australia under domestic portability rules in non-agreement countries. Existing pensioners outside Australia immediately before 1 January 2014 are exempt from this change unless they would be eligible for a higher rate of pension under the new rules.

Background

Strengthening Australian working life residence requirements

Domestically-qualified pensioners

Currently, some Australian pensions may continue to be paid to a pensioner who is overseas for an unlimited period. However, after 26 weeks, such pensions are paid at a rate which is a proportion of the domestic rate of pension where the pensioner has less than 25 years of Australian working life residence.

A person's working life is the period beginning when the person turns 16 and ending when the person reaches age pension age (as defined in the Social Security Act). A pensioner's period of Australian working life residence is the aggregate of periods during the person's working life during which the person has been an Australian resident.

Where the person has an Australian working life residence of 25 years or more, their pension is not reduced. However, if they have an Australian working life residence of less than 25 years, their pension is reduced to the percentage of the full means-tested rate of pension represented by dividing the number of years of their Australian working life residence by 25 years. For example, a person with 15 years of Australian working life residence will have their maximum payment rate reduced to 60 per cent – a percentage calculated on the basis of 15 years divided by 25 years.

This has been significantly more generous than the pension rules of other OECD countries, which generally require 35 to 45 years of pension contributions to receive a full pension. For example, France, Denmark, Japan and Canada require 40 years of pension contributions, and New Zealand has a 45-year working age residence requirement for payment overseas.

These amendments increase the required working life residence to receive a full means-tested rate of pension overseas from 25 to 35 years.

Pensions affected are age pension and, in some circumstances, disability support pension, wife pension and widow B pension.

The change will apply from 1 January 2014 to absences from Australia commencing on or after that day. In general, the change will not apply to pensioners who are already overseas on 1 January 2014, unless they subsequently return to Australia for a period of more than 26 weeks. Special arrangements will also be made for pensioners who reside overseas, but are temporarily in Australia on 1 January 2014. Provided such pensioners again leave Australia to return overseas before the expiry of 26 weeks from 1 January 2014, their pension rate will continue to be calculated by reference to a period of 25 years' working life residence.

Pensioners paid under international agreements

In some circumstances, an Australian pension is paid to a pensioner as a result of the operation of one of Australia's various social security agreements with other countries. In this case, a scheduled international social security agreement under the *Social Security (International Agreements) Act 1999* (the Social Security International Agreements Act) may override the ordinary provisions of the social security law. For pensioners who are outside Australia, and receive an Australian social security payment solely because of the operation of a scheduled international agreement, where the rate of payment is to be determined under the agreement according to the law of Australia, Australian working life residence is also relevant. For a small number of Australia's international agreements, calculation of pension rate for a pensioner who is in Australia may also be subject to Australian working life residence. To align with the change from 25 to 35 years for domestically-qualified pensioners, the Social Security International Agreements Act is also amended to increase the base Australian working life residence from 25 to 35 years.

The change will similarly apply to absences or to the rate of pensions granted under an international agreement from 1 January 2014. However, if a pensioner is outside Australia at this date and is receiving a social security payment under a scheduled international agreement at a rate worked out taking into account the person's period of Australian working life residence, the amendments will not apply unless the person subsequently returns to Australia for a period of at least 26 weeks. Similarly, where such a pensioner resides overseas, but is temporarily in Australia on 1 January 2014, their pension rate will continue to be calculated by reference to a period of 25 years' working life residence, provided they again leave Australia to return overseas before the expiry of 26 weeks from 1 January 2014.

Paying pensioners qualified under international agreements based upon their own working life residence

In a related change, members of a couple paid outside Australia under a social security agreement will have their pensions calculated on the basis of their own Australian working life residence, rather than their partner's or former partner's Australian working life residence.

Currently, partnered age and disability support pensioners, or former members of age or disability support pension couples, paid under the Social Security International Agreements Act, are able to be paid according to the higher Australian working life residence duration of either partner. A person receiving, under the Social Security International Agreements Act, either carer payment in respect of their care for their partner or wife pension, is deemed to have a period of Australian working life residence that is equal to the Australian working life residence of their partner (even if that is less than their own). Basing these people's pensions upon their own Australian working life residence will mean that these pensioners are treated the same as pensioners paid outside Australia under domestic portability rules.

This change will also apply to periods of absence commencing on or after 1 January 2014, such that pensioners already overseas at that date will not be affected unless they return to Australia for at least 26 weeks. However, for some wife pensioners or carer payment recipients already overseas, the change may result in a higher rate of payment. If so, despite the fact they are already overseas, the amendments will apply to the calculation of their pensions from 1 January 2014.

Explanation of the changes

Amendments to the Social Security Act

Module C of the Pension Portability Rate Calculator at section 1221 provides for the calculation of the residence factor, as part of the process of generating a rate of pension for portable pensions. Point 1221-C1 provides that, if a person's period of Australian working life residence is 300 months (25 years) or more, the person's residence factor is 1. **Item 2** omits the reference in this point to 300 months (25 years) and substitutes 420 months (35 years). **Item 1** updates the heading to the point, to refer to 35 years, rather than 25 years.

Point 1221-C2 provides the formula for calculating the residence factor. The formula divides the person's period of Australian working life residence by 300 months (25 years) if the person's period of Australian working life residence is less than 25 years. **Items 4 and 5** omit the references to 300 months (25 years) in this point and the related formula, and substitute references to 420 months (35 years). **Item 3** updates the heading to the point, to refer to 35 years, rather than 25 years.

Item 6 provides for the application of these changes. **Subitem 6(1)** provides that the change from 25 to 35 years' Australian working life residence applies to periods of absence from Australia starting on or after 1 January 2014. However, the other subitems qualify this general case.

Subitem 6(2) deals with a situation where a person receiving a portable pension which may be subject to a proportional calculation based upon Australian working life residence, is in Australia immediately before 1 January 2014, although is not at that date residing in Australia. Provided such a person departs Australia before the end of the period of 26 weeks beginning on 1 January 2014, and remains in receipt of that pension at the point of departure, then the amendments do not apply (subject to subitem (5)).

Subitem 6(3) deals with a person who came within the situation covered by subitem (2), who again returns to Australia on or after 1 January 2014. Where such a person again leaves Australia within the period of 26 weeks of returning, and remains in receipt of that pension, then the amendments do not apply. However, this is subject to subitem (5).

Subitem 6(4) deals with the situation where a person receiving a portable pension which is subject to a proportional calculation based upon Australian working life residence, was outside Australia immediately before 1 January 2014. The amendments do not apply to such a person by virtue of subitem (1). If such a person later returns to Australia, but again leaves Australia within 26 weeks of returning having remained in receipt of their pension, then subitem (4) provides that the amendments will not apply to the later absence, subject to subitem (5).

The above items may prevent application of the amendments for successive returns to and departures from Australia. **Subitem 6(5)** then provides a general rule which will end this saving if the person at any time returns to Australia and their subsequent departure is not covered by any of subitems (1) to (4). In this case, the particular departure will be subject to the new rules applying a 35-year Australian working life residence. This subitem continues to apply the new 35-year rule to any subsequent departures from Australia despite the fact they may otherwise have been covered by one of the earlier subitems.

Amendments to the Social Security International Agreements Act

Strengthening Australian working life residence

Division 3 of Part 3 of the Social Security International Agreements Act (calculation of international agreement portability rates) provides for the calculation of the residence factor, as part of the process of generating a rate of pension for portable pensions paid because of the operation of scheduled international social security agreements. Section 23 provides that, if a person's period of Australian working life residence is 300 months (25 years) or more, the person's residence factor is 1. **Item 10** omits the reference in this section to 300 months (25 years), and substitutes a reference to 420 months (35 years). **Item 9** updates the heading to the section, to refer to 35 years, rather than 25 years.

Section 24 provides the formula for calculating the residence factor. The formula divides the person's period of Australian working life residence by 300 months (25 years) if the person's period of Australian working life residence is less than 25 years. **Items 12 and 13** update the references to 300 months (25 years) in the section and the related formula, substituting references to 420 months (35 years). **Item 11** updates the heading to the section, to refer to 35 years, rather than 25 years.

Item 14 provides for the application of these amendments for periods of absence from Australia. **Subitem 14(1)** provides that the change from 25 to 35 years' Australian working life residence applies to periods of absence from Australia starting on or after 1 January 2014. However, the other subitems qualify this general case.

Subitem 14(2) deals with a situation where a person receiving a social security payment under a scheduled international social security agreement is in Australia immediately before 1 January 2014, although is not at that time residing in Australia. Provided such a person departs Australia before the end of the period of 26 weeks beginning on 1 January 2014, and remains in receipt of that payment at the point of departure, then the increase in working life residence to 35 years does not apply. This is subject to exceptions dealt with in subitems (5) and (6).

Subitem 14(3) deals with a person who came within the situation covered by subitem (2), who again returns to Australia having previously departed on or after 1 January 2014. Where such a person again leaves Australia within the period of 26 weeks of returning, and remains in receipt of that pension, then the amendments do not apply. However, this is subject to subitem (5), and subitem (6) (dealt with under paying agreement pensioners based upon their own working life residence below).

Subitem 14(4) deals with the situation where a person receiving a portable pension which is subject to a proportional calculation based upon Australian working life residence at a rate worked out under Part 3 of the Social Security International Agreements Act was outside Australia immediately before 1 January 2014. The amendments do not apply to such a person by virtue of subitem (1). If such a person later returns to Australia, but again leaves Australia within 26 weeks of returning, having remained in receipt of their pension, then the amendments will not apply to the later absence, subject to subitems (5) and (6).

The above items may prevent application of the amendments for successive returns to and departures from Australia. **Subitem 14(5)** then provides a general rule which will end this saving if the person at any time returns to Australia and their subsequent departure is not covered by any of subitems (1) to (4). In this case, the particular departure will be subject to the new rules applying a 35-year Australian working life residence. This subitem continues to apply the new 35-year rule to any subsequent departures from Australia despite the fact they may have otherwise been covered by one of the earlier subitems on a previous occasion.

Subitem 14(7) provides an additional overarching case for people who claim a pension, generally from outside Australia, under a social security agreement and whose start date for payment is on or after 1 January 2014. Regardless of when such a person's absence from Australia began, the new rules applying a 35-year Australian working life residence apply.

Paying internationally qualified pensioners based upon their own working life residence

Division 2 of Part 3 of the Social Security International Agreements Act (Australian working life residence) establishes the rules for determining a person's period of Australian working life residence. Sections 18 to 20 and section 22 provide for the calculation of a person's Australian working life residence by reference to another person's Australian working life residence (generally the person's partner) for age pension, disability support pension, wife pension and carer payment. **Item 8** repeals these sections. As a result, a person's Australian working life residence for the purposes of calculating the rate of these payments is calculated on an individual basis.

Item 7 makes a consequential change to section 16.

In alignment with the change to increase Australian working life residence requirements from 25 to 35 years, this change applies to periods of absence from Australia starting on or after 1 January 2014 (subitem 14(1)) and to persons whose start day for their social security payment under a scheduled international agreement is on or after 1 January 2014 (subitem 14(7)). However, subitem 14(6) provides an additional application for wife pension or carer payment recipients who are overseas immediately before 1 January 2014 where the amendments made by items 7 and 8 would result in a higher rate of pension. For these pensioners, the amendments will apply from 1 January 2014. Similarly, where the temporary return of a person provided for in subitem 14(2), 14(3) or 14(4) would otherwise apply the old rules, subitem (6) ensures that the amendments made by items 7 and 8 apply despite the return.

Schedule 5 – Interest charge

Summary

This Schedule will allow for an interest charge to be applied to certain debts relating to austudy payment, fares allowance, youth allowance payments to full-time students and apprentices, and ABSTUDY living allowance payments. The interest charge will only be applied where the debtor does not have or is not honouring an acceptable repayment arrangement. Debtors who are already making repayments, or who come to a repayment agreement with the Department of Human Services following the implementation of the measure, will not be charged interest.

The rate of the interest charge will be based upon on the 90-day Bank Accepted Bill rate, plus an additional seven per cent, as is currently applied by the Australian Taxation Office for tax debts under the Taxation Administration Act. Over the last four years, this rate has averaged 11.07 per cent, and currently stands at 9.6 per cent.

Background

The key purpose of the interest charge is to encourage debtors to repay their debt, in a timely fashion, where they have the financial capacity to do so.

Once the interest charge is in place, debtors who have not been making repayments will have an incentive to engage with the Department of Human Services to make a repayment arrangement in order to avoid the interest charge. The design of the repayment arrangement will mean that the interest charge will only be applied to debts of those debtors who have the capacity to repay their debt but are not doing so. There will also be provision for concessions, in the form of reduced repayment rates or temporary halts to repayment arrangements, for people experiencing financial hardship and other special circumstances.

These amendments will mean that the existing penalty interest charge scheme contained in the Social Security Act and the Student Assistance Act will no longer apply to debtors covered by the new arrangements.

The amendments made by this Schedule commence on 1 January 2014.

Explanation of the changes

Part 1 – Amendments

Amendments to the Social Security Act

Item 1 makes technical amendments for the purpose of identifying what methods of recovery will be available for the interest charge.

Item 2 inserts new section 1228B(2A) to clarify that a 10 per cent penalty added to a debt for the understatement of income is part of the debt. For the purposes of imposing an interest charge, this will mean that a reference to ‘debt’ will include the amount of the payment that a person has obtained to which they were not entitled, as well as any additional 10 per cent penalty added to the debt under section 1228B.

Item 3 amends subsection 1228B(5) so that an additional 10 per cent penalty imposed for the understatement of income does not apply to a debt due to the Commonwealth under section 1229G (as inserted by item 6).

The purpose of this amendment is to clarify that an additional 10 per cent penalty cannot apply to an interest charge under section 1229G. This is because section 1229B only imposes an additional 10 per cent penalty where a person has refused or failed to provide information in relation to the person’s income or knowingly or recklessly provided false or misleading information in relation to the person’s income. The interest charge debt due to the Commonwealth under section 1229G is not dependent on an individual providing information on their income, so an additional 10 per cent penalty cannot apply to an interest charge debt under section 1229G.

Item 4 inserts new paragraph 1229(1)(ea) to ensure that a notice in respect of a debt given to a person under section 1229 specifies the effect of an interest charge if it is applied to their debt. This will ensure that the person is fully informed of how the new interest charge will operate.

Item 5 inserts subsection 1229(5) to provide that the existing penalty interest scheme, as provided for in sections 1229A and 1229AB, does not apply if an interest charge applies in relation to a person and a social security debt under section 1229E or 1229F.

Item 6 inserts new sections 1229D to 1229H, which relate to the interest charge.

New section 1229D – Interest charge payable under section 1229E or 1229F on certain social security debts

New subsection 1229D(1) provides that an interest charge will apply to a person and a debt if the debt has not been wholly paid and the debt relates to either youth allowance (student and apprentices), austudy payment, fares allowance or any other social security payment prescribed in a legislative instrument. The power to prescribe other social security payments in a legislative instrument will provide the flexibility to extend the interest charge, at a later point in time, to debts relating to other payments under social security law.

This subsection further clarifies that the interest charge will only apply to youth allowance students who undertake full-time study or are new apprentices.

New subsection 1229D(1) also provides that the interest charge will apply to a person and a debt where qualification for youth allowance was in circumstances prescribed by a legislative instrument. This will allow the flexibility to extend the interest charge, at a later point in time, to debts relating to youth allowance payments where qualification for the payment was in circumstances other than where the student was undertaking full time study or was a new apprentice.

As any extension of these rules would be made through a legislative instrument, it would be subject to Parliamentary scrutiny and disallowance.

New subsections 1229D(2) and (3) provide that the Minister may make the above mentioned legislative instruments.

For the purposes of discussion in this explanatory memorandum, the debts that relate to the payments prescribed in paragraphs 1229D(1)(b) and 1229(1)(c) are referred to as 'relevant social security debts'.

New section 1229E – No repayment arrangement in effect

New subsection 1229E(1) provides that, if a person has an unpaid amount on a relevant social security debt and, by the end of the due day, has not entered into an arrangement for the repayment of the debt (under section 1234), then the person is liable to pay, by way of penalty, an interest charge on the debt for each day in a period.

New subsections 1229E(2) and (3) allow for the Minister to make a legislative instrument to prescribe circumstances in which the interest charge would not apply if a person has an unpaid amount on a relevant social security debt and, by the end of the due day, has not entered into an arrangement for the repayment of the debt.

It is envisaged that the instrument would prescribe circumstances in which a person would not have an interest charge applied to their debt if the amount that is being withheld from their payments (under current section 1231 of the Act) is satisfactorily repaying the debt. This instrument would also allow flexibility to exempt the application of the interest charge in prescribed circumstances at a later point in time.

In the event that a person is no longer in the circumstances prescribed in the legislative instrument, subsection 1229E(4) allows the Secretary to give a notice to the person, specifying the information provided in paragraphs 1229E(4)(a)(i) to (iv). It also provides that the outstanding amount of the debt is due and payable on the 28th day after the day on which the notice was issued.

New subsection 1229E(5) provides that, if a person has been given such a notice, the person has an outstanding debt at the end of the due date, and has not entered into an arrangement for the repayment of the debt, then the person is liable to pay, by way of penalty, an interest charge on the debt for each day in a period.

New subsection 1229E(6) provides that the period for which the interest charge will be applied to the debt starts at the beginning of the day after the due day. It further provides that the period will end on the earliest of either the last day on which the unpaid amount (and any interest charge on the unpaid amount) remains unpaid or the day before the first day on which the person makes a payment under an arrangement for repayment of the debt.

This subsection is intended to ensure that a person will be able to end the application of the interest charge by entering into, and making a payment under, an arrangement for repayment of the debt. This, in addition to entering into an arrangement before the due date, will mean that the person can entirely avoid the interest charge applying to their debt.

New subsection 1229E(7) provides that the interest charge on any unpaid amount is worked out by multiplying the interest charge rate for that day by the sum of the remaining unpaid amount and the interest charge from previous days. This provision ensures that the interest is compounded on a daily basis. New section 1229H prescribes the calculation of the 'interest charge rate' for that day, and is explained below.

New subsection 1229F – Failure to comply with or termination of repayment arrangement

New subsection 1229F(1) provides that, if a person has an unpaid amount on a relevant social security debt, the person has entered into a repayment arrangement under section 1234, and the person fails to make a payment under the arrangement, then the person is liable to pay, by way of penalty, an interest charge for each day in a period.

New subsection 1229F(2) provides that the period for which the interest charge will be applied to the debt starts at the beginning of the day after the due day. It further provides that the period will end on the earlier of the last day on which the outstanding amount (and any interest charge on any of the outstanding amount) remains unpaid, the day before the first day on which the person has paid all the payments that have so far become due and payable under the arrangement, or the day before the day the arrangement is terminated.

This subsection is intended to ensure that a person may end the application of the interest charge to their debt at the point where they catch up on any missed payments under the arrangement. To avoid doubt, while the interest charge will apply to the debt during the period, a person is only required to pay an amount equal to the missed payments (rather than an amount equal to the missed payments and the interest charge) to end the period of the application of the interest charge. The interest charge will otherwise be payable as a debt due to the Commonwealth, as explained below.

New subsection 1229F(3) prescribes the calculation of an interest charge for a day. The interest charge is calculated in the same way as in new subsection 1229E(7), which is explained above.

Repayment arrangement is terminated

New subsection 1229F(4) provides that, if a person has an unpaid amount on a relevant social security debt, the person has entered into an arrangement under section 1234, and the arrangement is terminated, then the outstanding debt, and any interest charge on the outstanding debt, is due and payable on the 14th day after the termination. If, at the end of the 14th day, any amount remains unpaid, the person is liable to pay, by way of penalty, an interest charge each day in a period.

New subsection 1229F(5) provides that the period for which the interest charge will be applied to the debt starts at the beginning of the day after the 14th day. It further provides that the period will end on the earliest of the last day on which the outstanding amount (and any interest charge on the outstanding amount) remains unpaid or the day before the first day after the 14th day on which the person makes a payment on another arrangement for the repayment of the debt.

This subsection is intended to ensure that a person may end the application of the interest charge at the point where they enter into another arrangement for repayment of the debt.

New subsection 1229F(6) prescribes the calculation of an interest charge for a day. The interest charge is calculated in the same way as in new subsection 1229E(7), which is explained above.

New section 1229G – Other rules for interest charge

New subsection 1229G(1) provides that the interest charge under section 1229E or 1229F for a day is due and payable to the Commonwealth at the end of that day.

New subsection 1229G(2) provides that an interest charge under section 1229E or 1229F for a day is a debt due to the Commonwealth by the person.

New subsection 1229G(3) clarifies that subsection 1229(1) and paragraph 1229D(1)(b) do not apply to a debt which is also an interest charge (as provided for under new sections 1229E and 1229F). This means that, for the interest charge, a notice in respect of a debt is not required to be issued under subsection 1229(1) and it is not a debt to which new section 1229D would apply. This avoids a situation where an interest charge is subject to further interest charges.

New section 1229H – What is the interest charge rate?

New section 1229H provides for the calculation of the interest charge rate. New subsections 1229H(1) and 1229H(2) provide that the rate is based upon the 90-day Bank Accepted Bill rate, plus an additional seven per cent, as is currently applied by the Australian Taxation Office for tax debts under the Taxation Administration Act. This is an appropriate method for calculating the rate of the interest charge to apply to income support debts because the rate is high enough to encourage repayment without being punitive, it provides a return to the Commonwealth (commensurate with the time value of the monies overpaid) and it will help align tax and income support debt recovery policy.

New subsection 1229H(2) specifies what the **base interest rate** is, with reference to the monthly average yield of 90-day Bank Accepted Bills. The rate is currently published by the Reserve Bank of Australia in the 'Interest Rates and Yields – Money Market – Monthly' table on the Bank's website. This subsection also provides a table identifying the appropriate monthly average to be used for each quarter.

Where the Reserve Bank of Australia has not published the specified rate by the start of a quarter, new subsection 1229H(3) substitutes the last published monthly average.

New subsection 1229H(4) provides for the rounding of the base interest rate to the second decimal place.

Item 7 is to clarify that, if a person has entered into an arrangement for the payment of a debt, it is a statutory requirement for the person to make a payment under an arrangement before the end of the day that the arrangement requires such a payment.

Amendments to the Student Assistance Act

Item 9 inserts into section 38 a definition of **ABSTUDY debt**, which means an amount paid under the ABSTUDY Scheme (which is also known as the Aboriginal and Torres Strait Islander Study Assistance Scheme) that should not have been paid.

An ABSTUDY debt is a special educational assistance scheme overpayment (or a debt under paragraph 38(a)), which, under section 39, is a debt owed by the person to the Commonwealth.

Item 10 amends paragraph (c) of the definition of **debt** in section 38 to ensure that an interest charge, imposed under section 41CA or section 41CB, is an amount payable to the Commonwealth and is therefore a debt.

In view of these amendments, **item 8** makes a technical amendment to simplify the heading to section 38.

Item 11 inserts new sections 41A to 41H.

New section 41A – Sections 40 and 41 do not apply to ABSTUDY debts

New section 41A provides that sections 40 and 41 do not apply in relation to a person and an ABSTUDY debt owed by the person the Commonwealth. This will have the effect that a person and an ABSTUDY debt will not be subject to the existing provisions in the Student Assistance Act relating to late payment charges and interest in relation to an overpayment of a benefit, but will instead be subject to the interest charge provisions contained in new sections 41CA and 41CB.

New section 41B – Notice in respect of ABSTUDY debt

New section 41B provides for a notice in respect of an ABSTUDY debt. This section mirrors the notice of debt provisions in the Social Security Act (that is, subsections 1229(1) and (2), as amended by this Schedule), and ensures consistent treatment of debts relating to ABSTUDY payments and relevant social security debts.

New subsection 41B(1) provides that, if an ABSTUDY debt has not been wholly paid, the Secretary must provide a notice specifying the information contained in paragraphs 41B(1)(a) to 41B(1)(h), which mirrors the notice of debt provisions in the Social Security Act. The subsection also provides that the outstanding amount of the debt is due and payable on the 28th day after the date on the notice.

New section 41C – Interest charge payable on ABSTUDY debts

New section 41C provides that the interest charges (provided by sections 41CA and 41CB) only apply if the debt is an ABSTUDY debt that has not been wholly paid.

New section 41D – No repayment arrangement in effect

New section 41D mirrors the operation of new section 1229E of the Social Security Act (as inserted by item 6 of this Schedule), but with respect to an ABSTUDY debt that has not been wholly paid.

New section 41E – Failure to comply with or termination of repayment arrangement

New section 41E mirrors the operation of new section 1229F of the Social Security Act (as inserted by item 6 of this Schedule), but with respect to an ABSTUDY debt that has not been wholly paid.

New section 41F – When interest charge becomes due and payable

New section 41F mirrors the operation of new subsection 1229G(1) of the Social Security Act (as inserted by item 6 of this Schedule), but with respect to an ABSTUDY debt that has not been wholly paid.

New section 41G – What is the interest rate charge

New section 41G mirrors the operation of new section 1229H of the Social Security Act (as inserted by item 6 of this Schedule) to provide the calculation of the interest rate charge referred to in sections 41CA and 41CB.

New section 41H – Arrangement for payment of ABSTUDY debt

New section 41H provides that the Secretary may, on behalf of the Commonwealth, enter into an arrangement with a person for payment of an ABSTUDY debt. This section mirrors subsections 1234(1) to 1234(4) of the Social Security Act to ensure consistent treatment of debts related to ABSTUDY payments and relevant social security debts.

Item 12 amends paragraph 51(1)(b) to ensure that a certificate by the Secretary (stating that, on a specified day, a notice, to a specified effect, in respect of an ABSTUDY debt, was given to a specified person by the Secretary) is prima facie evidence of the matters stated in the certificate.

Part 2 – Application and transitional provisions

Subitem 13(1) provides that section 1229D, as inserted by this Bill, only applies in relation to a debt that arises on or after the commencement of item 13 and a pre-existing debt that is outstanding immediately before the commencement of the Bill. This will mean that the amendments contained in item 7 will not apply to debts that are no longer outstanding immediately before the commencement of item 13.

Subitem 13(2) provides that paragraph 1229E(1)(b), as inserted by this Bill, applies to a notice given on or after the commencement of item 13. This will mean that a person is not liable to pay an interest charge under section 1229E if there was not a notice given to a person under subsection 1229(1) on or after the commencement of item 13.

Subitem 13(3) provides that, if section 1229D, as inserted by this Bill, applies to a debt that arose before the commencement of item 13 and, before the commencement of this item, the Secretary gave a person a notice under subsection 1229(1) of the Social Security Act, the Secretary must give the person another notice under section 1229(1) of that Act, as amended by this Bill. This means that the person will be informed in the new notice of the effect of the application of the interest charge, and that the Secretary can issue a second notice under subsection 1229(1) of the Social Security Act.

Subitem 13(4) provides that paragraph 1229F(1)(c), as inserted by this Bill, only applies in relation to a failure that occurs on or after the commencement of item 13, regardless of whether the arrangement was entered into before, on or after that commencement. This means that a person is not liable to pay an interest charge under section 1229F if a failure occurs before the commencement of item 13. It also means that an arrangement that was entered into prior to commencement of the Bill will continue in effect after commencement.

Subitem 13(5) provides that paragraph 1229F(4)(c), as inserted by this Bill, only applies to a termination that occurs on or after the commencement of item 13, regardless of whether the arrangement was entered into before, on or after that commencement. This means that a person is not liable to pay an interest charge under section 1229F if a termination occurs before the commencement of item 13. It also means that an arrangement that was entered into prior to commencement of the Bill will continue in effect after commencement.

Item 14 provides that interest charges under sections 41A to 41H, as inserted by this Bill, apply to an ABSTUDY debt that arises on or after the commencement of item 14, and to one that arose before the commencement of item 14, to the extent that the debt is outstanding immediately before that commencement.

Schedule 6 – Student start-up loans

Summary

This Schedule establishes, from 1 January 2014, the student start-up loan. These loans will be income-contingent, and there will be a limit of two loans a year of \$1,025 each (indexed from 2017). The loans will be repayable under similar arrangements to Higher Education Loan Program debts. Students will only be required to begin repaying their start-up loan after their Higher Education Loan Program debt has been repaid.

The Schedule also provides grandfathering arrangements so that recipients who received a student start-up scholarship or Commonwealth Education Costs Scholarship prior to 1 January 2014, and have remained continuously on student payments, will continue to be eligible to receive the student start-up scholarship, as a grant, until coming off student payments.

The student start-up loan and student start-up scholarship aim to assist students with the costs of study, including the purchase of text books, computers and internet access.

Background

This Schedule amends both the Social Security Act and the Student Assistance Act to provide for the student start-up loan and ABSTUDY student start-up loan from 1 January 2014. Each version of the loan will be an income-contingent loan, and will be repayable under similar arrangements to Higher Education Loan Program (HELP) debts, as provided for under the *Higher Education Support Act 2003*.

The qualification provisions for the student start-up loan and ABSTUDY student start-up loan are similar to the existing qualification provisions for the student start-up scholarship contained in Division 1 of Part 2.11B of the Social Security Act.

To the extent that it is possible, the provisions in Schedule 6 that amend the Social Security Act mirror the amendments made to the Student Assistance Act for the purpose of ensuring consistency between the administration of the student start-up loan and ABSTUDY student start-up loan. To ensure consistency with HELP, to the extent possible, the provisions in Schedule 6 relating to the recovery of the student start-up loans and ABSTUDY student start-up loans reflect the relevant provisions in the *Higher Education Support Act 2003*.

Schedule 6 also contains consequential amendments to the Social Security Administration Act, the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the Taxation Administration Act, and the *Taxation (Interest on Overpayment and Early Payments) Act 1983*, for the purpose of ensuring consistent administration between the student start-up loans and HELP.

Explanation of the changes

Amendments to the *Income Tax Assessment Act 1936*

Item 1 amends subsection 82A(2) to ensure that a payment made in respect of, or in the reduction or discharge of any indebtedness under Chapter 2AA of the Social Security Act or under Part 2 of the Student Assistance Act are not included within the definition of ***expenses of self-education***.

Items 2 and 3 amend section 202, which establishes the system of tax file numbers, and outlines the object of the system, to allow for the administration of Chapter 2AA of the Social Security Act and Part 2 of the Student Assistance Act with regard to the provision of student start-up loans and ABSTUDY student start-up loans and the recovery of these debts.

Item 4 amends subsection 202F(1)(fb) to provide that a decision of the Commissioner to give a notice under subsections 1061ZVHD(1) and 1061ZVHE(1) of the Social Security Act (as inserted by **item 25** of this Schedule) and sections 10D(1) and 10E(1) of the Student Assistance Act (as inserted by **item 67** of this Schedule) can be reviewed by the Administrative Appeals Tribunal.

Amendments to the *Income Tax Assessment Act 1997*

Items 5 and 6 amend section 12-5 to include student start-up loans in the list of provisions about deductions.

Item 7 amends section 26-20 to ensure that a payment made in respect of, or in the reduction or discharge of any indebtedness under Chapter 2AA of the Social Security Act or Part 2 of the Student Assistance Act is not a payment that can be deducted under the Act. This amendment will ensure that there is a consistent treatment between HELP and the student start-up loan under section 26-20.

Items 8 and 9 amend paragraphs 52-132(a) and 52-140(3)(a) respectively to ensure that payments received to assist in the discharge of a compulsory SSL or ABSTUDY SSL repayment amount are deemed to be exempt income under the Act.

Items 10 and 11 insert definitions of ***accumulated ABSTUDY SSL debt*** and ***accumulated SSL debt*** into the Act.

Amendments to the Social Security Act

Item 12 inserts section 19AAA, which provides a series of definitions for the purpose of Chapter 2AA. The definitions in section 19AAA relate solely to the provisions in the Act that deal with the student start-up loan.

Items 13 to 19 insert definitions under section 23, including ***accumulated SSL debt***, ***approved scholarship course***, ***enrolment test day***, ***scholarship-entitled person*** and ***student start-up loan***.

Item 17 will ensure that a student start-up loan will be a social security payment for the purposes of the Act.

Items 20 and 21 insert paragraph 592F(1)(a) and 592F(2)(a) to amend the qualification provisions of the student start-up scholarship to allow a person who currently receives a student start-up scholarship to continue to receive this payment.

In order to continue to qualify for and receive a student start-up scholarship on the basis of youth allowance, a person must have received either a student start-up scholarship payment, an ABSTUDY student start-up scholarship payment or a Commonwealth Education Costs Scholarship with respect to a period before 1 January 2014.

A person must also be receiving youth allowance or Living Allowance under the ABSTUDY Scheme for a continuous period since the time in which they received at least one of the above mentioned scholarships.

The qualification to receive a student start-up scholarship on the basis of austudy is the same as the qualification for a student start-up scholarship on the basis of youth allowance, except that a person can still be qualified if the person continuously received a youth allowance, a Living Allowance under the ABSTUDY Scheme or austudy.

A person will be treated as continuously receiving either youth allowance, a Living Allowance or austudy even though the person did not actually receive such payments if they comply with section 38B of the Act. In addition, a person will be continuously regarded as receiving such payments even if these payments are temporarily reduced to nil.

Items 22 and 23 make minor amendments to ensure that the definition of an **approved scholarship course** will apply to all references in the Act, rather than just within Part 2.11B.

Item 24 provides that a legislative instrument that determines the approved scholarship courses (made prior to the commencement of the Bill) will continue to be in force after the amendment in item23, and will have the effect for the whole of the Act and not just for the purposes of Part 2.11B. This will ensure that an approved course for the purposes of the student start-up scholarship is an approved course for the purposes of the student start-up loan.

Item 25 inserts new Chapter 2AA – Student start-up loans.

Section 1061ZVAA – Simplified outline of this Part

Section 1061ZVAA outlines broadly the qualification criteria and operation of the student start-up loan. Full-time students who are receiving youth allowance or austudy may qualify for a student start-up loan if they meet the qualification criteria in subsections 1061ZVAB(1) and 1061ZVAB (2). A student can qualify for up to two loans per calendar year.

Section 1061ZVAB – Qualification for student start-up loan

Section 1061ZVAB provides the qualification requirement for a student start-up loan. These qualification requirements are similar to the qualification requirements for the student start-up scholarship contained in section 592F of the Social Security Act.

To qualify for a student start-up loan, each of the following must occur at the same time:

- the person is qualified for youth allowance or austudy payment;
- youth allowance or austudy payment is payable to the person;
- the person is receiving youth allowance or austudy payment;
- the person is receiving part of the basic rate component of youth allowance or austudy payment, or youth disability supplement (that is, the person is not receiving only that component of youth allowance or austudy payment that consists of pharmaceutical allowance and rent assistance);
- the person is receiving youth allowance or austudy payment because the person is enrolled in an approved scholarship course;
- the Secretary is satisfied that the person is not likely to receive the amount or value of a Commonwealth Education Costs Scholarship in the period of six months starting immediately after the time: and
- at the time of qualification, the person has notified their tax file number to the Secretary and the Secretary has verified the person's tax file number or obtained the correct tax file number.

Under paragraphs 1061ZVAB(1)(a) to (b) and 1061ZVAB(2)(a) to (b), while a person must be receiving youth allowance or austudy payment to qualify for a scholarship payment, the person must also be qualified for youth allowance or austudy payment, and youth allowance or austudy payment must be payable to the person.

This provision is designed to ensure that if a person is later found not to be qualified for the youth allowance or austudy payment that the person was receiving (or the allowance was not payable), a debt may also be raised for any student start-up loan payment that paid for that time.

A person must also be in receipt of youth allowance or austudy payments even if the payments did not include an amount for rent assistance or pharmaceutical allowance. Under section 1210, a reduction for income is applied first against the maximum basic rate component of a rate plus youth disability supplement, then against rent assistance and pharmaceutical allowance. If a person's rate of payment has been reduced so that only rent assistance or pharmaceutical allowance is paid, the person will not be qualified for a student start-up loan payment.

Under paragraphs 1061ZVAB(1)(c) and 1061ZVAB(2)(c), approved scholarship courses will be approved by the Minister under section 592N.

Paragraphs 1061ZVAB(1)(d) and 1061ZVAB(2)(d) mean that a Commonwealth Education Costs Scholarship (CECS) takes precedence over a student start-up loan. If a person is likely to receive a CECS payment within six months of receiving a student start-up loan, the person will not be entitled to a student start-up loan.

Paragraphs 1061ZVAB(1)(e) and 1061ZVAB(2)(e) require a person to notify his or her tax file number to the Secretary. The Secretary will be obliged to verify the person's tax file number with the Commissioner or obtain the correct tax file number. As the student start-up loan is an income-contingent loan to be collected through the taxation system, similar to the operation of the Higher Education Loan Program (HELP) under the *Higher Education Support Act 2003* (Higher Education Support Act), the correct tax file number is necessary for the Australian Taxation Office to be able to administer the recovery of the loans effectively.

Subsection 1061ZVAB (3) operates such that a person does not qualify for a loan until the Secretary so determines, unless the determination occurs after the course or the qualification period has finished, in which case the person qualifies from the earlier of those dates. This is to ensure that loans are only paid to people who are continuing their qualifying study or have studied for the duration of their course or qualification period.

Section 1061ZVAC – Circumstances in which person is not qualified for student start-up loan

Section 1061ZVAC(1) provides the circumstances in which a person is not qualified for a student start-up loan.

A person is not qualified for a student start-up loan for a qualification period at a time in that period if:

- it has already been determined that the person is qualified for a student start-up loan or ABSTUDY student start-up loan for that qualification period; or
- the person is a scholarship entitled person; or
- in the period of six months ending immediately before what would otherwise be the person's qualification time one of the following circumstances apply:
 - the person has received a payment known as a student start-up scholarship payment under the Veterans' Children Education Scheme; or
 - the person has received a payment known as a student start-up scholarship payment under the Military Rehabilitation and Compensation Act Education and Training Scheme; or
 - the person has received the amount or value of a Commonwealth Education Costs Scholarship; or
 - the person was entitled to the amount or value of a Commonwealth Education Costs Scholarship but has not received the full entitlement only because the scholarship was suspended.

Subsection 1061ZVAC(2) defines a ***scholarship-entitled person*** as someone who has received a student start-up scholarship payment by virtue of receiving youth allowance, austudy or ABSTUDY or received the amount or value of a Commonwealth Education Costs Scholarship in respect of a time before 1 January 2014 and the student has been receiving these payments for a continuous period. This prevents students who have been grandfathered to continue receiving the student start-up scholarship from also qualifying for a student start-up loan while they remain on student payments.

Section 1061ZVAD – Amount of student start-up loan

Section 1061ZVAD provides that the amount of the student start-up loan payment is \$1,025. The amount of the student start-up loan payment will be indexed on 1 January 2017 and each later 1 January in line with CPI increases.

Section 1061ZVBA – Simplified outline of this Part

Section 1061ZVBA outlines broadly how student start-up loan debts are incurred in Part 2AA.2.

Section 1061ZVCA – SSL debts

Section 1061ZVCA establishes the student start-up loan as an income-contingent loan that is recovered and administered in a similar way to HELP. As explained below, the student start-up loan is only treated as an income-contingent loan if the person remains in their course for 35 days after being qualified for the loan or after the commencement of their course. If this does not occur, section 1223ABF (as inserted by **Item 30** of Schedule 6) will provide that the student start-up loan is a debt due to the Commonwealth and, under current section 1229, is due and payable 28 days after the person receives a debt notice.

Subsection 1061ZVCA(1) provides a person incurs a debt to the Commonwealth if the person has received a student start-up loan for a qualification period and the amount of the loan is not a debt in respect of student start-up loan under section 1223ABF, or as a result of the person obtaining benefit where they were not entitled for any reason to obtain that benefit.

Subsection 1061ZVCA (2) provides that the SSL debt is incurred by the person either on the day the person received the loan or the day after the person's enrolment test day for the qualification period. Enrolment test day is defined by subsection 1223ABF(2).

Subsection 1061ZVCA(3) clarifies that the amount of the SSL debt is the amount of loan reduced by any amount repaid before the day on which the debt is incurred. This will mean that if a student initially enrolls in a course or part of a course, receives a payment and withdraws from the course, then they will be able to reduce their debt if they make a repayment.

Subsection 1061ZVCA (4) provides that an SSL debt is not incurred if the loan has been fully repaid before the day on which the loan would have otherwise been incurred or if the Secretary has formed an opinion under subsection 1223ABF(3) in relation to the loan that the person ceased studying due to exceptional circumstances beyond the person's control. In this case, if a person ceases to be enrolled in an approved scholarship course or is no longer enrolled full-time before the enrolment test day, neither a social security debt nor an SSL debt will be incurred. This provision will ensure that there is flexibility and equity respect to incurring a student start-up loan.

Section 1061ZVCB – SSL debt discharged by death

Section 1061ZVCB provides that, upon the death of a person who owes a SSL debt to the Commonwealth, the debt is taken to have been paid.

Division 2 – Working out accumulated SSL debts

This Division provides for the calculation of a SSL debt and largely mirrors the calculation of a HELP debt under Division 140 of the Higher Education Support Act.

Section 1061ZVDA – Simplified outline of this Division

Section 1061ZVDA is an information provision, which provides an outline as to how accumulated SSL debts are worked out for any given financial year. There are two stages to working out a person's accumulated SSL debt. Stage 1 of the process is to work out a person's former accumulated SSL debt for the preceding financial year by taking account of a range of specified matters. Stage 2 of the process of working out a person's accumulated SSL debt is to take into account a range of specified matters. .

Section 1061ZVDB – Working out a former accumulated SSL debt.

Subsection 1061ZVDB(1) provides that a person's former accumulated SSL debt, in relation to the person's accumulated SSL debt for a financial year is worked out by multiplying the amount worked out using a six step method statement (set out in the table in the subsection) by the HELP debt indexation factor for 1 June in that financial year.

The ***HELP debt indexation factor*** is defined in section 19AAA (as inserted by item 12 of Schedule 6) and has the same meaning as in section 140-10 of the Higher Education Support Act. As the calculation of the index numbers and the method of publication of HELP debt indexation factors are factors in calculating the HELP debt indexation factor, then by reference, the definition of HELP debt indexation draws on section 140-10 to 140-20 of the Higher Education Support Act. For this reason, equivalent provisions in the Social Security Act are not required.

Subsection 1061ZVDB(2) provides that, for the purposes of section 1061ZVDB, an assessment (or an amendment of an assessment) is taken to have been made on the day specified in the notice of assessment (or notice of amended assessment) as the date of issue of that notice.

Section 1061ZVDC – Working out an accumulated SSL debt

Subsection 1061ZVDC(1) provides that a person's accumulated SSL debt, for a financial year is equal to the persons former accumulated SSL debt plus the SSL debts incurred minus the person's SSL repayments, where:

- a former accumulated SSL debt is the person's former accumulated SSL debt in relation to that accumulated SSL debt;
- SSL debt repayments are the sum of all voluntary SSL repayments paid on or after 1 July in the financial year and before 1 June in that year, in reduction of the SSL debts incurred in that year; and
- SSL debts incurred are the sum of all SSL debts (if any) that the person has incurred during the first 6 months of the financial year.

Subsection 1061ZVDC(2) provides that the person incurs the accumulated SSL debt on 1 June in the financial year.

Subsection 1061ZVDC(3) provides that the first financial year for which a person can have an accumulated SSL debt is the financial year starting on 1 July 2014. This is because the SSL provisions contained within the Bill commence on 1 January 2014 and, due to subsection 1061ZVDC(2), an SSL debt can only be incurred on 1 June in a financial year.

Section 1061ZVDD – Rounding of amounts

Subsection 1061ZVDD(1) provides that, if (apart from this section) a person's accumulated SSL debt is \$1 or above, then that debt will be rounded down to the nearest whole dollar.

Subsection 1061ZVDD(2) provides that, if (apart from this section) a person's accumulated SSL debt is below \$1, then that debt is rounded down to zero.

Section 1061ZVDE – Accumulated SSL debt discharges earlier debt

Subsection 1061ZVDE(1) provides that the accumulated SSL debt a person incurs on 1 June in a financial year discharges (or discharges the unpaid part of) any SSL debt that the person incurred during the calendar year immediately preceding that day and any accumulated SSL debt that the person incurred on the preceding 1 June. This is because accumulated SSL debt incurred on 1 June in a financial year is calculated to include any new SSL debt incurred the calendar year as well as any outstanding accumulated SSL debt that was incurred immediately preceding 1 June.

Subsection 1061ZVDE(2) clarifies that subsection 1061ZVDE(1) does not affect the calculation of accumulated SSL debts.

Section 1061ZVDF – Accumulated SSL debt discharged by death

Subsection 1061ZVDF(1) provides that, when a person who has an accumulated SSL debt dies, the accumulated SSL debt is taken to have been discharged.

Subsection 1061ZVDF(2) provides that subsection 1061ZVDF(1) does not affect any compulsory SSL repayment amounts required to be paid in respect of the accumulated SSL debt, whether or not those amounts were assessed before the person's death.

Part 2AA.3 – Discharge of indebtedness

Division 1 of Part 2AA.3 provides for the voluntary and compulsory discharge of SSL repayments. These provisions mirror the discharge of indebtedness provisions of Divisions 148 to 154 of the *Higher Education Support Act 2003*.

Section 1061ZVEA – Simplified outline of this Part

Subsection 1061ZVEA provides an outline of Part 2AA.3-Discharge of indebtedness.

Section 1061ZVEB – Debts under this Chapter

Section 1061ZVEB(1) provides that debts under this Chapter are SSL debts and accumulated SSL debts. Debts that arise under sections 1223 (Debts arising from a lack of qualification, overpayment etc.) and 1223ABF (Debts in respect of student start-up loans) are not debts under Chapter 2AA of the Act

Section 1061ZVFA – Voluntary SSL repayments in respect of debts

Section 1061ZVFA allows a person to may make a voluntary payment, at any time, in respect of a debt that the person owes to the Commonwealth under Chapter 2AA. This payment must be made to the Commissioner for Taxation as a debt under this Chapter a debt that is administered by the Australian Taxation Office.

Section 1061ZVFB – Application of voluntary SSL repayments

Subsection 1061ZVFB(1) provides that a person who makes voluntary payments to the Commonwealth in respect to debts under Chapter 2AA may give a direction as to which debt they are paying off.

Subsection 1061ZVFB(2) provides that if the person has not given an adequate direction, then the money will firstly be paid to the discharge or reduction of any accumulated SSL debt of the person and secondly to the discharge or reduction of any SSL debts of the person.

Section 1061ZVFC – Refunding of payments

Section 1061ZVFC ensures that a person cannot pay more money than they owe to the Commonwealth by providing that if a person pays an amount to the Commonwealth under Division 2 of Part 2AA.3 and the amount is greater than the amount required to discharge all debt under Chapter 2AA and the total amount of the person's primary tax debts (within the meaning of Part IIB of the Taxation Administration Act), then the Commonwealth must refund to the person an amount equal to that excess.

Section 1061ZVGA – Liability to repay amounts

Subsection 1061ZVGA(1) provides that, if:

- a person's repayment income for an income year is greater than their minimum repayment income for that income year; and
- the person had an accumulated SSL debt on the 1 June immediately preceding an assessment of the person's income of that year; and either:
 - the person does not have an outstanding accumulated HELP debt; or
 - the amount required to be paid would fully discharge the HELP debt;

then the person is liable to pay to the Commonwealth the amount worked out in section 1061ZVGE in reduction of the person's repayable debt. The effect of this subsection is that the repayment of any existing HELP debt is paid back before a SSL debt. It also ensures that in a year where an amount payable is more than what is remaining of the accumulated HELP debt, the remainder of what is payable to the Commonwealth is paid to reduce a person's SSL debt.

Subsection 1061ZVGA(2) provides that a person is not liable to pay an amount under this section for an income year if no Medicare levy is payable by the person on their taxable income for that year or if the amount of the Medicare levy payable by the person on their taxable for the income year is reduced.

Section 1061ZVGB – Repayment income

Section 1061ZVGB provides repayment income has the same meaning as under section 154-5 of the Higher Education Support Act.

Section 1061ZVGC – Minimum repayment income

Section 1061ZVGC provides that the minimum repayment income has the same meaning as section 154-10 of the Higher Education Support Act. As the calculation of the indexation of an income year and the method of publication of indexed amounts are factors in calculating the minimum repayment income, then by reference, the definition of minimum repayment income draws on sections 154-25 and 154-30 of the Higher Education Support Act. For this reason, equivalent provisions in the Social Security Act are not required.

Section 1061ZVGD – Repayable SSL debt for an income year

Subsection 1061ZVGD(1) provides that a person's repayable SSL debt for an income year is their accumulated SSL debt immediately preceding 1 June in that income year or the amount (if any) remaining after deducting the total amount paid or assessed to be payable.

Subsection 1061ZVGD(2) clarifies that, in the calculation of a person's repayable debt, if the amount assessed to be payable has been increased, or reduced by an amendment, then the amendment amount is the amount payable.

Section 1061ZVGE – Amounts payable to the Commonwealth

Section 1061ZVGE provides that the amount that person is liable to pay under section 1061ZVGA in respect of an income year.

If the person does not have an accumulated HELP debt on 1 June immediately preceding an assessment of the SSL debt, then the person is liable to pay an amount that is applicable under the table in section 154-20 of the Higher Education Support Act.

If a person is required to pay an amount that would fully discharge their accumulated HELP debt, then the amount the person is liable to pay in respect of the SSL debt is an amount that is applicable under the table in section 154-20 of the Higher Education Support Act minus the amount that they have been required to pay in respect of their accumulated HELP debt for that income year.

This section will mean that a person will only repay an amount of SSL debt if they meet the same income thresholds as under HELP (as contained in section 154-20 of the Higher Education Support Act). It will also mean that the amounts payable with respect to a SSL debt are consistent with amounts payable with respect to an accumulated HELP debt.

This section will also mean that a SSL debt will only be payable if an accumulated HELP debt has been fully discharged. In the event that a person is able to discharge their accumulated HELP debt in an income year, then if the person would otherwise be liable to pay an amount under the table in section 154-20 of the Higher Education Support Act, then this amount will be compulsorily payable with respect to their SSL debt.

It is also important to note that a person will repay their SSL debt if there is no **accumulated** HELP debt. This may mean that if, for whatever reason, a person has no accumulated HELP debt at the point of an assessment, and they otherwise incur a HELP debt that has not become an accumulated HELP debt under that assessment, then this section will operate so that a person will repay an amount of their SSL debt. In these circumstances, the person will then repay that HELP debt only when it is an accumulated HELP debt at the point of an assessment.

Section 1061ZVGF – Commissioner may make assessments

Section 1061ZVGF allows the Commissioner to make an assessment of the person's accumulated SSL debt on the 1 June immediately before making the assessment. The Commissioner may also make an assessment of the amount that is required to be paid in respect of that debt. In making this assessment, the Commissioner may use any information in his or her possession.

Section 1061ZVGG – Notification of notices of assessment of tax

Section 1061ZVGG allows the Commissioner to provide an additional notice of an assessment of a SSL debt if the Commissioner did not provide this with an assessment that he has severed with respect to a person's income under section 174 of the *Income Tax Assessment Act 1936*. This additional notice of assessment must also contain the amounts that have been provided in the notice under section 174 of that Act.

Section 1061ZVGH – Commissioner may defer making assessments

Subsection 1061ZVGH(1) provides that a person may apply in an approved form to the Commissioner for deferral of the making of an assessment in respect of the person under section 1061ZVGF.

Subsection 1061ZVGH(2) provides that the application must specify the income year for which the deferral is being sought and the reasons for seeking the deferral.

Subsection 1061ZVGH(3) provides that the income year specified in the application must be the income year in which the person makes the application, the immediately preceding income year or the immediately succeeding income year.

Subsection 1061ZVGH(4) provides that, on application by a person under section 1061ZVGH(1), the Commissioner may defer making an assessment in respect of the person under section 1061ZVGF if the Commissioner is of the opinion that if the assessment were made, payment of the assessed amount would either cause serious hardship to the person, or there are other special reasons that make it fair and reasonable to defer making the assessment.

Subsection 1061ZVGH(5) provides that the Commissioner may defer making the assessment for any period that he or she thinks appropriate.

Subsection 1061ZVGH(6) provides that as soon as practicable after an application is made under section 1061ZVGH(1), the Commissioner must consider the matter to which the application relates and notify the applicant of the Commissioner's decision on the application.

Section 1061ZVGJ – Commissioner may amend assessments

Subsection 1061ZVGJ(1) provides that a person may apply in an approved form to the Commissioner for an amendment of an assessment made in respect of the person under section 1061ZVGF so that the amount payable under the assessment is reduced or no amount is payable under the assessment.

Subsection 1061ZVGJ(2) provides that the application must be made no later than two years after the day the Commissioner to which the assessment relates or must specify the reasons justifying a later application.

Subsection 1061ZVGJ(3) provides that, on application by a person under section 1061ZVGJ(1), the Commissioner may amend an assessment made in respect of the person under section 1061ZVGF so that the amount payable under the assessment is reduced or no amount is payable under the assessment if the Commissioner is of the opinion that payment of the assessed amount has caused (or would cause) serious hardship to the person or there are other special reasons that make it fair and reasonable to make the amendment.

Subsection 1061ZVGJ(4) provides that, as soon as practicable after an application is made under section 1061ZVGJ(1), the Commissioner must consider the matter to which the application relates and notify the applicant of the Commissioner's decision on the application.

Part 2AA.4 – Tax administration matters

Section 1061ZVFHA Simplified outline of this Part

Section 1061ZVFHA outlines the purpose of Part 2AA.4 – Tax administration matters.

Section 1061ZVHB – Verification of tax file numbers

Section 1061ZVHB(1) allows the Secretary, when determining a claim for a student start-up loan for a person receiving youth allowance or austudy, to verify the person's tax file number with the Commissioner.

Section 1061ZVHB(2) allows the Commissioner, if they are satisfied with the person's tax file number, to notify the Secretary, via a written notice, accordingly.

Section 1061ZVHC – When person with tax file number incorrectly notifies number

Subsection 1061ZVHC provides that, if the Commissioner is satisfied that the tax file number that was given to the Secretary in order to become qualified for a student start-up loan has been at any time cancelled or withdrawn, or is otherwise wrong, and the person does have a tax file number, then the Commissioner may give a notice of this to the Secretary. The Commissioner may also provide the Secretary with the person's tax file number. For the purposes of qualification, the new tax file number is the one that is taken to have been given to the Secretary.

This provision ensures that a person will not be disqualified from the student start-up loan because of providing an incorrect tax file number.

Section 1061ZVHD – When person without tax file number incorrectly notifies number

Subsection 1061ZVHD(1) provides that, if the Commissioner is satisfied that the tax file number that was given to the Secretary in order to become qualified for a student start-up loan has been cancelled or for any other reason is not the persons' tax file number and the Commissioner is not satisfied that the person has such a number, then the Commissioner may give to the Secretary a written notice informing the Secretary accordingly.

The Commissioner must also give a copy of any notice to the person concerned containing a statement of reasons for the decision to give the notice.

In addition, section 75 of the Social Security Administration Act allows the Secretary to request a tax file number from a person who is receiving a social security payment.

Section 1061ZVHE – When tax file numbers are cancelled

Section 1061ZVHE provides that if the Commissioner cancels a tax file number that a person has given to the Secretary in order to become qualified for a student start-up loan, then the Commissioner may give to the Secretary a written notice of the cancellation.

The Commissioner must also give a copy of any notice to the person concerned containing a statement of reasons for the decision to give the notice.

In addition, section 75 of the Social Security Administration Act allows the Secretary to request a tax file number from a person who is receiving a social security payment.

Section 1061ZVHF – Return assessments, collection and recovery

Section 1061ZVHF provides that, subject to Parts 2AA.3 and 2AA.4 of the Act (as inserted by Schedule 6 of the Bill), Part VI of the *Income Tax Assessment Act 1936*, Division 5 of the *Income Tax Assessment Act 1997* and Part 4-15 in Schedule 1 to the Taxation Administration Act apply (so far as they are capable of application) in relation to a compulsory SSL repayment amount of a person as if it were income tax assessed to be payable by a taxpayer by an assessment made under Part IV of the *Income Tax Assessment Act 1936*.

Section 1061ZVHG – Charges and civil penalties for failing to meet obligations

Section 1061ZVHG provides that Part 4-25 in Schedule 1 to the Taxation Administration Act has effect as if any compulsory SSL repayment amount of a person were income tax payable by the person in respect of the income year in respect of which the assessment of that debt was made, and Part 2AA.1 so far as it relates to tax file numbers, and Part 2AA.2, 2AA.3 and this Part were an income tax law.

This does not have the effect of making a person liable to a penalty for any act or omission that happened before the commencement of this section.

Section 1061ZVHH – Pay as you go (PAYG) withholding

Section 1061ZVHH provides that Part 2-5 (other than section 12-55 and Subdivisions 12-E, 12-F and 12-G) in Schedule 1 to the Taxation Administration Act applies (so far as it is capable of application) in relation to the collection of amounts of a person's compulsory SSL repayment amount of a person as if the compulsory SSL repayment amount were income tax.

Section 1061ZVHJ – Pay as you go (PAYG) instalments

Section 1061ZVHJ provides that Division 45 in Schedule 1 to the Taxation Administration Act applies (so far as it is capable of application) in relation to the collection of a person's compulsory SSL repayment amount as if the compulsory repayment amount were income tax.

Section 1061ZVHK – Administration of this Chapter

Section 1061ZVHK provides that the Commissioner of Taxation has general administration of Part 2AA.1 in so far as it relates to tax file numbers, Parts 2AA.2 and Part 2AA.3 of the Act (as inserted by this Schedule) and Division 2A of Part 4 of the Administration Act.

The purpose of this provision is to allow the Commissioner of Taxation to administer the recovery of SSL debts.

It is important to note that, while the Commissioner of Taxation has general administration of Part 2AA.1, it is the Secretary who, under subparagraph 1061ZVCA(4)(b)(ii), is responsible for forming an opinion as to whether a person ceased to be enrolled in an approved scholarship course because of exceptional circumstances beyond the person's control.

Items 26 and 27 insert items 69A and 41A into the tables contained in section 1190 and subsection 1191(1) respectively to provide for the indexation of the student start-up loan amount. This is not to be confused with the indexation of the accumulated SSL debt.

Item 28 inserts subsection 1192(8B) to provide that the student start-up loan payment is not indexed on 1 January 2014, 1 January 2015 and 1 January 2016. This will ensure that the amount of the student start-up scholarship payment and the student start-up loan will remain equal in value.

Item 29 is a technical amendment for the purpose of section 1223ABG (as inserted by item 30).

Item 30 inserts sections 1223ABF and 1223ABG.

Section 1223ABF – Debts in respect of student start-up loans

Subsection 1223ABF(1) provides that if a person:

- has received a student start-up loan for which the person qualified at the time in a qualification period; and
- at any time on or before the person's enrolment test day, the person is not enrolled in an approved scholarship course;

then the amount of the loan is a debt due to the Commonwealth and the debt is taken to have arisen when the person received the loan.

Subsection 1223ABF(2) defines a person's enrolment test day for a qualification period, which is the earliest of the following days:

- the last day of the approved scholarship course, if the approved scholarship course ends during that qualification period;
- the last day of the relevant qualification period;
- the 35th day of the period starting on either the first day of the approved scholarship course (if the person's qualification time was before the first day of the relevant approved scholarship course, for example where a person is beginning their course) or the day on which the person qualifies for the loan.

The purpose of these rules is to ensure that the loans are targeted to people who have a genuine commitment to continuing their study.

Subsection 1223ABF(3) states that a debt will not arise under this section if the Secretary determines that a person is no longer enrolled full-time in an approved scholarship course because of exceptional circumstances beyond the person's control.

Section 1223ABG – Student start-up loan previously treated as part of accumulated SSL debt

Section 1223ABG is a mechanism by which the Commissioner can amend a student start-up loan if it is found to be a debt under section 1223 or 1223ABF and is therefore not an income-contingent loan. This is to ensure that where a person was discovered to have not been qualified for a student start-up loan, then the indexation can be applied to the amount of the loan by way of the Commissioner amending the amount of debt.

Subsection 1223ABG(1) clarifies that this section applies to debts that arise under section 1223 or 1223ABF in relation to a student start-up loan and the Commissioner has been treating them as if they were part of an accumulated SSL debt, but at a time since (to be known as the cessation time) has ceased to do so.

Subsection 1223ABG states that the amount of the debt arising under section 1223 or 1223ABF is the amount of the accumulated SSL debt as is immediately before the cessation time.

Item 31 inserts subparagraph 1229D(1)(b)(iiiia) to provide that a student start-up loan, as contemplated under section 1223ABF, is a debt to which an interest charge may be applied to under section 1229E or 1229F of the Social Security Act (as inserted by Schedule 1 of the Bill).

Amendments to the Social Security Administration Act

Item 32 amends subsection 10(1) to exclude Division 2A from the jurisdiction of the Social Security Appeals Tribunal. This is because decisions under Division 2A are made by the Commissioner and, consistent with other decisions by the Commissioner, are reviewable by the Administrative Appeals Tribunal.

Item 33 inserts section 26C, which provides a time limit for claiming the student start-up loan.

Subsection 26C(1) provides that a person's claim for a student start-up loan for a qualification period must be made before the end of the qualification period.

Section 26C(2) provides that a person's claim for a student start-up loan for a qualification period must be made at least 35 days before the course end date if the student is expected to complete the approved scholarship during that qualification period.

Item 34 inserts subsection 36(4) and (5) which provide obligations of the Secretary in determining claims and intend to give the Secretary flexibility in when to determine claims.

Subsection 36(4) states that, if a person claims a student start-up loan for a qualification period, the Secretary may determine the person's claim at a time the Secretary considers appropriate. The Secretary should have regard to the principle that the time should be close to the start of the period of study concerned for the relevant approved scholarship course.

Subsection 36(5) provides that nothing in subsection 36(4) affects the operation of section 39 which provides that if the Secretary does not make a determination regarding a claim within the period of 13 weeks after the day on which the claim was made, the Secretary is taken to have made a determination rejecting the claim.

Item 35 is a minor amendment for the purposes of item 36.

Item 36 inserts subsection 39(9) to provide an exception to the requirement in subsection 39(1). Subsection 39(1) deems that a claim that has not been decided upon by the Secretary within a 13 week period of making the claim is refused.

Subsection 39(9) provides that, if, at any time, a person has lodged more than one claim for a student start-up loan for a qualification period that has not yet been determined and a person has not yet actually qualified for a claim, then the 13-week period will start on the day when the person does become qualified. This will ensure that a person can validly put in a claim in advance of being qualified.

Item 37 provides that the student start-up loan is within the definition of a lump sum benefit for the purposes of section 47 of the Act.

Item 38 makes technical amendments to subsection 47(4) to allow for sections 47DA and 47DB.

Item 39 inserts section 47DB, which provides that, where a person qualifies for a student start-up loan because the person is receiving youth allowance and all or part of that person's youth allowance is being paid to the person's parent or another person, the whole amount of the SSL, or the proportion of youth allowance that is being paid to the person's parent or other person, may be paid by the Secretary to the person's parent or other person.

Item 40 amends the heading of section 58 to 'Payment of social security payment after death'.

Item 41 amends section 58 to include reference to the student start-up loan.

Item 42 inserts subsection 127(4) to provide that the Secretary must not review a decision that is a reviewable decision under section 138A. As discussed with respect to section 138A, the purpose of this amendment is to ensure that reviewable decisions under the student start-up loan provisions are reviewed in the same way that the equivalent decisions in the Higher Education Support Act that relate to HELP are reviewed. Under the recovery of HELP the decision maker for reviewable decisions is the Commissioner. This amendment appropriately ensures that the Commissioner, who administers the recovery of HELP is the relevant decision maker.

For the same reason, item 42 will ensure the Secretary will not be able to review a decision relating to the student start-up loan that is reviewable by the Commissioner.

Item 43 inserts paragraph 129(4)(da) to provide that a person may not apply to the Secretary for a decision that is reviewable under section 138A. As discussed in relation to item 42, it is intended that the Commissioner reviews decisions under section 138A, rather than the Secretary, and therefore a person cannot apply to the Secretary for such a review.

Item 44 inserts Division 2A – Internal review of Commissioner decisions relating to student start-up loans – which contains sections 138A to 138G. These provisions are intended to ensure that the system of review for the student start-up loan is consistent with the system of review for HELP under the Higher Education Support Act.

Section 138A – Decisions reviewable under this Division

Section 138A provides that the decisions by the Commissioner to defer making an assessment or to amend an assessment are reviewable decisions.

Section 138B – Commissioner must give reasons for reviewable decisions

Section 138B provides that, if the Commissioner is required to notify a person of the making of a reviewable decision, then the notice must include the reasons for the decision. This will mean that if the Commissioner makes a reviewable decision under 138A, then he or she will have to include the reasons for the decision. This section will not affect any other legal obligation to give reasons for a decision.

Section 138C – Reviewer of decisions

Subsection 138C(1) provides that Commissioner is the reviewer of reviewable decisions under Division 2A unless subsection 138C(2) applies.

Subsection 138C(2) provides that, where a delegate of the Commissioner makes a reviewable decision, any delegate of the Commissioner who reconsiders the decision must not have been involved in the making of the decision and must be more senior to the decision maker.

Section 138D – Reviewer may reconsider reviewable decisions

Section 138D provides a mechanism by which a reviewer can reconsider a reviewable decision. Unlike section 138E, a reviewer can review a decision under this section whether or not a person requests such reconsideration.

Subsections 138D(1) and (2) provide that the reviewer of a reviewable decision may reconsider the decision if they are satisfied that there is a sufficient reason to do so. The reviewer will be able to do so even if the application for reconsideration was made on request or the decision had been confirmed, varied or set aside and an application had otherwise been made to the Administrative Appeals Tribunal.

Subsection 138D(3) provides that, after reconsidering the decision, the reviewer must either confirm, vary or set aside the decision. If the decision is set aside a new decision must be substituted.

Subsection 138D(4) provides that decision of the reviewer to confirm vary or set aside the original decision takes effect either on the day that is specified in the decision of the review or if it is not specified, the day on which the new decision was made.

Subsection 138D(5) provides that the reviewer must give written notice of the decision on review to the person to whom the decision relates.

Subsection 138D(6) provides that the notice must be given within a reasonable period of time after the decision has been made and must contain a statement of the reason for the reviewer's decision on review. In addition to this requirement, section 27A of the *Administrative Appeals Tribunal Act 1975* will also require the person to be notified of the person's review rights.

Section 138E – Reconsideration of reviewable decisions on request

Section 138E provides a mechanism by which a person can require a reviewer to confirm, vary or set aside a decision that is to be reconsidered.

Subsection 138E(1) provides a right of a person whose interests are affected by a reviewable decision to request the reviewer to reconsider the decision.

Subsection 138E(2) provides that such a request must be in a written notice given to the reviewer within 28 days (or longer, if the reviewer allows it) from when the person first received the notice of decision.

Subsection 138E(3) provides that the notice must set out the reasons for making the request.

Subsections 138E(4) to 138E(7) operate in the same way as subsections 138D(3) to 138D(6) but with respect to a decision reconsidered on request.

Subsection 138E(8) provides that, if a reviewer does not give a notice of a decision to the person within 45 days after receiving the person's request, then the original decision is taken to be confirmed. In addition to this requirement, section 27A of the *Administrative Appeals Tribunal Act 1975* will also require the person to be notified of the person's review rights.

Section 138F – AAT review of the reviewable decisions

Section 138F provides that, if a reviewable decision has been confirmed, varied or set aside by a reviewer has reconsidered the decision, then a person may apply to the AAT for review of the decision.

Item 45 amends section 144 to provide that the reviewable decision under 138A or decisions under section 138E or 138F cannot be reviewed by the Social Security Appeals Tribunal (SSAT). This is because the reviewable decisions under section 138A are reviewable decisions made by the Commissioner relating to the deferral and amendments of assessment of SSL debts. To ensure that the student start-up loan is administered in a way that is consistent with the administration of HELP under the Higher Education Support Act, such reviewable decisions will not be reviewed by the SSAT. This will not prohibit any other decision contained in Chapter 2AA of the Social Security Act (as inserted by item 25) from being reviewed by the SSAT subject to the existing provisions in the Social Security Administration Act.

Amendments to the Student Assistance Act

Items 46 to 66 amend subsection 3(1) to include definitions of terms relating to the ABSTUDY student start-up loan.

Item 67 inserts Part 2 – ABSTUDY student start-up loans.

Section 6A – Simplified outline of this Division

Section 6A briefly outlines the qualification for and amount of ABSTUDY student start-up loan.

Section 6B – ABSTUDY Scheme

Section 6B provides clarity that ABSTUDY student start-up loans are made under the ABSTUDY scheme.

Section 6C – Qualification for ABSTUDY student start-up loan

Section 6C operates in a similar way to section 1061ZVAB of the Social Security Act (as inserted by item 25) but with respect to the ABSTUDY student start-up loan.

The difference between these provisions is that, in order to be qualified for a student start-up loan under section 6C, rather than being qualified on the basis of youth allowance or austudy, a person at the qualification time has to be qualified for a payment known as Living Allowance under the ABSTUDY Scheme and Living Allowance must be payable to the person.

Section 6D – Circumstances in which person is not qualified for ABSTUDY student start-up loan

Section 6D mirrors the operation of section 1061ZVAC of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 6E – Amount of ABSTUDY student start-up loan

Subsection 6E(1) provides that the amount of the ABSTUDY student start-up loan is \$1,025.

Subsection 6E(2) provides that the ABSTUDY student start-up loan is indexed under Division 2 of Part 3.16 of the Social Security Act on 1 January 2017 and each subsequent 1 January, as if it were a student start-up loan amount referred to in the table in subsection 1191(1) of that Act.

Section 7A – Simplified outline of this Division

Section 7A briefly outlines the process for incurring ABSTUDY SSL debts.

Section 7B – ABSTUDY SSL debts

Section 7B mirrors the operation of section 1061ZVCA of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 7C – ABSTUDY SSL debt discharged by death

Section 7C mirrors the operation of section 1061ZVCB of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 8A – Simplified outline of this Division

Section 8A mirrors the operation of section 1061ZVDA of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 8B – Working out a former accumulated ABSTUDY SSL debt

Section 8B mirrors the operation of section 1061ZVDB of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 8C – Working out an accumulated ABSTUDY SSL debt

Section 8C mirrors the operation of section 1061ZVDC of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 8D – Rounding of amounts

Section 8D mirrors the operation of section 1061ZVDD of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 8E – Accumulated ABSTUDY SSL debt discharges earlier debts

Section 8E mirrors the operation of section 1061ZVDE of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 8F – Accumulated ABSTUDY SSL debt discharged by death

Section 8F mirrors the operation of section 1061ZVDF of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 9A – Simplified outline of this Division

Section 9A mirrors the operation of section 1061ZVEA of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 9B – Debts under this Part

Section 9B provides that a debt within the meaning of section 39 of the Act is not a debt that arises under Part 2. This is because these debts relate to the ABSTUDY student start-up loans which are income-contingent loans and are therefore administered differently to other debts arising under the Student Assistance Act.

Section 9C – Voluntary ABSTUDY SSL repayments in respect of debts

Section 9C mirrors the operation of section 1061ZVFA of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 9D – Application of voluntary ABSTUDY SSL repayments

Section 9D mirrors the operation of section 1061ZVFB of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 9E – Refunding of payments

Section 9E mirrors the operation of section 1061ZVFC of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 9F – Liability to repay amounts

Section 9F mirrors the operation of section 1061ZVGA of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 9G – HELP repayment income

Section 9G provides that for the purposes of Part 2 of the Act, the term **HELP repayment income** has the same meaning as **repayment income** in the Higher Education Support Act.

Section 9H – Minimum repayment income

Section 9H provides that for the purpose of Part 2, the term **minimum HELP repayment income** has the same meaning as **minimum repayment income** in the Higher Education Support Act.

Section 9J – Repayable ABSTUDY SSL debt for an income year

Section 9J mirrors the operation of section 1061ZVGD of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 9K – Amounts payable to the Commonwealth

Section 9K mirrors the operation of section 1061ZVGE of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 9L – Commissioner may make assessments

Section 9L mirrors the operation of section 1061ZVGF of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 9M – Notification of notices of assessment of tax

Section 9M mirrors the operation of section 1061ZVGG of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 9N – Commissioner may defer making assessments

Section 9N mirrors the operation of section 1061ZVGH of *the* Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 9P – Commissioner may amend assessments

Section 9P mirrors the operation of section 1061ZVGJ of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 10A – Simplified outline of this Division

Section 10A briefly outlines tax administration matters with regards to the ABSTUDY student start-up loan.

Section 10B – Verification of tax file numbers

Section 10B mirrors the operation of section 1061ZVHB of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 10C – When person with tax file number incorrectly notifies number

Section 10C mirrors the operation of section 1061ZVHC of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 10D – When person without tax file number incorrectly notifies number

Section 10D mirrors the operation of section 1061ZVHD of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 10E – When tax file numbers are cancelled

Section 10E mirrors the operation of section 1061ZVHE of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 10F – Returns, assessments, collection and recovery

Section 10F mirrors the operation of section 1061ZVHF of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 10G – Charges and civil penalties for failing to meet obligations

Section 10G mirrors the operation of section 1061ZVHG of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 10H – Pay as you go (PAYG) withholding

Section 10H mirrors the operation of section 1061ZVHH of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 10J – Pay as you go (PAYG) instalments

Section 10J mirrors the operation of section 1061ZVHJ of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Section 10K – Administration of this Part

Section 10K mirrors the operation of section 1061ZVHK of the Social Security Act (as inserted by item 25) but with respect to an ABSTUDY student start-up loan.

Item 68 amends the definition of **ABSTUDY debt** to include an ABSTUDY student start-up loan overpayment. This amendment is necessary given item 71 of this Schedule inserts section 38A, which provides for the meaning of **ABSTUDY student start-up loan overpayment**.

Item 69 amends the definition of debt to include an ABSTUDY student start-up loan overpayment.

Item 70 makes technical amendments for the purposes of the amendment contained in item 71.

Item 71 inserts section 38A – ABSTUDY student start-up loans overpayments.

Section 38A operates in a similar way to section 1223ABF of the Social Security Act (as inserted by item 30) as it sets out circumstances in which the ABSTUDY start-up loan will not be treated as an income-contingent loan but as a debt owed by the person to the Commonwealth under section 39 of the Act.

Items 72 and 73 make minor amendments for the purposes of item 74.

Item 74 amends section 39 to provide that, where an ABSTUDY student start-up loan payment becomes a debt recoverable by the Commonwealth, the ABSTUDY student start-up loan overpayment is taken to have arisen when the person received the loan to which the overpayment relates.

Item 75 inserts section 39AAA (ABSTUDY student start-up loan), previously treated as part of accumulated ABSTUDY SSL debt. This section mirrors section 1223ABG of the Social Security Act (as inserted by item 30), but with respect to an ABSTUDY student start-up loan overpayment.

Item 76 makes a minor amendment for the purposes of item 77.

Item 77 amends subsection 44A(7) to provide that subsection 44A(5) does not apply in relation to recovery of an amount relating to an ABSTUDY student start-up loan. This will mean that a student will have to provide their actual tax file number, rather than lodging an application for a tax file number with the Department, in order to meet the qualification requirements for the ABSTUDY student start-up loan.

Item 78 amends subsection 55A to clarify that payments made in relation to ABSTUDY student start-up loans are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

Item 79 makes a minor amendment for the purposes of item 80.

Item 80 amends section 302 to provide that Division 1 of Part 9 does not apply to a decision that is reviewable under section 308A.

Item 81 inserts new Division 1A – Internal review of Commissioner decisions relating to ABSTUDY student start-up loans.

Section 308A – Decisions reviewable under this Division

Section 308A mirrors the operation of section 138A of the Social Security Administration Act (as inserted by item 44) but with respect to reviewable decisions in relation to ABSTUDY student start-up loan.

Section 308B – Commissioner must give reasons for reviewable decisions

Section 308B mirrors the operation of section 138B of the Social Security Administration Act (as inserted by item 44) but with respect to reviewable decisions in relation to ABSTUDY student start-up loan.

Section 308C – Reviewer of decisions

Section 308C mirrors the operation of section 138C of the Social Security Administration Act (as inserted by item 44) but with respect to reviewable decisions in relation to ABSTUDY student start-up loan.

Section 308D – Reviewer may reconsider reviewable decisions

Section 308D mirrors the operation of section 138D of the Social Security Administration Act (as inserted by item 44) but with respect to reviewable decisions in relation to ABSTUDY student start-up loan.

Section 308E – Reconsideration of reviewable decisions on request

Section 308E mirrors the operation of section 138E of the Social Security Administration Act (as inserted by item 44) but with respect to reviewable decisions in relation to ABSTUDY student start-up loan.

Section 308F – AAT review of reviewable decisions

Section 308F mirrors the operation of section 138F of the Social Security Administration Act (as inserted by item 44) but with respect to reviewable decisions in relation to ABSTUDY student start-up loans.

Item 82 mirrors the operation of subsection 144(t) of the Social Security Administration Act (as inserted by item 45) but with respect to ABSTUDY student start-up loans.

Amendments to the Taxation Administration Act

Item 83 inserts a definition of ***compulsory ABSTUDY SSL repayment amount*** into the Act.

Item 84 inserts a definition of ***compulsory SSL repayment amount*** into the Act.

Item 85 amends section 8AAZLD to provide that any compulsory SSL repayment amount of the entity and then any compulsory ABSTUDY SSL repayment amount will be prioritised in that order after any compulsory repayment amount but before any FS assessment debt when the Commissioner applies a credit that arises under the Pay As You Go system.

Item 86 amends section 6-1 in Schedule 1 to allow for the Pay As You Go system to collect amounts that go towards meeting liability to repay debts in relation to student start-up loans and ABSTUDY student start-up loans.

Item 87 amends the objects in section 11-1 of Schedule 1 to ensure that the object Part 2-11 is to ensure the efficient collection of amounts of liabilities to the Commonwealth under Chapter 2AA of the Social Security Act or under Part 2 of the Student Assistance Act.

Item 88 amends section 15-30 of Schedule 1 to ensure that the Commissioner must have regard to the applicable percentages in section 1061ZVGE of the Social Security Act and the equivalent provision in the ABSTUDY scheme when making a withholding schedule.

Item 89 amends the object in section 45-5 of Schedule 1 so that the object Part 2-10 is to ensure the efficient collection of amounts of liabilities to the Commonwealth under Chapter 2AA of the Social Security Act or under Part 2 of the Student Assistance Act.

Item 90 amends section 45-340 in Schedule 1 to insert steps 3AA and 3AB to the method statement on adjusted taxable income or on adjusted withholding income.

Item 91 makes technical amendments to step 4 of the method statement in section 45-340 in Schedule 1 to take account of new steps 3AA and 3AB as inserted by item 90.

Item 92 amends the method statement in section 45-375 in Schedule 1 to insert steps 3AA and 3AB for adjusted assessed tax on adjusted assessed taxable income.

Item 93 makes a technical amendment to step 4 of the method statement in section 45-375 in Schedule 1 to take account of new steps 3AA and 3AB as inserted by item 92.

Item 94 amends the table in subsection 250-10(2) to include any compulsory SSL and ABSTUDY SSL repayment amount in the adjusted taxable income calculation.

Item 95 amends subsection 355-65(2) to include that records or disclosures relating to social welfare, health or safety can be made for or disclosure can be made to an Agency Head (within the meaning of the *Public Service Act 1999*) of an agency (within the meaning of that Act) dealing with matters relating to the social security law, including the Student Assistance Act so far as it relates to ABSTUDY student start-up loans (within the meaning of that Act) and debts relating to such loans, along with the Social Security Act.

Amendments to the *Taxation (Interest on Overpayment and Early Payments) Act 1983*

Items 96 and 97 insert a definition of ***compulsory ABSTUDY SSL repayment amount*** and ***compulsory SSL repayment amount*** into the Act.

Item 98 amends the table in subsection 3C(1) so that compulsory SSL repayment amounts and ABSTUDY SSL repayment amounts are identified as relevant tax law for the purposes of the Act.

Items 99 and 100 amend subsections 8A(1) and 8A(2) to ensure compulsory SSL repayment amounts and ABSTUDY SSL repayment amounts are payments for which interest is payable by the Commissioner to the person on the payment, calculated in respect of the period applicable under section 8B at the rate specified in section 8C.

Items 101 and 102 amend paragraphs 8E(1)(d) and 8E(2)(d) to ensure that interest can be paid when crediting amounts in excess of any compulsory SSL repayment amounts and compulsory ABSTUDY SSL repayment amounts.

Items 103 and 104 amend subparagraph 12A(1) to ensure that interest entitlement arises in respect of refunds of payments made on account of compulsory SSL repayment amounts and compulsory ABSTUDY SSL repayment amounts. These items otherwise amend subparagraph 12A(1) to ensure this provision is written in a way that reflects current drafting techniques. This is a minor, technical amendment.

Item 105 is a minor amendment for the purposes of item 103.

Schedule 7 – Paid parental leave

Summary

To ease administrative burdens on business, the Paid Parental Leave legislation will be amended to remove the requirement for employers to provide Government-funded parental leave pay to their eligible long-term employees.

From 1 March 2014, employees will be paid directly by the Department of Human Services, unless an employer opts in to provide parental leave pay to its employees and an employee agrees to their employer paying them.

Background

Currently under the Paid Parental Leave Act, in the majority of cases, employers are required to provide parental leave pay to their eligible long-term employees. The Secretary must make an employer determination that a person's employer is to pay the person's instalments of parental leave pay, if the Secretary is satisfied that certain conditions are met.

However, an employer determination can be made despite not all of the conditions being satisfied if an employer has made an election to 'opt-in' to pay instalments of parental leave pay to the employee and the employee consents to the employer paying the instalments. If an employer determination is in force for an employer and their employee, the employer must pay instalments of parental leave pay to their employee.

From 1 March 2014, payments of parental leave pay will be made by the Department of Human Services, unless an employer chooses to 'opt in' to manage the payment of parental leave pay to their employees and their employee agrees for the employer to pay them. This will go some way towards easing the administrative burden on business.

The amendments will only require an employer to provide instalments of parental leave pay to a person if an employer determination is in force for the employer and the employee. An employer determination can only be made if the employer has made an election to pay instalments, that election applies to the person, and certain other conditions are met, including the employee agreeing to their employer paying them. PPL funding amounts will then be transferred to the employer from the Department of Human Services for payment to the employee, consistent with current arrangements.

If an employer determination is made for a particular employer and employee, but the employer no longer wishes to pay parental leave pay for that particular employee, the employer can decline the paymaster role. If this happens, the Department of Human Services will pay the employee.

To reflect the non-mandatory nature of this role, employers who do not respond to a notice of an employer determination will no longer be potentially subject to a compliance notice. Review of an employer determination is no longer required because the employer can simply decline the paymaster role.

The amendments made by this Schedule commence on 1 March 2014.

Explanation of the changes

Part 1 – Amendments

Amendments to the Paid Parental Leave Act

Items 1, 2 and 3 amend section 4, which is the Guide to the Act, to reflect the changes made by this Schedule.

Item 4, 5 and 8 amend certain definitions in section 6, to reflect the changes made by items 11, 21, 22 and 32 of this Schedule.

Item 6 repeals the definition of ***employer determination decision*** in section 6, as this was only relevant to review of these decisions and is no longer required as a consequence of the amendment made by item 41.

Item 7 inserts a new definition of ***non-acceptance notice*** in section 6, which is defined in paragraph 103(1)(b), as amended by item 21.

Item 9 amends the note under subsection 64(1) by removing the reference to 'section 93', consequential to repeal of that section by item 15.

Item 10 amends the third paragraph in section 83, which is the Guide to Part 3-3, relating to payment of instalments by the Secretary.

Item 11 repeals subsection 84(3), to omit reference to an employer having made an application for review of the decision to make an employer determination.

Item 12 repeals and substitutes a new heading for section 85, titled 'Payment of arrears – employer determination revoked before coming into force'. This item is consequential to item 13.

Item 13 repeals and substitutes new subsection 85(1), omitting reference to subsection 84(3), but otherwise re-enacting the subsection unchanged.

Item 14 amends subsection 85(3) and is consequential to items 12 and 13.

Item 15 repeals section 93, and removes the requirement for the Secretary to pay instalments because an employer has sought review of an employer determination.

Item 16 repeals and substitutes a new section 100, which is a guide to Part 3-5 of the Paid Parental Leave Act and gives a brief outline of the matters dealt with in the Part, relating to employer determinations. The changes to section 100 reflect the amendments made by items 17 to 32.

Item 17 repeals and substitutes new paragraphs 101(1)(b) and (c). Subsection 101(1) provides that the Secretary must make an employer determination that a person's employer is to pay the person instalments if the Secretary is satisfied that certain conditions have been met.

New paragraph 101(1)(b) provides that, when making an employer determination, one of the conditions of which the Secretary must be satisfied is that the person's employer has made an election (or 'opted in') under section 109 to pay instalments and that election applies to the person.

New paragraph 101(1)(c) provides that, when making an employer determination, the Secretary must also be satisfied that the person has consented in the claim form to the employer paying instalments of parental leave pay to the person.

Item 18 repeals paragraph 101(1)(e), which removes the condition that an employer has an ABN, when the Secretary makes an employer determination. The requirement to have an ABN is now provided by subsection 109(1) (item 31).

Item 19 amends paragraph 101(1)(f), and is consequential to items 17 and 18.

Item 20 repeals subsection 101(2), and is consequential to the changes made by item 17.

Item 21 repeals and substitutes new section 103, which sets out the required employer response to a notice of an employer determination.

New subsection 103(1) provides that, if an employer is given a notice under section 102 that an employer determination has been made, the employer may, within the period referred to in subsection 103(2) (which is normally 14 days):

- give the Secretary a written notice (the **acceptance notice**) that complies with section 104; or
- give the Secretary a **non-acceptance notice**, orally or in writing, declaring that the employer does not accept the employer's obligations to pay instalments to the person.

New subsection 103(2) provides that, for the purposes of subsection (1), the period is 14 days, or such longer period allowed by the Secretary, after the date of the notice given under section 102.

Item 22 repeals subsections 104(2) and (5), which provide the requirement to have bank account information in the acceptance notice. This requirement is now provided in paragraph 109(2)(b) (item 32).

Item 23 repeals section 105, removing the requirement for the employer to give bank account and pay cycle information etc. after an internal review or review by the SSAT, as this is no longer relevant.

Item 24 amends subsection 107(1), and is consequential to item 27.

Item 25 repeals the heading to subsection 107(2).

Item 26 amends subsection 107(2) by omitting the reference to ‘a compliance notice given under section 157’.

Item 27 repeals subsection 107(3), and is consequential to item 23.

Item 28 inserts a new item 1A in the table in subsection 108(1). New table item 1A provides that the Secretary must revoke an employer determination made for a person and the person’s employer if the Secretary is satisfied that the employer has given a non-acceptance notice for the person under paragraph 103(b). In this situation, the revocation comes into force on the day of the revocation.

Item 29 amends item 2 in column 1 of the table in subsection 108(1), and is consequential to item 21.

Item 30 repeals subsection 108(6), which relates to the notice of revocation of an employer determination to the SSAT, when the Secretary revokes an employer determination, as a review would no longer occur in this situation (consequential to item 41).

Item 31 amends subsection 109(1) by adding the requirement for an employer to have an ABN, before the employer may choose to ‘opt in’ to pay instalments of parental leave pay to an employee.

Item 32 repeals and substitutes new paragraph 109(2)(b), which sets out the requirements of an election notice (or notice to ‘opt in’).

New paragraph 109(2)(b) provides that the election notice must be in the approved form and contain information (bank account information) about an account held and maintained by the employer into which PPL funding amounts can be paid.

Item 33 repeals items 10 and 11 in the table in section 146, relating to what constitutes a civil penalty provision. This is consequential to items 21 and 23.

Item 34 repeals and substitutes new subsection 157(1), which relates to compliance notices given by the Secretary, to omit reference to failing to respond to an employer determination or failing to provide certain information after a review. New subsection 157(1) provides that section 157 applies if the Secretary reasonably believes that a person has contravened subsection 82(2), which deals with an employer notifying the Secretary if certain events happen.

Item 35 amends subsection 159(1), and is consequential to item 36.

Item 36 repeals paragraphs 159(1)(b) and (c), relating to infringement notices the Secretary may give in relation to section 103 (which deals with responding to an employer determination) and subsection 105(3) (which deals with giving bank account and pay cycle information etc. after a review).

Item 37 repeals and substitutes a new last paragraph of the Guide to Part 5-1 (relating to internal review of decisions) in section 202. This change reflects the changes made by item 41.

Item 38 repeals the first note under subsection 203(2), which is consequential to the repeal of section 207 by item 41.

Item 39 changes the heading of ‘Note 2’ to ‘Note’ under subsection 203(2), which is consequential to item 38.

Item 40 amends subsection 205(1) by removing the reference to section ‘207’, which is consequential to item 41.

Item 41 repeals section 207, removing the right for an employer to make an application for internal review of an employer determination, as an employer can now simply decline the employer determination instead.

Item 42 amends subsection 209(2) by omitting the reference to ‘an application under section 207’. This item is consequential to item 41.

Item 43 amends paragraphs 210(2)(a) and (b) by removing the references to ‘an employer determination decision’, which is consequential to item 41.

Item 44 repeals paragraph 212(1)(c), relating to a notice of a decision relating to an employer determination decision, which is consequential to item 41.

Item 45 amends subsection 212(5), and is consequential to item 44.

Item 46 amends paragraphs 223(1)(a), (b), (c) and (d) by omitting the references to ‘an employer determination decision’, which is consequential to item 41.

Item 47 repeals subsection 224(1), which allowed an employer to apply to the SSAT for review of an employer determination decision. This item is consequential to the changes made by item 41.

Item 48 amends subsection 224(2) by omitting the reference to ‘if the decision is an employer funding amount decision’.

Item 49 amends subsection 224(3), and is consequential to item 47.

Item 50 repeals paragraph 225(2)(b), which is consequential to item 47.

Item 51 amends subsection 278(1), which relates to Commonwealth employees and is consequential to item 52.

Item 52 repeals subsection 278(2), which relates to Commonwealth employees and is consequential to item 17.

Item 53 repeals subsection 299(1) and substitutes a new subsection.

New subsection 299(1) provides that the PPL Rules or the regulations may provide that a person may make an election under section 109 to pay instalments to another person if both persons are in a relationship that is similar to the relationship between an employer and an employee.

Part 2 – Application and transitional provisions

Item 54 is an application provision, which provides that the amendments made by Part 1 of this Schedule apply in relation to an employer determination that is made on or after the commencement of this Schedule in relation to a claim for parental leave pay that is made before, on or after that commencement.

Item 55 is a transitional provision relating to elections made before commencement. This item provides that an election under section 109 of the Paid Parental Leave Act that is in force immediately before the commencement of this Schedule ceases to be in force at that commencement.

Item 56 is a transitional provision relating to revoking employer determinations made before commencement.

Subitem 56(1) provides that this item applies if:

- an employer determination was made before the commencement of this Schedule for a person and the person's employer; and
- the determination had not been revoked before that commencement; and
- the person's PPL period had not started before that commencement.

Subitem 56(2) provides that the Secretary must revoke any determination captured under subitem 56(1).

Subitem 56(3) provides that the Paid Parental Leave Act applies as if a revocation under subitem 56(2) were made under subsection 108(1) of that Act.

Schedule 8 – Pension bonus scheme

Summary

From 1 March 2014, this Schedule will end late registrations for the closed pension bonus scheme.

The scheme provides a lump sum payment to people who are qualified for age pension, age service pension, partner service pension after reaching pension age, or income support supplement after reaching qualifying age – but who choose to defer their pension and remain in the workforce. The scheme was closed from 2009, although people remained able to register for the scheme if they were qualified for it, but had not registered, at the time of its closure.

However, the introduction around the same time of a work bonus for age pensioners with earnings from employment has been more effective in encouraging older Australians to continue contributing to the workforce past pension age. Ending late registrations for the pension bonus scheme will help ensure the pension system is simpler and more sustainable for older Australians into the future.

Background

Both the social security law and the Veterans' Entitlements Act provide for a pension bonus scheme.

The pension bonus scheme under the social security law is established by Part 2.2A of the Social Security Act. It allows a person registered for the scheme, who qualifies for age pension but defers claiming it, to claim a single lump-sum pension bonus.

A person must apply to register in the pension bonus scheme (section 92D), and be registered (section 92J) in order to become a member of the scheme and accrue a pension bonus. Section 92H imposes time limits on when a person can lodge an application for registration, depending on the person's date of qualification for age pension.

The pension bonus scheme was closed to new entrants whose date of qualification for age pension occurred on or after 20 September 2009 (subsection 92J(1A)). In general, an application for registration must be made within 13 weeks after the date of the person's qualification for age pension (section 92H). However, subsection 92H(3) permits the Secretary to extend the period within which a person must lodge their application. This has allowed a person to make a late application for registration in the pension bonus scheme and have their registration start date backdated.

This Schedule prevents an application for registration in the scheme from being made on or after 1 March 2014. It removes capacity for the Secretary to extend the period for an application for registration to be made on or after 1 March 2014. As a result, it will no longer be possible for a person to apply for registration in the scheme if their application for such registration is not lodged before 1 March 2014. A saving provision will allow registration applications lodged prior to 1 March 2014 to be processed after that date, and the person registered in the scheme if qualified.

Similarly, under the Veterans' Entitlements Act, the scheme provides a lump sum payment to people who are registered in the scheme and eligible for service pension or partner service pension after reaching pension age, or income support supplement after reaching qualifying age, but who choose to defer their pension or supplement and remain in the workforce. The pension bonus scheme is established under Part IIIAB of the Veterans' Entitlements Act.

Mirror amendments are made to the Social Security Act and the Veterans' Entitlements Act.

The amendments made by this schedule commence on 1 March 2014.

Explanation of the changes

Amendments to the Social Security Act

Items 1 and 2 add new subsection (2) to section 92D, to provide expressly that a person cannot make an application on or after 1 March 2014.

Item 3 repeals notes to subsections 92H(1) and (2) consequential upon the main repeal made by item 4 below.

Item 4 repeals subsections 92H(3) to (7), which provided capacity for the Secretary to extend the timeframe for an application for registration in the pension bonus scheme.

Item 5 provides a saving provision. If an application for registration has been made prior to 1 March 2014, then, despite the repeal of subsection 92H(3), the Secretary may register the person in the scheme as a result of the application, with the registration taking effect on a date determined under that subsection. That is, applications for registration in the scheme lodged before 1 March 2014 will be determined in line with legislation in effect immediately before the commencement of this Schedule. It will not be possible to lodge an application for registration in the Scheme on or after 1 March 2014.

Amendments to the Veterans' Entitlements Act

Items 6 and 7 add new subsection 45TD(2) to provide expressly that a person cannot make an application for registration in the pension bonus scheme on or after 1 March 2014.

Item 8 repeals the notes to subsections 45TH(1) and (2) consequential to the repeal made by item 9.

Item 9 repeals subsections 45TH(3) to (7), which provided capacity for the Repatriation Commission to extend the timeframe for an application for registration in the pension bonus scheme.

Item 10 provides a saving provision. If an application for registration has been made prior to 1 March 2014, then, despite the repeal of subsection 45TH(3), concerning late applications, the Repatriation Commission may register the person in the scheme. The registration will take effect on a date determined under the repealed subsection 45TH(3). This provision enables the Repatriation Commission to continue to extend the application lodgement period for registrations lodged before 1 March 2014 in accordance with the legislation that was in effect immediately before the commencement of this Schedule. It will not be possible to lodge an application for registration in the scheme on or after 1 March 2014.

Schedule 9 – Indexation

Summary

This Schedule will extend the indexation pauses on certain higher income limits for three further years until 30 June 2017.

This will apply to the family tax benefit Part B primary earner income limit, the parental leave pay and dad and partner pay individual income limits, and the higher income free area for family tax benefit Part A. In addition, the annual end-of-year family tax benefit supplements will remain at current levels for three years.

This Bill will also maintain the annual child care rebate limit at \$7,500 for three further income years starting from 1 July 2014, with the first indexation of this amount occurring on 1 July 2017. As a result, an individual will be able to receive up to the maximum amount of \$7,500 per child per financial year for out-of-pocket child care costs for those three income years.

Background

Family tax benefit income thresholds

Schedule 4 to the Family Assistance Act sets out the arrangements for indexation of family assistance rates and income thresholds. Amendments to Schedule 4 will result in the continuation of indexation pauses until 30 June 2017 on the higher income free area for family tax benefit Part A (both the basic amount of \$94,316 and the additional amount for each FTB child after the first of \$3,796) and the \$150,000 primary earner income limit for family tax benefit Part B.

Family tax benefit Part A and Part B end-of-year supplements

The indexation arrangements for the end-of-year family tax benefit Part A and family tax benefit Part B supplement amounts, also provided by Schedule 4, will be amended so that indexation of these amounts is paused until 30 June 2017. The supplement amounts are currently \$726.35 for family tax benefit Part A for each FTB child, and \$354.05 for a family tax benefit Part B recipient.

Child care rebate limit

Child care rebate is a payment assisting eligible individuals with the cost of child care fees for sessions of care provided by an approved child care service. The amount of child care rebate an individual may receive for a child for an income year is 50 per cent of the difference between the amount that the individual is liable to pay for care provided to the child and the sum of the individual's child care benefit entitlement (if any) and the Jobs, Education and Training Child Care fee assistance (if any) relating to that child, up to the maximum limit legislatively set at \$7,500 for 2012-14 (the CCR limit). The legislation currently provides for the CCR limit to be indexed on 1 July 2014. Amendments in this Schedule will maintain the annual child care rebate limit at \$7,500 for three further income years starting from 1 July 2014, with the first indexation of this amount occurring on 1 July 2017.

Paid parental leave income limit

The Paid Parental Leave Act provides that a person can only be eligible for parental leave pay if they meet certain requirements, which include having adjusted taxable income for the reference income year of no more than the relevant 'PPL income limit'. The PPL income limit before 1 July 2014 is \$150,000 and is then subject to indexation. The amendments in this Schedule will further delay the commencement of indexation of the PPL income limit from 1 July 2014 to 1 July 2017.

The amendments made by this Schedule commence on 1 March 2014.

Explanation of the changes

Amendments to the Family Assistance Act

Section 84F specifies the child care rebate limit applicable in respect of a child and an income year. These amounts are relevant to the calculation of the amount of child care rebate for a quarter (under section 84AA), and for an income year (under section 84A), the amount of child care rebate relating to child care benefit in substitution (under section 84DA), and the amount of child care rebate for a week (under section 84AAA). Paragraph 84F(ea) currently specifies the income limit of \$7,500 for the income years ending on 30 June 2012, 30 June 2013 and 30 June 2014.

Item 1 amends paragraph 84F(ea) to specify the limit of \$7,500 for the additional income years ending on 30 June 2015, 30 June 2016 and 30 June 2017.

Item 3 amends subclause 3(6B) of Schedule 4 to the Family Assistance Act to prevent the indexation of specified child care rebate payments from occurring on 1 July 2014, 1 July 2015 and 1 July 2016. **Item 2** makes a consequential amendment to the heading to subclause 3(6A) of Schedule 4.

Item 4 amends the note to subclause 3(6B) of Schedule 4 to state that the indexation of the child care rebate limit resumes on 1 July 2017.

Item 5 is a transitional provision to the effect that, for the purposes of working out the indexed amount for the child care rebate limit on 1 July 2017 under Schedule 4 to the Family Assistance Act, the current figure for the child care rebate limit immediately before that day is taken to be \$7,500.

Item 7 amends subclause 3(7) of Schedule 4 to the Family Assistance Act. This amendment will prevent the indexation of specified family tax benefit income limits from occurring on 1 July 2014, 1 July 2015 and 1 July 2016. **Item 6** makes a consequential amendment to the heading to subclause 3(7).

Item 9 amends subclause 3(8) of Schedule 4 to the Family Assistance Act to provide that indexation of the FTB gross supplement amount (A) and FTB gross supplement amount (B) will not occur on 1 July 2014, 1 July 2015 and 1 July 2016. **Item 8** makes a consequential amendment to the heading to subclause 3(8).

Amendment to the *Family Assistance Legislation Amendment (Child Care Budget Measures) Act 2011*

Item 10 repeals item 5 of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care Budget Measures) Act 2011*, which is a transitional provision that is superseded by item 5 above.

Amendments to the Paid Parental Leave Act

Item 11 amends the Guide to Part 2-3 by substituting the date 30 June 2017 for the date 30 June 2014 as the date before the first indexation of the PPL income limit.

Item 12 amends paragraph 41(a) to extend the time that the \$150,000 figure applies for the PPL income limit from 'before 1 July 2014' to 'before 1 July 2017'.

Item 13 amends subsection 42(1) to provide for the first indexation of the PPL income limit to occur on 1 July 2017.

Item 14 amends the Guide to Part 3A-3 (Eligibility for dad and partner pay), which states that DAPP claimants must not have income exceeding the PPL income limit, which will not be indexed until after 30 June 2017.

Schedule 10 – Reduction of period for temporary absence from Australia

Summary

From 1 July 2014, the length of time that families can be temporarily overseas and continue to receive family and parental payments will reduce from three years to 56 weeks.

In some circumstances, (such as where certain Australian Defence Force and Australian Federal Police personnel are deployed overseas) a person will continue to be eligible for family and parental leave payments for up to three years while temporarily absent from Australia.

Background

Currently, if an individual leaves Australia temporarily, the maximum period for which the individual can be eligible for family tax benefit during the absence from Australia is three years.

Similarly, the maximum period for which a person may be temporarily absent from Australia and still be eligible for parental leave pay, or dad and partner pay, is currently three years. If the three-year temporary absence period is exceeded before the end of a PPL period or DAPP period, the payment will stop from that day.

This Schedule reduces the allowed period of temporary absence from Australia for family tax benefit, parental leave pay and dad and partner pay recipients from three years to 56 weeks. This will also affect payments that link to family tax benefit, such as double orphan pension.

However, in some circumstances (such as where certain Australian Defence Force and Australian Federal Police personnel are deployed overseas), a person will continue to be eligible for family and parental leave payments for up to three years while temporarily absent from Australia.

The amendments made by this Schedule commence on 1 July 2014.

Explanation of the changes

Amendments to the Family Assistance Act

Items 1, 2, 3 and 4 change the allowed period of temporary absence from Australia for an FTB or regular care child, or an individual, from three years to 56 weeks in subsection 24(1), paragraph 24(2)(a), subsection 24(4) and paragraph 24(5)(a).

Item 5 adds new subsections 24(7) to (10) into the Family Assistance Act. These provisions set out the circumstances in which the 56-week temporary absence period from Australia can be extended for an individual or child, to a period of up to three years. The 56-week period can be extended:

- where the person is unable to return to Australia within the 56-week period because of a specified event such as serious illness or hospitalisation of the person or a family member, or natural disaster or war in the country in which the person is located (see new subsections 24(7) and (8));
- where the person is receiving financial assistance in relation to their absence from Australia under the Medical Treatment Overseas Program (see new subsection 24(9)); and
- where the person is unable to return to Australia within the 56-week period because the person is deployed outside Australia as a defence force member, or, for the purpose of capacity building or peacekeeping, as a member or special member of the Australian Federal Police or a protective services officer (see new subsection 24(10)).

These circumstances are consistent with the circumstances in which the six-week temporary absence period that applies before a temporary overseas absence affects an individual's rate of family tax benefit can be extended (see section 63A of the Family Assistance Act).

Amendments to the Family Assistance Administration Act

Items 6 and 7 change current references to the allowed period of temporary absence from Australia in paragraphs 30A(1)(c) and 30B(1)(c) from three years to 56 weeks.

Item 8 is an application provision, which provides that the amendments made by items 1 to 7 apply in relation to any absence from Australia, whether this begins before, on or after 1 July 2014. However, the amendments only affect an individual's eligibility for family tax benefit on and from 1 July 2014.

Amendments to the Paid Parental Leave Act

Items 9 and 11 change the allowed period of temporary absence from Australia, for parental leave pay and dad and partner pay recipients, from three years to 56 weeks in paragraph 46(1)(b) and paragraph 46(2)(a).

Items 10 and 12 are technical amendments to the headings to subsection 46(2) and subsection 46(3), changing each reference to three years to a reference to 56 weeks.

Item 13 adds new subsections 46(4) and (5) into the Paid Parental Leave Act.

New subsection 46(4) provides for an extension of the 56-week temporary absence period from Australia, to a period of up to three years, for a person who is unable to return to Australia within the initial period because the person is deployed outside Australia in certain circumstances. This extension can be applied if the person is deployed outside Australia as a member of the Defence Force, or if the person is deployed outside Australia, for the purpose of capacity-building or peacekeeping functions, as a member or a special member of the Australian Federal Police or a protective service officer.

New subsection 46(5) provides for the PPL rules to prescribe further events or circumstances in which the 56-week temporary absence period from Australia can be extended, to a period of up to 3 years.

Item 14 is an application provision for items 9 to 13.

Subitem 14(1) provides that the amendments made by items 9 to 13 apply in relation to a person's eligibility for parental leave pay and dad and partner pay for a child born on or after 1 July 2014. For this purpose, it does not matter whether an absence from Australia began before, on or after 1 July 2014.

Subitem 14(2) provides that the following provisions in the Paid Parental Leave Act apply in relation to this item as if this item were a provision of that Act:

- section 275, which deals with how the Act applies to an adopted child;
- section 276, which deals with how the Act applies to claims for parental leave pay made in exceptional circumstances; and
- section 277A, which deals with how the Act applies to claims for dad and partner pay made in prescribed circumstances.

Schedule 11 – Extending the deeming rules to account-based income streams

Summary

This Schedule will align the income test treatment of account-based superannuation income streams, for products assessed from 1 January 2015, with the deemed income rules applying to other financial assets. Account-based income streams held by income support recipients immediately before 1 January 2015 will continue to be assessed under the previous rules unless recipients choose to change to a product that is assessed under the new rules.

Background

Generally, to calculate the income assessed in relation to an income support recipient's financial investments, deeming rates are applied to the total market value of their financial investments. That is, financial investments are assumed to be earning a certain rate of income, regardless of what they actually earn. The policy rationale is that, by treating all financial investments in the same way, the deeming rules encourage people to choose investments on their merit rather than on the effect the investment income may have on the person's income support entitlement.

However, under the current legislation, Division 1C of part 3.10 of the Social Security Act and Division 4 of Part IIIB of the Veterans' Entitlements Act set out different rules for assessing income in relation to certain income streams. Those income streams provided for in Division 1C and Division 4 are not subject to income deeming.

This measure extends the income deeming provisions to any asset-tested income stream (long term) that is an account-based pension, or an equivalent annuity product. The extension of the deeming rules that currently apply to financial assets, such as bank accounts, shares and managed funds, will ensure that people with similar financial assets are treated consistently under the income support system.

The amendments made by this Schedule commence on 1 January 2015.

Explanation of the changes

Part 1 – Amendments

Amendments to the Social Security Act

Items 3 and 4 broaden the definition of **financial investment** by inserting new paragraphs 9(1)(i) and (j) to include an asset-tested income stream (long term) that is an account-based pension, and an asset-tested income stream (long term) that is an annuity provided under a contract that meets the requirements determined in an instrument under new subsection 9(1EA). **Account-based pension** is defined in Part 1.03 of the *Superannuation Industry (Supervision) Regulations 1994*. **Annuity** is defined in section 10 of the *Superannuation Industry (Supervision) Act 1993*.

Item 5 repeals notes 4 and 5 to subsection 9(1C). Subsection 9(1C) defines what are not *managed investments* for the purposes of the Social Security Act.

The repealed notes referred to the treatment of income streams under Subdivision B of Division 1C of Part 3.10 prior to the amendments made by this Schedule.

Item 6 inserts new subsection 9(1EA), which empowers the Minister to determine the requirements to be met for an annuity to be considered a financial investment under new paragraph 9(1)(j), inserted by item 4 above, for the purposes of the social security law. This power may only be exercised by the making of a legislative instrument in accordance with the *Legislative Instruments Act 2003*. It is intended to apply only to annuities equivalent to account-based pensions, such as products covered by Regulation 1.05(11A) of the *Superannuation Industry (Supervision) Regulations 1994*.

Items 24 and 25 substitute new headings to Division 1B and 1C of Part 3.10, to indicate clearly the application of each Division to the determination of income from financial assets and income streams.

Items 26 and 27 limit the scope of Subdivision B of Division 1C of Part 3.10, which sets out the rules for assessing income from income streams that are not family law affected income streams, by inserting new subsection 1097A(2). The new subsection states that Subdivision B of Division 1C does not apply to an asset-tested income stream (long term) that is an account-based pension, and an asset-tested income stream (long term) that is an annuity provided under a contract that meets the requirements determined in an instrument under new subsection 9(1EA).

Note 1 to new subsection 1097A(2) provides that an income stream of the type referred to in the subsection will be subject to treatment under Division 1B.

Note 2 to new subsection 1097A(2) provides a signpost to the application provisions in **item 48** of Part 2 of this Schedule, which preserve the rule in Subdivision B in certain situations.

Item 28 substitutes **new paragraph 1099DAA(1)(b)**, which removed the reference to income streams that are a pension or an annuity that meets the requirements determined by the Minister. This is because these products are now subject to the general rules for assessing income that apply to financial investments.

Items 29 and 30 limit the scope of Subdivision C of Division 1C of Part 3.10, which sets out the rules for assessing income from family law affected income streams, by inserting new subsection 1099DA(2). The new subsection states that Subdivision C of Division 1C does not apply to an asset-tested income stream (long term) that is an account-based pension, and an asset-tested income stream (long term) that is an annuity provided under a contract that meets the requirements determined in an instrument under new subsection 9(1EA).

Note 1 to new subsection 1099DA(2) provides that an income stream of the type referred to in the subsection will be subject to treatment under Division 1B.

Note 2 to new subsection 1099DA(2) provides a signpost to the application provisions in item 48 of Part 2 of this Schedule, which preserve the rule in Subdivision B in certain situations.

The combined effect of **items 3 to 6 and 24 to 30** is that an asset-tested income stream (long term) that is an account-based pension or annuity will no longer be subject to the rules for assessing income that apply to most income streams. Instead, by including these asset-tested income streams (long term) in the definition of financial investment, they will be subject to the general rules for assessing income that apply to financial investments.

Items 1, 2, 7 to 23, and 31 make consequential amendments to parts of the Social Security Act that refer to provisions amended by this Part.

Amendments to the Veterans' Entitlements Act

Items 32 and 33 amend notes 1 and 3 respectively to the definitions of **income** and **ordinary income** in subsection 5H(1).

The consequential amendments revise the references to the provisions of Part IIIB which may impact on the determination of the income and the ordinary income of a person.

Items 34 and 35 broaden the definition of **financial investment** by inserting new paragraphs 5J(1)(i) and (j) to include an asset-tested income stream (long term) that is an account-based pension, and an asset-tested income stream (long term) that is an annuity provided under a contract that meets the requirements determined in an instrument made under new subsection 5J(1G).

The definition of **account-based pension** is located in Part 1.03 of the *Superannuation Industry (Supervision) Regulations 1994*, and the definition of **annuity** is in section 10 of the *Superannuation Industry (Supervision) Act 1993*.

Item 36 repeals notes 4 and 5 to subsection 5J(1C). Subsection 5J(1C) defines what are not **managed investments** for the purposes of the Veterans' Entitlements Act.

The repealed notes referred to the treatment of income streams under Subdivision B of Division 4 prior to the amendments made by this Schedule.

Item 37 inserts new subsection 5J(1G), which empowers the Minister to determine the requirements to be met for an annuity to be considered a financial investment under new paragraph 5J(1)(j), inserted by item 35 above, for the purposes of the Veterans' Entitlements Act. This power may only be exercised by the making of a legislative instrument in accordance with the *Legislative Instruments Act 2003*. It is intended to apply only to annuities equivalent to account-based pensions – for example, products covered by Regulation 1.05(11A) of the *Superannuation Industry (Supervision) Regulations 1994*.

Item 38 amends note 2 to section 46, revising the references to the provisions of Part IIIB which may impact on the determination of the ordinary income of a person.

Items 39 and 40 substitute new headings to Divisions 3 and 4 of Part IIIB, to indicate clearly the application of each Division to the determination of income from financial assets and income streams.

Items 41 and 42 limit the scope of Subdivision B of Division 4 of Part IIIB, which sets out the rules for assessing income from income streams that are not family law affected income streams, by inserting new subsection 46SA(2). The new subsection states that Subdivision B of Division 4 does not apply to an asset-tested income stream (long term) that is an account-based pension, and an asset-tested income stream (long term) that is an annuity provided under a contract that meets the requirements determined in an instrument made under new subsection 5J(1G).

Note 1 to new subsection 46SA(2) provides that an income stream of the type referred to in the subsection will be subject to treatment under Division 3.

Note 2 to new subsection 46SA(2) provides a signpost to the application provisions in item 48 of Part 2 of this Schedule, which preserve the rule in Subdivision B of Division 4 in certain situations.

Item 43 substitutes new paragraph 46YA(1)(b), removing the reference to an income stream that is a pension or an annuity that meets the requirements determined by the Minister. This is because these products are now subject to the general rules for assessing income applying to financial investments.

Items 44 and 45 limit the scope of Subdivision C of Division 4 of Part IIIB, which sets out the rules for assessing income from family law affected income streams, by inserting new subsection 46Z(2). The new subsection states that Subdivision C of Division 4 does not apply to an asset-tested income stream (long term) that is an account-based pension, and an asset-tested income stream (long term) that is an annuity provided under a contract that meets the requirements determined in an instrument made under new subsection 5J(1G).

Note 1 to new subsection 46Z(2) provides that an income stream of the type referred to in the subsection will be subject to treatment under Division 3.

Note 2 to new subsection 46Z(2) provides a signpost to the application provisions in item 48 of Part 2 of this Schedule, which preserve the rule in Subdivision C of Division 4 in certain situations

The combined effect of **items 34 to 37 and 41 to 45** is that an asset-tested income stream (long term) that is an account-based pension or annuity will no longer be subject to the rules for assessing income that apply to most income streams. Instead, by including these asset-tested income streams (long term) in the definition of financial investment, they will be subject to the general rules for assessing income that apply to financial investments.

Items 46 and 47 amend paragraphs (c) and (d) of note 2 to point SCH6-E2 of the Rate Calculator in Schedule 6 to the Veterans' Entitlements Act.

The consequential amendments revise the references to the provisions of Part IIIB which may impact on the determination of the ordinary income of a person.

Part 2 – Application provisions

Item 48 contains four subitems. **Subitem 48(1)** provides that the amendments made by Part 1 apply in relation to working out the ordinary income of a person in relation to days occurring on or after 1 January 2015.

Subitems 48(2) and (3) preserve the existing rules for assessing income from certain income streams in existence immediately before 1 January 2015.

Subitem 48(2) provides that the amendments made by Part 1 do not apply to a person and an income stream if the following criteria are met:

- (a) the person was receiving an income support payment immediately before 1 January 2015;
- (b) either of the following was being provided to the person immediately before 1 January 2015:
 - (i) an asset-tested income stream (long term) that is an account-based pension; or
 - (ii) an asset-tested income stream (long term), that is an annuity provided under a contract that meets the standards determined in an instrument under subparagraph 1099DAA(1)(b)(ii) of the Social Security Act;
- (c) the person has been continuously receiving an income support payment since 1 January 2015; and
- (d) that income stream has continued to be provided to the person since 1 January 2015.

The person in subitem (2) is referred to as the ***primary beneficiary*** for the purposes of subitem (3).

It is intended that, if a person's income support payment ceases to be payable and, on a later date, the same or another income support payment becomes payable to the person, that person would be subject to the amendments made by Part 1 from the day that the income support payment ceases to be payable to that person.

Subitem 48(3) provides that the amendments made by Part 1 do not apply in relation to a reversionary beneficiary and an income stream if the following criteria are met:

- (a) the primary beneficiary dies during a time while the amendments made by Part 1 do not apply because of subitem (2);
- (b) the income stream referred to in subitem (2) reverts to the reversionary beneficiary on the primary beneficiary's death;

- (c) at the time of that reversion, the reversionary beneficiary is receiving an income support payment;
- (d) the reversionary beneficiary has been continuously receiving an income support payment since the time of that reversion; and
- (e) that income stream has been provided to the reversionary beneficiary since the time of that reversion.

Subitem 48(4) defines the term *income support payment* for the purposes of this application provision.

Schedule 12 – Other amendments

Summary

This Schedule makes miscellaneous amendments. These include improving the administration of debt recovery under the Student Financial Supplement Scheme, clarifying the provisions relating to the time period for lodging tax returns for family assistance purposes, and ensuring that funding under the National Disability Insurance Scheme paid into a person's account, which is set up for the purpose of managing the funding for supports for a participant's plan, cannot be garnisheed for debt recovery purposes.

Further amendments recast and simplify the tax file number provisions in the Family Assistance Administration Act, including to enable the Commissioner of Taxation to provide the Secretary with income information about an individual who is not required to lodge a tax return (that is, Australian Taxation Office pre-fill data), using tax file numbers as the primary matching key.

Amendments to the child support legislation ensure that provisions relevant to child support service delivery operate consistently with the arrangements for child support administration.

Background

Part 1 – Repayment of financial supplement through taxation system

This Schedule amends the Social Security Act and the Student Assistance Act to allow the Commissioner of Taxation to continue administering the recovery of debts under the Student Financial Supplement Scheme (SFSS), and to make other minor amendments relating to the administration of the SFSS.

These amendments commence on the day after Royal Assent.

Part 2 – Time periods and FTB reconciliation conditions

Section 32A of the Family Assistance Administration Act ensures that the family tax benefit Part A supplement and family tax benefit Part B supplement cannot be included in determining an individual's rate of family tax benefit unless and until the individual satisfies the family tax benefit reconciliation conditions. These conditions are set out in sections 32C to 32Q. Each of these sections provides when it applies and then provides for a reconciliation time. It is possible that more than one section applies to a particular individual, in which case section 32B provides that the reconciliation conditions are satisfied at the latest reconciliation time.

Sections 32C to 32H deal with cases where an individual and/or their partner are required to lodge income tax returns. These provisions ensure that the individual does not meet the family tax benefit reconciliation conditions if they or their partner do not lodge tax returns within the specified timeframe. Where the individual separates from their partner before the period allowed for lodging tax returns, the provisions seek to ensure that the individual's family tax benefit entitlement is not affected by their ex-partner's failure to lodge a tax return.

The current reconciliation provisions are more complex than they need to be. The provisions have some gaps (current section 32H does not cover all necessary scenarios involving separations in the second income year) and also produce unintended consequences in some scenarios. These are addressed by the amendments.

The date of effect rules that apply in relation to review decisions (sections 107 and 109E of the Family Assistance Administration Act) and the time limits applicable to review of certain decisions (section 109D) currently refer to an income tax return lodged before the end of the next income year. These provisions are amended to allow a further period in special circumstances if a tax return is lodged in the second income year, consistent with the claim and reconciliation provisions that allow a further period in special circumstances if a tax return is lodged in the second income year.

These amendments commence on the day after Royal Assent.

Part 3 – Protection of amounts under the National Disability Insurance Scheme

One of the objects of the *National Disability Insurance Scheme Act 2013* (the National Disability Insurance Scheme Act) is to provide reasonable and necessary supports for participants in the National Disability Insurance Scheme. In some cases, amounts will be paid to the participant, their nominee or a registered plan management provider for the specific purpose of enabling the purchase of supports identified in the participant's plan. It would be contrary to the objectives of National Disability Insurance Scheme Act to allow amounts paid in respect of reasonable and necessary supports to be garnisheed, sold or transferred for any other purposes.

This measure amends the National Disability Insurance Scheme Act to ensure that amounts paid under the National Disability Insurance Scheme in relation to funding for supports are inalienable. It also seeks to prevent third parties from seeking to recover debts by obtaining a garnishee order over bank accounts kept for the purpose of managing funding for supports under the National Disability Insurance Scheme.

These amendments commence on the day after Royal Assent.

Part 4 – Use of tax file numbers

Section 154A of the Family Assistance Administration Act currently allows for the exchange of tax file number data between the Secretary and Commissioner of Taxation for the purpose of the Commissioner informing the Secretary of amounts determined by the Commissioner to be included in an individual's adjusted taxable income. There are also rules requiring destruction of tax file number records provided by the Secretary and covering situations where an individual is not required to lodge a tax return. Section 154B currently allows the Secretary to provide an individual's tax file number and other relevant information to the Commissioner in relation to specified debt recovery actions provided for in the Family Assistance Administration Act, which involve the Commissioner.

Amendments are made to replace the current provisions with new section 160A. In broad terms, new section 160A is cast more generally, is simpler and more closely aligned with the model of tax file number provisions used in other portfolio Acts.

The new provision allows for the exchange of tax file numbers between the Secretary and Commissioner of Taxation for the purpose of the Commissioner providing the Secretary with information relevant for specified family assistance purposes relating to compliance and debt recovery. The new provision covers the data transfer allowed under the existing rules but would also allow the Secretary to require the Commissioner to provide income information received by the Australian Taxation Office from third parties (that is, pre-fill data) in relation to individuals who are not required to lodge tax returns. This information is of relevance in determining the adjusted taxable income of individuals who are not required to lodge tax returns and may be relevant in verifying eligibility for family assistance or in determining rate. The new provision also deals with the transfer of tax file number data for debt-related purposes.

These amendments commence on the day after Royal Assent.

Part 5 – Child support amendments

Child support administration involves the Department of Social Services, with responsibility for child support policy, and the Department of Human Services, with responsibility for child support service delivery. The amendments to the child support legislation ensure that certain provisions relevant to child support service delivery will operate consistently with these arrangements for child support administration.

A number of provisions relevant to child support service delivery will be amended to replace references to 'the Secretary' with 'the Human Services Secretary', replace references to 'the Department' with 'the Human Services Department', or add reference to 'the Human Services Department'.

The relevant provisions are for the Child Support Registrar, Acting Child Support Registrar, the use of computer programs to make decisions, the delegation provision, the multiple secrecy provision, and the procedures on receiving an application for a Social Security Appeals Tribunal review of certain child support decisions.

The Child Support Registrar will be an SES employee in the Human Services Department, appointed by the Human Services Secretary. The amendment of the other provisions noted will ensure they relate to the Human Services Secretary, or relate to the Human Services Department.

A number of amendments simplify provisions by replacing references to ‘the Family Assistance Secretary’ with ‘the Secretary’, as these references relate to the Secretary of the Department of Social Services.

The amendments made by this Schedule will commence on the 7th day after the Act receives Royal Assent.

Part 6 – Other amendments

This Part makes some minor adjustments to provisions relating to the newborn supplement and newborn upfront payment of family tax benefit and the stillborn baby payment, which commence on 1 March 2014, including to:

- ensure that the newborn upfront payment of family tax benefit is treated in the same way as the newborn supplement where the relevant tax returns have not been lodged on time and the non-lodger provisions apply;
- ensure that percentage determinations that allow family tax benefit to be split in blended families and in certain situations where couples separate, are taken into account in determining eligibility for the newborn supplement and amount of the newborn upfront payment;
- allow a claim for stillborn baby payment to be made more than 52 weeks after the birth of the stillborn child in further specified circumstances;
- clarify that the higher rate of newborn supplement is available in relation to the first child aged less than one year who is entrusted to the care of an individual or their partner; and
- ensure that a stillborn child in a multiple birth is taken into account in determining the amount of newborn supplement.

These amendments commence on 1 March 2014, immediately after the commencement of Parts 1 and 2 of Schedule 2A to the *Family Assistance and Other Legislation Amendment Act 2013*. Those Parts replace baby bonus with the newborn supplement (and related newborn upfront payment) and stillborn baby payment.

Explanation of the changes

Part 1 – Repayment of financial supplement through taxation system

Amendments to the Social Security Act

Item 1 inserts section 1061ZZENA, which provides that the Commissioner of Taxation has the general administration of Part 2B.3 of the Social Security Act with respect to Divisions 2, 4, 6 to 8 and 5 (except for section 1061ZZFE), as well as section 1061ZZFO. These provisions are taken to be taxation laws for the purposes of the Taxation Administration Act.

The purpose of this provision is to allow the Commissioner of Taxation to continue administering the recovery of debts under the SFSS.

Item 2 repeals section 1061ZZFGC as this section related to the now-redundant provisional tax system.

Item 3 amends subsection 1061ZZFJ(1) to allow the Commissioner of Taxation to delay the making of an assessment under section 1061ZZFH if the person has made an application in an approved form. This gives greater flexibility to a person to make an application as it will not have to be strictly in written form.

Item 4 inserts subsection 1061ZZFJ(4), which provides that, for section 1061ZZFJ, an approved form has the same meaning in section 388-50 in Schedule 1 to the Taxation Administration Act.

Item 5 amends subsection 1061ZZFK(1) to allow the Commissioner of Taxation to amend an assessment made under section 1061ZZFH so that no amount is payable under the assessment if the person has made an application in the approved form. This gives greater flexibility to a person to make an application as it will not have to be strictly in written form.

Item 6 inserts subsection 1061ZZFK(3), which provides that, for section 1061ZZFK, approved form has the same meaning in section 388-50 in Schedule 1 to the Taxation Administration Act.

Amendments to the Student Assistance Act

Item 9 inserts section 12ZEA to provide that the Commissioner of Taxation has the general administration of Division 6 of Part 4A of the Student Assistance Act to the extent that it relates to the Commissioner. These provisions are taken to be taxation laws for the purposes of the Taxation Administration Act.

The purpose of this provision is to allow the Commissioner of Taxation to administer the recovery of debts under the SFSS.

Items 7 and 8 make technical amendments for the purpose of item 9.

Item 10 repeals section 12ZNC as this section is related to the now-redundant provisional tax system.

Item 11 amends subsection 12ZP(1) and 12ZP(2) so that a person may apply to the Commissioner of Taxation in an approved form, rather than strictly by written application, under these subsections.

Item 12 inserts subsection 12ZP(4), which provides that, for section 12ZP, approved form has the meaning given by section 388-50 in Schedule 1 to the Taxation Administration Act.

Item 13 is a minor technical amendment.

Item 14 provides that the amendments made by items 3, 5, and 11 (which will allow applications in an approved form, rather than in written form) will apply to applications made on or after the commencement of those items. This means an application in written form made before the commencement of those items will comply with the requirements of those provisions amended by items 5, 15 and 30.

Part 2 – Time periods and FTB reconciliation conditions

Amendments to the Family Assistance Administration Act

Replacement of sections 32C to 32H

Item 16 replaces current sections 32C to 32H with new sections 32C to 32F.

In broad terms, if the first individual is or was required to lodge a tax return, then one provision (new section 32C) would set out the relevant reconciliation time for that circumstance, rather than six sections (current sections 32C to 32H). If the first individual's tax return is lodged before the end of the first income year after the relevant income year or such further period allowed by the Secretary, then the individual's relevant reconciliation time is when the tax assessment is made under the *Income Tax Assessment Act 1936*.

If the other member of the couple is or was required to lodge a tax return, then three new provisions would set out the relevant reconciliation time.

New section 32D applies where the first individual has a partner who is required to lodge a tax return and they continue to be a couple until the end of the first income year after the relevant income year or such further period allowed by the Secretary. If the partner's tax return is lodged before the end of the first income year after the relevant income year or such further period allowed by the Secretary, then the relevant reconciliation time is when the tax assessment is made.

New section 32E covers situations where the first individual's partner is required to lodge a tax return for the relevant income year and the couple separate during the first income year after the relevant income year. If the partner lodges a tax return before the end of the first income year after the relevant income year, then the relevant reconciliation time is when the tax assessment is made. Otherwise, it is the end of the first income year after the relevant income year.

New section 32F covers situations where:

- the first individual's partner is required to lodge a tax return for the relevant income year;
- the partner does not do so before the end of the next income year;
- the Secretary has allowed a further period for lodgement; and
- the couple separate after the end of the first income year but before the end of that further period.

If the partner lodges the tax return before the separation, then the relevant reconciliation time is when a tax assessment is made. Otherwise, it is when the couple separate.

New sections 32C to 32F do not use the concept of a designated date. A consequential amendment is therefore made by **item 17** to repeal section 32R of the Family Assistance Administration Act (which defines **designated date**).

These changes apply in relation to a relevant income year (as referred to in subsection 32A(1) of the Family Assistance Administration Act) that is the 2013-14 income year or a later income year (**subitem 26(1)** refers).

Amendments to certain review provisions

Subsections 107(3), 109D(4) and 109E(3) of the Family Assistance Administration Act set out date of effect rules relating to certain review decisions and time limits on seeking review of other decisions. However, the limitations set out in these provisions do not apply where the relevant decision is being reviewed because the Commissioner of Taxation has made or reviewed a decision on the basis of an income tax return lodged before the end of the first income year following the income year to which the assessment relates.

These provisions are amended by **items 18 to 25** to ensure that the limitations also do not apply in relation to tax returns that are lodged within such further period (if any) as the Secretary allows because of special circumstances that prevented the income tax return being lodged before the end of the first income year. This approach is consistent with the claim and reconciliation provisions that allow a further period in special circumstances if a tax return is lodged in the second income year.

These changes apply in relation to an income year as referred to in specified provisions that is the 2013-14 income year or a later income year (**subitem 26(2)** refers).

Technical amendment

Item 15 makes a technical amendment to the heading of subsection 10(2) to reflect the content of the provision.

Part 3 – Protection of amounts under the National Disability Insurance Scheme

Amendments to the National Disability Insurance Scheme Act

Item 27 inserts new sections 46A and 46B at the end of Division 3 of Part 2 of Chapter 3.

New subsection 46A(1) provides that an NDIS amount is absolutely inalienable. An **NDIS amount** is defined under section 9 to mean an amount paid under the National Disability Insurance Scheme in respect of reasonable and necessary supports funded under a participant's plan. This provision gives legal force to the intention that NDIS amounts are paid to a participant, their nominee or a registered plan management provider for the specific purpose of purchasing the supports identified under a participant's plan. Such an amount cannot be transferred to another person either by a voluntary act or by the operation of the law.

New subsection 46A(2) provides that inalienability is subject to Part 1 of Chapter 7. The effect is that the Agency may fully exercise its powers to recover debts due to the Agency in accordance with sections 183, 184 and 185, despite subsection 46A(1).

New subsection 46B(1) provides the general rule that a court must not make an order in the nature of a garnishee order in respect of an account with a financial institution if:

- one or more NDIS amounts for a particular participant have been paid into an account; and
- the account has been kept solely for the purpose of managing the funding for supports under the participant's plan.

New subsection 46B(2) provides an exception to the general rule in subsection 46B(1). That is, a court may make an order in the nature of a garnishee order in respect of an account if:

- the account is made in favour of a person in relation to a debt that arose because of the person providing goods or services in relation to the participant; and
- the goods and services are reasonable and necessary supports specified in the participant's plan.

New subsection 46B(1) is intended to protect NDIS amounts paid into certain accounts from being garnisheed by third parties for debt recovery purposes. New subsection 46B(2) seeks to limit this protection, in the situation where the person seeking a garnishee order should rightfully be paid from NDIS amounts held in an account, because they have not been paid for providing goods or services that have been identified as reasonable and necessary supports under a participant's plan.

Item 28 provides the application provisions, such that new section 46A applies in relation to amounts paid on or after the commencement of this item, and new section 46B applies in relation to court orders made on or after the commencement of this item.

Part 4 – Use of tax file numbers

Amendments to the Family Assistance Administration Act

Items 29 and 30 replace sections 154A and 154B of the Family Assistance Administration Act with a new section 160A.

New section 160A applies in relation to a tax file number provided under and for the purposes of the Family Assistance Administration Act (see, for example, section 8, which sets out the tax file number requirement).

New subsection 160A(2) provides specific authority for the Secretary to provide such a tax file number to the Commissioner of Taxation and require the Commissioner to provide specified information, including the individual's tax file number, back to the Secretary. This could be a different tax file number to the one provided by the Secretary if it is not the correct tax file number for the individual concerned. The Secretary could also provide other relevant information about the individual to the Commissioner, provided the disclosure is consistent with the confidentiality provisions in the Family Assistance Administration Act.

Under new subsection 160A(3), the information provided to the Secretary by the Commissioner can only be used by the Secretary for specified, compliance related purposes (for example, to verify eligibility or entitlement or to establish whether the correct rate of family assistance is or was paid).

New subsection 160A(4) provides authority for the Secretary to provide a tax file number to the Commissioner for specified debt related purposes which involve the Commissioner. For example, section 87 of the Family Assistance Administration Act allows for the application of a tax refund by the Commissioner to satisfy the whole or part of a family assistance debt. Section 226, on the other hand, provides for the setting off of family assistance entitlement against a tax liability.

Item 31 sets out application and saving provisions.

Subitem 31(1) ensures that new section 160A can apply to a tax file number provided to the Secretary before, on or after commencement of the provision.

Subitem 31(2) preserves the operation of existing sections 154A and 154B in relation to a record of a tax file number provided to the Commissioner under subsection 154A(2) or 154B(1) before commencement of new section 160A.

Part 5 – Child support amendments

Amendments to the *Child Support (Assessment) Act 1989*

Item 32 repeals the definition of ***Family Assistance Secretary*** contained in subsection 5(1). This definition will not be required, as other amendments made by this Part replace references to ‘Family Assistance Secretary’ with ‘Secretary’. Under the child support legislation, ‘the Secretary’ is the Secretary of the Department of Social Services.

Item 33 amends subsection 12A(1) by omitting the words, ‘The Secretary of the Department of which the Registrar is an employee’, and substituting the words, ‘The Human Services Secretary’. This amendment will enable the Human Services Secretary to arrange for the use, under the Registrar’s control, of computer programs for the purposes of decision-making.

Items 34 to 41 omit references to ‘Family Assistance Secretary’, and substitute a reference to ‘Secretary’ in the relevant provisions. These items are consequential to item 32.

Item 42 amends subsection 149(1) by adding a reference to ‘the Human Services Department’. Section 149 contains the Registrar’s powers of delegation and this amendment enables the Registrar to delegate all or any of the Registrar’s powers and functions under the Act to an officer or employee of the Department (of Social Services) or the Human Services Department, as well as to the Chief Executive Centrelink.

Items 43 to 47 amend section 150, which regulates the use of ‘protected information’. **Item 43** amends the definition of ***person to whom this section applies*** in subsection 150(1), with the effect that it will refer to ‘the Minister’ (for Social Services) and ‘the Human Services Minister’.

Item 44 amends the definition of ***relevant Minister*** in subsection 150(1), with the effect that it will refer to ‘the Minister’ (for Social Services) and ‘the Human Services Minister’.

Item 45 amends paragraph 150(3)(ba) by adding a new subparagraph 150(3)(ba)(ia), which refers to ‘the Human Services Secretary’.

Items 46 and 47 amend paragraphs 150(4)(a) and 150(4C)(d), with the effect that the provisions will refer to the Department (of Social Services) and ‘the Human Services Department’.

The amendments made by **items 43 to 47** ensure that the relevant provisions apply to the persons specified and operate consistently with the arrangements for child support administration.

Item 48 amends the definition of **relevant information** in subsection 150AA(3) by inserting a reference to ‘the Human Services Department. Section 150AA provides for an offence of unauthorised use of information. This amendment ensures that section 150AA applies to the records of the Department (of Social Services) and the Human Services Department.

Items 49 and 50 amend subparagraph 151A(1)(b)(ii) and paragraph 151A(7)(b) by omitting the reference to ‘Department’ and inserting a reference to the ‘Human Services Department’.

Amendments to the *Child Support (Registration and Collection) Act 1988*

Item 51 amends the definition of **Human Services Department** in subsection 4(1). This definition is simplified by omitting the words, ‘Minister administering the *Human Services (Centrelink) Act 1997*’, and substituting, ‘Human Services Minister’.

Item 51 is consequential to **item 52**, which inserts a new definition of **Human Services Minister** into subsection 4(1). Human Services Minister means the Minister administering the *Human Services (Centrelink) Act 1997*.

Item 53 inserts into subsection 4(1) a definition of **Human Services Secretary**, which is defined to mean the Secretary of the Human Services Department.

Item 54 amends subsection 4A(1) by omitting the words, ‘The Secretary of the Department of which the Registrar is an employee’, and substituting the words, ‘The Human Services Secretary’. This amendment is made for similar reasons to item 33.

Items 55 and 56 amend section 10 by replacing the reference in paragraph 10(2)(a) to ‘the Department’ with ‘the Human Services Department’, and replacing the reference in paragraph 10(2)(b) to ‘the Secretary’ with ‘the Human Services Secretary’. These amendments provide that the Child Support Registrar is an SES employee in the Human Services Department and appointed by the Human Services Secretary.

Item 57 makes corresponding amendments to section 10A, which provides for the appointment of an Acting Child Support Registrar.

Item 58 amends subsection 15(1) by adding a reference to the Human Services Department. This amendment is made for similar reasons to item 42.

Items 59 and 60 amend subsection 16(1) by adding references to the Human Services Minister in the definitions of **person to whom this section applies** and **relevant Minister**. These amendments are made for similar reasons to items 43 and item 44.

Items 61 and 62 amend subsection 16(2AA), which applies to communication of a Social Security Appeals Tribunal (SSAT) child support decision under Part VIIA of the *Child Support (Registration and Collection) Act 1988*. **Item 61** amends paragraph 16(2AA)(a) by inserting after, ‘by the Secretary’, the words, ‘or to the Human Services Secretary or a person authorised by the Human Services Secretary’. **Item 62** amends paragraph 16(2AA)(b) by adding at the end of that paragraph ‘or the Human Services Secretary from communicating the reasons for a decision of the SSAT under Part VIIA to a person authorised by the Human Service Secretary’. Both items ensure that paragraphs 16(2AA)(a) and (b) operate in relation to the Secretary (of Social Services) and the Human Services Secretary.

Item 63 amends subsection 16(2AB) by inserting the words, ‘or the Human Services Secretary, or a person authorised by the Human Services Secretary’, after the words, ‘by the Secretary’. Subsection 16(2AB) enables the publication of ‘de-identified’ SSAT child support decisions. The amendment ensures that subsection 16(2AB) operates in relation to the Secretary (of Social Services) and the Human Services Secretary.

Item 64 amends paragraph 16(3)(ba) by inserting a reference to the ‘Human Services Secretary’ before subparagraph 16(3)(ba)(i). This amendment is made for similar reasons to item 45.

Items 65 and 66 amend paragraphs 16(4)(a) and 16(4C)(d) by inserting references to the Human Services Department. These amendments are made for similar reasons as for items 46 and 47.

Item 67 amends the definition of **relevant information** contained in subsection 16AA(3) by adding a reference to the Human Services Department after ‘Department’. This amendment is made for similar reasons to item 48.

Items 68 and 69 amend subsection 16AB(2). Section 16AB deals with multiple secrecy provisions. **Item 68** amends paragraph 16AB(2)(a) by replacing the reference to ‘the Secretary, the Registrar or an officer or employee of the Department’ with a reference to ‘the Human Services Secretary, the Registrar or an officer or employee of the Human Services Department’. **Item 69** makes a similar amendment to paragraph 16AB(2)(b).

Item 70 amends section 80A by omitting the reference to ‘Family Assistance Secretary’, and substituting ‘Secretary’. This item is consequential to item 32.

Items 71 and 72 amend subsection 95(1) and paragraph 95(2)(b) by omitting ‘Secretary’, and substituting references to ‘Human Services Secretary’. Section 95 deals with procedures on receiving application for review to the SSAT. These amendments ensure that these provisions will operate in relation to the Human Services Secretary.

Item 73 amends paragraph 110Y(1)(a) by omitting the reference to ‘Family Assistance Secretary’, and substituting, ‘Secretary’. This item is consequential to item 32.

Part 6 – Other amendments

Amendments to the Family Assistance Act

Items 74, 75 and 76 make some minor adjustments to subsection 36(2) of the Family Assistance Act (eligibility for stillborn baby payment) to ensure the provisions work as intended.

The amount of newborn upfront payment of family tax benefit under subsection 58AA(1) is \$500. There is no provision for splitting the payment where family tax benefit is shared because a percentage determination is in force under section 28 (blended families) or section 29 (eligibility for family tax benefit where a couple separates, for a period before separation).

Item 77 inserts such a rule as new subsection 58AA(1A). New subsection 58AA(1A) applies where an amount of newborn supplement is added for a day in relation to both members of a couple and an FTB child, there is a percentage determination under section 28 or 29 in force in relation to the couple and the child for that day, and the day is the first day on which an amount of newborn supplement is added in relation to that child. In this situation, each member of the couple is entitled to the same percentage of \$500 as is applicable under the percentage determination.

A note at the end of new subsection 58AA(1A) indicates to the reader that the newborn upfront amount is paid as a single lump sum and cross-references the relevant provision.

Item 84 makes a related amendment to the indexation provisions to ensure the amount of \$500 referred to in new subsection 58AA(1A) is indexed in the same way as the amount referred to in subsection 58AA(1). To this end, a reference to new subsection 58AA(1A) is added into item 7B of the table in clause 2 of Schedule 4 to the Family Assistance Act.

Item 78 makes a consequential amendment, which takes account of new subsection 58AA(1A).

Item 79 inserts new subsection 58AA(5) to ensure that the application of section 58AA is subject to new sections 28AA and 32AEA of the Family Assistance Administration Act, as inserted by this Part.

Subclause 35A(10) of Schedule 1 ensures that the partner of an individual who has been paid the newborn supplement in respect of an FTB child for 13 weeks cannot also be eligible for newborn supplement in respect of that child. This rule does not have regard to circumstances in which family tax benefit can be shared by a couple, that is, where there is a percentage determination in force under section 28 (blended family) or section 29 (where a couple separates, for a period before separation) of the Family Assistance Act. **Item 81** amends subclause 35A(10) to add another condition which ensures that eligibility for the newborn supplement is not precluded unless there is also no percentage determination in force in relation to both members of the couple and the child.

Item 80 is a technical amendment.

Clause 35B of Schedule 1 to the Family Assistance Act sets out the annualised rate of newborn supplement for the different eligibility categories. A higher rate is available for a first child who is born alive to a woman or who becomes entrusted to the care of an individual or their partner. This amount is also applicable where two or more children are born during the same multiple birth or come into the care of the individual or their partner as part of the same entrustment to care or adoption process.

Item 82 makes a minor amendment to paragraph 35B(1)(b) so the higher rate is available in relation to a first entrustment of the care of a child who is aged less than one on the relevant day.

Item 83 amends subclause 35B(2) to ensure that a stillborn child is taken into account in determining the amount of newborn supplement for an FTB child who is born alive in the case of a multiple birth. If, for example, a multiple birth consists of a stillborn child and a child who is delivered alive, then the child who is born alive would attract the higher rate under subclause 35B(2). A stillborn baby payment would be available in respect of the stillborn child, subject to the relevant eligibility conditions being satisfied.

Amendments to the Family Assistance Administration Act

Section 28 of the Family Assistance Administration Act outlines the consequences for family tax benefit where the relevant tax returns have not been lodged within required timeframes. Section 28 sets out the circumstances in which a claimant's family tax benefit entitlement determination can be varied with the effect that the claimant is not entitled to family tax benefit in relation to a particular income year (which can result in a debt) and the circumstances in which that decision can be undone. As newborn supplement is a component of the rate of family tax benefit, section 28 can also affect entitlement to the newborn supplement.

New section 28AA, as inserted by **item 85**, ensures the newborn upfront payment of family tax benefit is affected in the same way as the newborn supplement where section 28 applies.

If a claimant is entitled to a newborn upfront payment because an amount of newborn supplement is added to their rate of family tax benefit and the claimant's family tax benefit entitlement determination is varied under section 28 with the effect that the claimant is not entitled to family tax benefit, then new subsection 28AA(1) provides that the claimant is also not entitled to the upfront amount. However, new subsection 28AA(2) ensures that, if that variation is undone, then new subsection 28AA(1) ceases to preclude entitlement to the upfront amount. New subsection 28AA(3) makes it clear that new subsection 28AA(1) can apply more than once.

A variation under section 28 to the effect that the individual is not entitled to family tax benefit can also affect ongoing payment of family tax benefit on an estimated income basis under Subdivision CA of Division 1 of Part 3.

Item 86 inserts a new section 32AEA at the end of Subdivision CA. The effect is to preclude entitlement to the newborn upfront payment if payment of family tax benefit, worked out on an estimated income basis, is precluded under Subdivision CA.

As a general rule, a claim for stillborn baby payment is not effective unless it is made before the end of 52 weeks beginning on the day of the birth of the stillborn child (subsection 39(2) of the Family Assistance Administration Act refers). There are exceptions, as set out in subsections 39(3) and (4).

Item 88 inserts a new exception, as new subsection 39(3A). The new rule applies where an individual is eligible for the stillborn baby payment because the individual or their partner is entitled to family tax benefit that includes a Part A rate greater than nil in relation to a day during the period of 52 weeks after the birth of the stillborn child and the individual or their partner is notified of their rate of family tax benefit after the end of, or during the last 13 weeks of, that 52 week period. In these circumstances, the individual can make a claim for stillborn baby payment up to 13 weeks after the day on which the notice is given.

Item 87 makes a consequential amendment to subsection 39(2) to take account of new subsection 39(3A).

REGULATION IMPACT STATEMENT

Social Services and Other Legislation Amendment Bill 2013

Schedule 7 – Paid parental leave – remove mandatory employer role

This Regulation Impact Statement has been prepared by the Commonwealth Department of Social Services. Its purpose is to assist the Australian Government to make decisions regarding removing the mandatory employer role under the national Paid Parental Leave (PPL) scheme.

This Regulation Impact Statement has been prepared in accordance with the Australian Government Best Practice Regulation Handbook, July 2013, issued by the Office of Best Practice Regulation in the Department of the Prime Minister and Cabinet, and in consultation with the Office of Best Practice Regulation.

1. Background

The national PPL scheme started on 1 January 2011. The PPL scheme is designed to provide financial support to eligible working parents to take time off work to care for a newborn or recently-adopted child.

Two payments are provided under the national scheme:

- parental leave pay (PLP), which provides up to 18 weeks' pay at the rate of the National Minimum Wage to eligible primary carers (usually birth mothers) since 1 January 2011;
- dad and partner pay (DAPP), which provides up to two weeks' pay at the rate of the National Minimum Wage to eligible dads or partners caring for a child born or adopted from 1 January 2013.

The employer role is a feature of the current PPL scheme. Under the scheme, the Department of Human Services funds employers to provide PLP to their eligible long-term employees. The employer role was recommended by the Productivity Commission to benefit employers through improved retention rates, and to help change community attitudes by sending a strong signal that taking leave from work around the time of birth or adoption is seen as part of the normal course of work and life.

The employer role became a mandatory requirement from 1 July 2011 for employers of PLP recipients who are long-term employees of the employer, noting:

- more than 125,000 employees have received PLP from their employer since the start of the PPL scheme from 1 January 2011 to 30 June 2013; and
- in June 2013, 76 per cent of recipients were receiving their PLP from their employer.

Employers do not have a role in the administration of DAPP payments.

In its 2013 Federal Election policy document, *Our Plan: Real Solutions for all Australians*, as part of the government red tape reduction process, the Government committed to 'give employers the option of "opting in" to managing the administration of Paid Parental Leave to their employees. If they choose not to be the government's paymaster, payments will be made directly to the employee' (p27).

The Government made a further election commitment in its 2013 Federal Election policy document, *The Coalition's Policy for Paid Parental Leave*, to enhance the PPL scheme from 1 July 2015 so that working mothers would be able to access 26 weeks of payment at their replacement wage plus superannuation, rather than being limited to 18 weeks of payment at national minimum wage.

2. Problem

The Government is currently undertaking a legislated review of the PPL scheme ('the review'), in addition to an evaluation being undertaken to assess whether the scheme is meeting its objectives ('the evaluation').

In their feedback to the review, employer and industry groups generally did not support the employer role, particularly in relation to small business. These stakeholders considered the employer role places an unnecessary administrative burden on business, and any benefits to employers in terms of employee retention were not commensurate with the administrative burden imposed.

The Australian Chamber of Commerce and Industry conducted a survey of members on the PPL scheme in May 2013. In the survey, 84.3 per cent of businesses either agreed or strongly agreed that 'the Government should not require employers to be the paymaster for the Paid Parental Leave scheme'.

The evaluation of the scheme has found the employer role is generally operating smoothly. While employers were mostly positive about the process to make payments, quantitative data was not collected as to their attitude towards the employer role. Quantitative data collected on process issues did not highlight significant differences across employer organisation size. However, a number of smaller employers were more negative in their views during qualitative interviews.

PPL administrative data suggests that some employers may be more likely to find the PPL role valuable or cost-effective, and therefore opt in to provide payments beyond what is required under legislation:

- PPL administrative data for 2012-13 shows that 11.7 per cent of all businesses opted in to provide parental leave pay to non-mandatory employees.
 - This proportion was significantly higher amongst large businesses (27.7 per cent) than medium (10.8 per cent) and small (6.7 per cent) businesses.
- In 2012-13, only 10 per cent of small businesses paid PLP in respect of more than one of their employees.

3. Objectives

A removal of the mandatory employer role under the PPL scheme could assist in meeting the following objectives:

- helping to reduce administration and compliance costs on employers, particularly those who feel the role is not beneficial for their organisation; and
- where the employer has administrative capacity and has found the role to be beneficial for their organisation, continue to provide an option for employers to take on this role voluntarily.

4. Options

In terms of assessing the regulatory impact, this statement reports on three options:

- implementing the measure as proposed from 1 March 2014;
- implementing the measure from 1 July 2015 as part of the broader reforms to the PPL scheme; or
- removing the employer role completely, with all payments under the PPL scheme to be made by the Department of Human Services.

Implementing the measure as proposed from 1 March 2014

The measure as proposed would be to remove the PPL mandatory employer role from 1 March 2014, while still allowing employers to opt into providing payments under the PPL scheme to employees on a voluntary basis, where both the employer and employee agree.

Implementing the measure from 1 July 2015 as part of the broader reforms to the PPL scheme

This option would implement the measure as proposed, but delay the start date to 1 July 2015, in line with commencement of the broader reforms to the PPL scheme.

Removing the employer role completely, with all payments under the PPL scheme to be made by the Department of Human Services.

A complete removal of the employer role, either from 1 March 2014 or 1 July 2015, could also be considered. Under this option, employers could no longer make any payments to employees, with all payments to be made by the Department of Human Services.

5. Impact

Impact on employers

All three options would result in the same outcome: to shift administration costs from the employer to Government.

The evaluation Phase 2 report found the additional costs for employers were mainly due to the extra workload, rather than purchasing a new payroll system or hiring additional staff to administer the scheme:

- Among the 29 per cent of employers who felt additional costs were involved, almost all (94 per cent) said these costs involved taking on extra workload themselves, while half (51 per cent) said the workload of current staff had been increased to implement PPL.
- In terms of staff hours needed to implement PPL, the median identified by all organisations was 22 hours:
 - 23 per cent of organisations reported only 1 to 2 hours were needed;
 - 22 per cent reported implementation required 3 to 5 staff hours; and
 - 30 per cent of all employers reported the implementation of PPL took 15 staff hours or more.
- The median cost identified by all organisations to implement PPL was \$1,783:
 - nearly half (45 per cent) of employers estimated the cost to be between \$1 and \$250;
 - 21 per cent estimated the cost to be between \$250 and \$1,000; and
 - 20 per cent estimated the cost to exceed \$1,000.

It is possible that smaller businesses would feel a larger proportional impact, as they do not have the same economies of scale when applying the process for a single employee. As noted earlier, for 90 per cent of small businesses who provided PPL to an employee in 2012-13, this employee was the only PLP recipient in that business in the 2012-13 financial year. Therefore, it is likely that, for many small businesses, costs incurred to administer PLP payments are mostly one-off costs.

Forty-one per cent of employers felt organising payments was time consuming, and submissions to the review indicated that, even though costs may not have been significant, the process was viewed by some as time-consuming.

Some employers find the administration of PPL problematic. A very small number report very high monetary costs. Evaluation interviews found some employers experienced problems, especially small, private organisations.

While there would be benefits to employers in the form of increased workforce attachment and overall participation, these are difficult to quantify. As raised earlier, most employers are of the view that costs to administer the scheme outweigh any benefits that a mandatory employer role may deliver. The evaluation results showed that most employers felt it was too soon to tell if there would be gains, but most agreed there had been good workplace attachment in women on parental leave.

Impact on employees

The proposed measure has no impact on regulatory or compliance costs for employees, as they would still undertake the same claim process as currently required.

While most of the impact in removing the mandatory employer role would be felt by employers, there is an impact on employees with salary sacrifice arrangements in place. Where their employer is administering the PLP payment, these salary sacrifice arrangements are able to continue and so the employee's tax liability would continue to be calculated on a lower salary. However, as the Department of Human Services does not offer salary sacrifice deduction functionality, an employee's tax liability could increase if the mandatory employer role is removed and their employer does not opt back in. This may be a particular issue for employees in the not-for-profit sector. This impact is not a compliance cost, but is an impact on the after-tax PLP a person may receive, dependent on an employee's income and the level of income salary sacrificed under the arrangement.

Impact on Government

As noted above, the proposed measure would result in a shift of administration costs from employers to Government. Currently, the Department of Human Services administers payments for around 24 per cent of employees. However, under the proposed measure, the Department of Human Services would be responsible for making the majority of payments to employees. The additional cost to Government to implement the measure as proposed is \$7 million over five years.

Impacts associated with particular options

- *Implementing the measure as proposed from 1 March 2014*

For employers who consider the employer role to be an unnecessary burden, this option would provide an early removal of the mandatory nature of the current employer role.

Proceeding with this option would also provide an opportunity to monitor employer involvement and any issues raised through an 'opt-in' role well before commencement of the enhanced PPL scheme from 1 July 2015.

- *Implementing the measure from 1 July 2015 as part of the broader reforms to the PPL scheme*

Delaying the start date of the measure to 1 July 2015 would allow a generous amount of time for consultation with the business community to occur before making any changes, which could have interactions with other private workplace arrangements.

However, this delayed start date would not be beneficial for employers who no longer wish to play a role in administering PLP and incurring related costs.

- *Removing the employer role completely, with all payments under the PPL scheme to be made by the Department of Human Services*

Consultation with the business community would need to occur before a change such as this could be implemented, as some businesses may have negotiated private workplace arrangements on the understanding that they would be the paymaster for their employees.

- *Regulatory Burden Estimate Table*

Average Annual Change in Compliance Costs (from BAU)				
Sector/Cost Categories	Business	Not-for-profit	Individuals	Total by cost category
Administrative Costs	\$44 million (savings)	\$4 million (savings)	\$	\$48 million (savings)
Substantive Compliance Costs	\$	\$	\$	\$
Delay Costs	\$	\$	\$	\$
Total by Sector	\$44 million (savings)	\$4 million (savings)	\$	\$48 million (savings)
Proposal is cost neutral?	<input type="checkbox"/> yes	<input checked="" type="checkbox"/> no		
Proposal is deregulatory	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no		

6. Consultation

The opposition of employer groups to the mandatory employer role was first established during public consultations conducted in 2009, prior to implementation of the existing scheme. An ongoing implementation working group, which is made up of representatives from small business and large employer groups, employee, women's and community groups (which Government established to inform the PPL implementation process) has been specifically asked to comment on the mandatory employer role, and has provided direct feedback indicating that it should be removed.

A public consultation process was undertaken as part of the PPL Review including:

- a public submission phase, including a general call for submissions and direct emails to employee, employer and community peak bodies;
- face-to-face consultation with key stakeholders; and
- the formation of a PPL Review steering committee made up of representatives from employer, employee, women's and community groups.

Feedback on the employer role has also been received through direct contact made by members of the public, generally small business employers who have been recently notified of their mandatory obligations.

The proposed measure directly responds to all these forms of feedback received over a significant period of time. As outlined earlier, employer groups have an overwhelming and sustained opposition to the mandatory employer role, and have put forward their own proposals to remove its mandatory nature.

Some representative bodies expressed support for the role (such as bodies representing employees and other interest groups). The view of these organisations is that having an employer administer the PLP payment reaffirms the nature of the payment as an industrial entitlement, rather than a welfare entitlement. These groups particularly view the employer role to be beneficial in situations where employers 'top up' PLP payments so that parents above minimum wage continue to be paid at their normal wage for a period, and so that parents continue to receive pay in line with their usual pay cycle. A small number of employers have also responded that they favour this approach. The proposed measure directly responds to this view by ensuring that employers who value the role can continue to have this arrangement with their employees (should the employee wish).

Further consultation with interested parties will occur in the lead up to commencement of the enhanced PPL scheme from 1 July 2015, to gauge the relevance of a continued employer role under the new scheme and whether any issues would need to be resolved to ensure effective arrangements from 1 July 2015.

7. Conclusion

Given the feedback from employers and the Government's commitment to move to an 'opt-in' role, the preferred option could be to move to an opt-in employer role under the PPL scheme from either 1 March 2014 or 1 July 2015. However, it is considered that an earlier start date of 1 March 2014 would be more beneficial for employers and provide a useful indicator of the effectiveness of the opt-in arrangements well before the commencement of the enhanced PPL scheme on 1 July 2015.

8. Implementation and review

Under the proposed measure to remove the mandatory employer role from 1 March 2014, all employers registered for the PPL scheme will be 'opted out' on that date and payments of PLP will be made by the Department of Human Services. However, if an employer chooses to 'opt in' to provide the payment and the employee consents to being paid by their employer, an employer determination will be made and payment could be provided by the employer. Where an employer is already providing PLP to an employee on 1 March 2014, that arrangement would not be affected.

Ongoing, where an employee consents to being paid by their employer, employers will be sent a notice with the option to accept or decline an employer determination. If the employer accepts the notice of the employer determination and their obligations to pay instalments of parental leave pay to the person, funds will be transferred to the employer in line with current arrangements. If the employer declines or does not respond to the notice, the Department of Human Services will provide PLP directly to the customer. To reflect the non-mandatory nature of their role, employers will no longer be potentially subject to a compliance notice for not responding to a notice of an employer determination.

As stated earlier, take up of the opt-in arrangement will be monitored as an indicator for the effectiveness of these arrangements as part of the enhanced PPL scheme to commence on 1 July 2015. Key performance indicators could include:

- number of employees who consent to their employer providing PLP;
- number of employers who accept or decline the employer determination; and
- number of employers who opt in after 1 March 2014.

STATEMENTS OF COMPATIBILITY WITH HUMAN RIGHTS

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

Social Services and Other Legislation Amendment Bill 2013

Schedule 1 – Encouraging responsible gambling

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the amendments

Schedule 1 to the Bill makes a number of amendments to the *National Gambling Reform Act 2012*, and repeals in full the *National Gambling Reform (Related Matters) Act (No.1) 2012* and the *National Gambling Reform (Related Matters) Act (No.2) 2012*.

The Bill repeals provisions relating to: the National Gambling Regulator (including removing all its powers and functions, and the penalties to enforce compliance); the national supervisory levy; the automatic teller machine (ATM) withdrawal limit; the trial on mandatory pre-commitment; and matters for Productivity Commission review.

The Bill also amends the pre-commitment, gaming machine capability and dynamic warning requirements to express the Commonwealth's commitment to work towards, and intention to introduce, measures in the future. Most of the research components in the Act will be retained.

Human rights implications

The amendments have the effect of removing the three main measures in the Act (that is, the pre-commitment, dynamic warning, and ATM withdrawal limit requirements) and replacing the provisions with statements setting out the Commonwealth's commitment to the development and implementation of measures in the future that encourage responsible gambling.

Given that the new provisions will not impose any substantive legal obligations, Schedule 1 to the Bill will not limit any human rights. In addition, as the amendments remove existing provisions relating to the exercise of coercive monitoring and enforcement powers and the collection of personal information, Schedule 1 reduces the risk of interference with a person's right to a fair and public hearing, right against self-incrimination and right to privacy and reputation in accordance with Articles 14(1), 14(3)(g) and 17 of the *International Covenant on Civil and Political Rights*.

Conclusion

Schedule 1 is compatible with human rights as it does not raise any human rights issues.

Schedule 2 – Continuing income management as part of Cape York Welfare Reform

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the amendments

The continuation of income management as part of Cape York Welfare Reform component of the Bill introduces a minor amendment to the Social Security Administration Act (the Social Security Administration Act). Paragraphs 123UF(1)(g) and 123UF(2)(h) of the Social Security Administration Act provide that a person can only be subject to income management under section 123UF after a decision by the Family Responsibilities Commission made before 1 January 2014.

The amendment extends to 1 January 2016 the timeframe for which a person, after a decision by the Family Responsibilities Commission, can be subject to income management under section 123UF.

The purpose of the amendment is to allow income management to continue in Cape York for two further years until 1 January 2016.

Human rights implications

Eliminating racial discrimination

The amendment to the Social Security Administration Act engages Article 2(1) of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), which:

‘...imposes an obligation on State parties to undertake to pursue a policy of eliminating racial discrimination in all its forms and promoting understanding among all races...’¹

Equality before the law

The amendment to the Social Security Administration Act also engages Article 26 of the International Covenant on Civil and Political Rights (ICCPR), which states:

‘...all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’²

¹ International Convention on the Elimination of All Forms of Racial Discrimination, Article 2(1)

² International Covenant on Civil and Political Rights, Article 26.

There is no incompatibility with the rights engaged as the circumstances meet the test for legitimate differential treatment under international law.

Legitimate differential treatment

The objective of Cape York Welfare Reform is aimed at supporting the restoration of socially responsible standards of behaviour and assisting community members to resume and maintain primary responsibility for the wellbeing of their community and the individuals and families within their community. This objective is considered sufficiently important to justify differential treatment on the basis of a prohibited ground.

An independent Evaluation of the Cape York Welfare Reform Trial, released in March 2013, indicates that the trial has had a positive impact in participating communities, with increased personal responsibility and positive behavioural changes such as increased school attendance, increased commitment to education by parents, and greater support for local Indigenous authority and leadership.

Moreover, results of consultations conducted to date have established support for the welfare reforms in the four participating Cape York communities.

The Family Responsibilities Commission (FRC), a central plank of the reforms, operates through a conferencing model. In practice, this means an individual will attend a number of conferences with Local Commissioners who are respected local Indigenous elders in the community. At the conferences, options for support are discussed, including referrals to existing support services, prior to any income management direction being made by the FRC. The FRC considers appropriate alternatives in conjunction with the individual, with income management only being used as a final measure.

The results of the reviews and consultations to date demonstrate that the differential treatment of members of the four Cape York communities is having a positive impact on individuals, families and the broader communities.

Conclusion

The amendments are compatible with human rights because, to the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate.

Schedule 3 – Family tax benefit and eligibility rules

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the amendments

This Schedule makes amendments to limit family tax benefit Part A to children aged under 16, or teenagers aged 16 to 19 (end of the calendar year they turn 19) who are in full-time secondary study (or equivalent). Exemptions to the study requirement will continue to apply for teenagers who cannot study due to physical, psychiatric, intellectual or learning disability.

Teenagers with a secondary qualification who cease to be eligible for family tax benefit from 1 January 2014 will be able to apply for youth allowance. Youth allowance, with its 'learn or earn' provisions that require young people to participate in work, job search, study or training, will remain available as the more appropriate payment to help young people transition from school into work or post-secondary study.

Human rights implications

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), as well as Article 26 of the *Convention on the Rights of the Child* (CRC), recognise the right of a child to benefit from social security.

The right to social security in article 9 of the ICESCR requires a social security system be established and that a country must, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

Article 26 of the CRC requires countries to recognise the right of the child to benefit from social security. Benefits should take into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child.

From 1 January 2014, this Schedule will mean that teenagers aged 16 to 17 who have a Year 12 (or equivalent) qualification will no longer be eligible for family tax benefit. This Schedule makes similar changes to eligibility for family tax benefit for approved care organisations. These teenagers will continue to be eligible to claim youth allowance.

This change will focus payments in the family assistance system on families with children who are at school, while youth allowance will become the primary form of assistance to eligible young people who have completed secondary study. To the extent that the changes in Schedule 3 may limit human rights, those limitations are reasonable and proportionate.

Conclusion

These amendments are compatible with human rights because they advance the protection of human rights and, to the extent that these changes limit access to family and parental payments, these limitations are reasonable and proportionate.

Schedule 4 – Period of Australian working life residence

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the amendments

This Schedule amends the rules for calculating pensions paid outside Australia. It primarily affects age pension and some other pensions which also have unlimited portability, and pensions paid under most social security agreements. Pensioners paid under the Greek and New Zealand agreements will continue to be paid according to the specific terms of those agreements.

Under the change, pensioners who leave Australia on or after the start date will be required to have been Australian residents for 35 years during their working life (from age 16 to age pension age) to receive their full means-tested pension if they choose to retire overseas or travel overseas for extended periods of longer than 26 weeks. The current requirement is 25 years. Thirty-five years is considered a more appropriate period given Australia's pension system is residence-based and taxpayer-funded.

In an associated change, members of a couple paid outside Australia under a social security agreement will now have their pensions calculated on their own Australian working life residence, rather than their partners' Australian working life residence, as already applies to pensioners paid outside Australia in non-agreement countries.

Pensioners paid under the existing rules at the date these changes commence, and who would be adversely affected, will be grandfathered unless they return to Australia for more than 26 weeks and subsequently leave Australia again.

Human rights implications

This Schedule has considered the human rights implications, particularly with reference to the right to social security as contained within Article 9 of the *International Covenant on Economic, Social and Cultural Rights*. It is concluded that the proposed change to the calculation of pensions for people who, after the start date, leave Australia or claim under a social security agreement is reasonable, subject to due process provided for in national law, and is permissible (under ILO Convention No.168 (1988)) in the case of 'absence from the territory of the State'.

Conclusion

The Schedule is compatible with human rights because it does not limit or preclude people from gaining or maintaining access to social security.

Schedule 5 (Interest charge), Schedule 6 (Student start-up loans), and Part 1 of Schedule 12 (Repayment of financial supplement through taxation system)

These amendments are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the amendments

Schedule 5 – Interest charge

Schedule 5 to the Bill amends the *Social Security Act 1991* (the Social Security Act) and the *Student Assistance Act 1973* (the Student Assistance Act) in order to introduce an interest charge on debts relating to austudy, fares allowance, youth allowance payments to full-time students and apprentices, and ABSTUDY living allowance.

The current lack of an interest charge on student income support debt means recipients have no incentive to repay their debts. Once the interest charge is in place, debtors will have a pressing incentive to engage with the Department of Human Services to make a repayment arrangement in order to avoid the interest charge.

It is also important to note that a debt only arises under the Social Security Act or the Student Assistance Act where a person receives a payment to which they were not entitled. Furthermore, an interest charge can only be applied to the person and the debt where the person has not entered into a repayment arrangement, has failed to comply with a repayment arrangement, or has terminated a repayment arrangement without entering into a new repayment arrangement.

In negotiating a repayment arrangement, the Department of Human Services will take into account the circumstances of the debtor, and will suggest repayment amounts based on the debtor's financial capacity. Where a debtor is experiencing financial hardship, repayment arrangements can be paused and no interest charge applied for that period of time. Students will also be able to continue to receive income support payments whilst repaying any debt and interest charge incurred.

Additionally, an interest charge will not be applied where a person is in circumstances prescribed in a legislative instrument made by the Minister. It is envisaged that the prescribed circumstances would be where the amount that is being withheld from the person's payments (under current section 1231 of the Social Security Act) is satisfactorily repaying the debt.

An interest charge can only be applied if the person has been issued a notice in respect of a debt, which will outline the reason why the debt was incurred, the outstanding amount of the debt, the effect of an interest charge applying, and the day on which the debt is due and payable. When the debt is initially incurred, a notice in respect of a debt will provide that the debt is due and payable 28 days after the notice has been issued. In the event that a repayment arrangement has been terminated, a newly issued notice will provide that the debt is due and payable 14 days after the notice has been issued. This will ensure that the person will have sufficient time either to repay the outstanding debt or to enter into a repayment arrangement and thereby avoid the application of an interest charge.

The interest rate is calculated by adding seven percentage points to the monthly average yield of 90-day Bank Accepted Bills (as published by the Reserve Bank of Australia). This is considered an appropriate method for calculating the rate of the interest charge to apply to income support debt because the rate is high enough to encourage repayment without being punitive, and it provides a return to the Commonwealth, commensurate with the time value of the monies overpaid.

Schedule 6 – Student start-up loans

Schedule 6 amends the Social Security Act and the Student Assistance Act to cease the student start-up scholarship (SSS), from 1 January 2014, for new recipients of student payments who are participating in higher education. Students will instead be able to receive either an ABSTUDY student start-up loan or a student start-up loan (the loans), which are income-contingent loans, equivalent in value to the SSS, and claimed on a voluntary basis. These loans will be available to new full-time students who are in receipt of youth allowance, austudy payment or ABSTUDY living allowance.

The students will be limited to two loans per year of \$1,025 (indexed from 2017), in line with the current SSS arrangements, and the loans will be repayable under similar arrangements to Higher Education Loan Program (HELP) debts. Students will only be required to begin repaying the loans once their earnings are above the repayment threshold (which will be consistent with the current HELP repayment thresholds) and after any accumulated HELP debt has been paid.

The loans also provide grandfathering arrangements so that recipients who received an SSS or Commonwealth Education Costs Scholarship, prior to 1 January 2014, and have remained continuously on student payments will continue to be eligible to receive the SSS, as a grant, until coming off student payments.

Part 1 of Schedule 12 – Repayment of financial supplement through taxation system

Part 1 of Schedule 12 to the Bill contains technical amendments to the Social Security Act and Student Assistance Act to give the Commissioner of Taxation increased flexibility in determining how applications for waiver of Student Financial Supplement Scheme (SFSS) debts are to be submitted. The amendments will also remove any doubt that the Commissioner has general administration over the recovery of these debts.

Human rights implications

Right to education

Schedule 5 to the Bill engages the right to education contained in Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

In particular, article 13(2)(b) states that secondary education, in all its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means and, in particular, by the progressive introduction of free education.

Schedule 5 – Interest charge

Schedule 5 does not limit the right to education. The interest charge is intended as an incentive for debtors to repay debts in a timely fashion, where they have the financial capacity to do so. Given that a debtor's financial capacity will be taken into account before a repayment arrangement is agreed to, the interest charge will not limit the debtor's ability to access education.

Schedule 6 – Student start-up loans

Schedule 6 to the Bill does not limit the right to education. While the SSS will not be available for new recipients after 1 January 2014, people who would otherwise be entitled to the SSS will be eligible for the loans. The purpose of the SSS and the loans are identical as both payments are designed to help students with the up-front costs of textbooks and equipment. Under the loans, students will be eligible for the same payment amounts and will be able to claim payments when these expenses arise. In this way, students will still have access to funds to assist them with the up-front costs of study. The fact that the loans are repayable once the person reaches a particular income threshold will not limit a person's right to education.

Right to social security

Schedules 5 and 6 to the Bill engage the rights to social security contained in article 9 of the ICESCR.

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

The United Nations Committee on Economic, Cultural and Social Rights (the Committee) has stated that a social security scheme should be sustainable and that the conditions for benefits must be reasonable, proportionate and transparent (see General Comment No.19).

Article 4 of ICESCR provides that countries may limit the rights such as to social security in a way determined by law only in so far as this may be compatible with the nature of the rights contained within the ICESCR and solely for the purpose of promoting the general welfare in a democratic society. Such a limitation must be proportionate to the objective to be achieved.

Schedule 5 – Interest charge

To the extent that interest is charged on a person's debt, any impact will be limited and will have a very marginal effect on the ability of a person to cover essential living costs or acquire basic forms of education, thereby engaging a person's right to social security. The provisions in Schedule 5 are therefore unlikely to limit this right, given the appropriate safeguards put in place to protect it.

As noted above, it is intended that the provisions introduced by Schedule 5 will allow the efficient recovery of social security payments, supporting effective and efficient administration of the social security system. This measure is proportionate in achieving this policy objective as all persons can avoid an interest charge by entering into a repayment arrangement, and these rights are safeguarded by the requirements of notice and periods of time in which a person will be able to pay back the debt or enter into an arrangement. Furthermore, the Secretary will have the discretion in appropriate circumstances to waive a debt, including any interest charged on the debt.

By allowing the efficient recovery of social security payments, Schedule 5 ensures the financial sustainability of the social security system. The interest charge, as it applies to persons who receive payments to which they are not entitled, is a reasonable condition on the benefits of the system as it encourages recipients to repay those amounts and ensures that the Commonwealth is able to recover the real value of these amounts. The interest charge, as a condition, is also transparent as it is provided for in legislation, will be accurately communicated through the Department's website, and can only be applied after the recipient is given notice. This ensures that all stakeholders will be informed of how the interest charge will operate before it is applied to recipients.

Therefore, Schedule 5 to the Bill will be compatible with the right to social security as the potential limitation on this right is proportionate to the policy objective and intended to improve the administration of social security system.

Schedule 6 – Student start-up loans

To the extent that there is an impact on a person's rights to social security by virtue of Schedule 6, the impact is limited. In practice, a person will still be entitled to the same amount of financial assistance under the loans as they would have received from an SSS, and will only be required to repay the loans once they reach the relevant threshold level of income. This threshold is set at a level of income at which a person would no longer require financial assistance to acquire essential health care, housing, water and sanitation, foodstuffs, and education. Given the above safeguards, and the fact that the loans will be given on a voluntary basis (that is, a debtor does not need to incur debt) the measures contained in Schedule 6 are compatible with the rights to social security.

Additionally, the Government is committed to providing continuing support to students from regional Australia. Because of this, the Relocation Scholarship, for dependent students who are required to move to study and some independent students, will continue to be provided as a grant to all eligible students. Other student income support payments will also remain unaffected by the loans measure.

Taking into account the continued access to fund the costs of study, together with the fact that there will be no changes to the Relocation Scholarship and other student payments, the amendments to the SSS are consistent with a person's rights to social security and to an adequate standard of living.

Part 1 of Schedule 12 – Repayment of financial supplement through taxation system

Part 1 of Schedule 12 to the Bill contains amendments which will give the Commissioner of Taxation greater flexibility in determining how applications for waiver of youth allowance (student and Australian apprentice), austudy and ABSTUDY SFSS debts are to be submitted.

These amendments are beneficial in nature as they will allow the Commissioner to accept applications for waiver of debt without them having to be in writing. Consequently, these amendments do not have any adverse human rights implications.

Right to an adequate standard of living, including food, water and housing

Schedule 5 to the Bill engages the right to an adequate standard of living, including food, water and housing, contained in article 11 of the ICESCR.

The right to an adequate standard of living, including food, water and housing provides that everyone is entitled to adequate food, clothing and housing and to the continuous improvement of living conditions.

Schedule 5 – Interest charge

To the extent that there is an impact on a person's right to an adequate standard of living, including food, water and housing, by virtue of Schedule 5, the impact is limited.

It is intended that the provisions of Schedule 5 will allow the efficient recovery of social security payments, which will ultimately improve the efficacy of the social security system. This measure is proportionate in achieving this policy objective as all persons can avoid an interest charge by entering into a repayment arrangement, and these rights are safeguarded by the requirements of notice and periods of time in which a person will be able to repay the debt or enter into an arrangement. The Secretary will also have the discretion to waive a debt in appropriate circumstances, including any interest charged on the debt.

Furthermore, by allowing the efficient recovery of social security payments, Schedule 5 ensures the financial sustainability of the social security system. The interest charge, as it applies to people who receive payments to which they are not entitled, is a reasonable condition on the benefits of the system as it encourages recipients to repay those payments and ensures that the Commonwealth is able to recover the real value of these amounts. The interest charge is also transparent as it is provided for in legislation, will be accurately communicated through the Department's website, and can only be applied after the recipient is given written notice. This ensures that all stakeholders will be informed of how the interest charge will operate before it is applied.

Therefore, Schedule 5 to the Bill will be compatible with the right an adequate standard of living as the potential limitations on this right are proportionate to the policy objective and are intended to improve the administration of the social security system.

Right to equality and non-discrimination

To avoid doubt, Schedules 5 and 6 do not engage the right to equality and non-discrimination contained in articles 2 and 26 of the *International Covenant on Civil and Political Rights* either on the basis of race or 'other' status.

Article 2(1) of the *International Covenant on Civil and Political Rights* obligates each State party to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognised in the Covenant without distinction of any kind, such as *race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*³.

Article 26 not only entitles all persons to equality before the law as well as equal protection of the law, but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as *race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*⁴.

³ CCPR General Comment No. 18

⁴ CCPR General Comment No. 18

It is important to note, however, that not all differential treatment will be considered discriminatory. The Committee on Economic, Social and Cultural Rights has provided the following commentary on when differential treatment will be considered discriminatory:

Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realised and the measures or omissions and their effects. A failure to remove differential treatment on the basis of a lack of available resources is not an objective and reasonable justification unless every effort has been made to use all resources that are at the State party's disposition in an effort to address and eliminate the discrimination, as a matter of priority⁵.

Schedule 5 – Interest charge

Discrimination on the basis of race

Schedule 5 to the Bill will apply an interest charge to all debts resulting from student income support debts, including ABSTUDY living allowance, which supports Indigenous Australians. However, there is no differential treatment on the basis of race as the interest charge will apply equally to all student debtors.

For these reasons, Schedule 5 to the Bill will not engage the right of equality and non-discrimination.

Discrimination on the basis of 'other status'

Schedule 5 to the Bill applies an interest charge to debts with respect to overpayments to students (rather than all social security overpayments).

This will not be a limitation on the right to equality and non-discrimination as the differential treatment is for a reasonable and objective purpose.

Recipients of these payments generally transition from study to employment (and thus are no longer recipients of social security payments) before the full amount of the debt is repaid through the social security withholding mechanism. Once the person has left payments, many often choose not to repay the debt, and indeed there is currently little incentive for them to do so.

⁵ CESCR, General Comment No 20

It is therefore reasonable and objective to apply an interest charge to debts with respect to the above mentioned types of payment to ensure that people with a debt repay the outstanding amount in a timely fashion. Recipients of these payments will be able to avoid the interest charge altogether by either repaying their debt within 28 days of being notified of the debt or by entering into an acceptable repayment arrangement.

For these reasons, Schedule 5 to the Bill will not engage the right of equality and non-discrimination.

Schedule 6 – Student start-up loans

While the provisions of Schedule 6 will establish an ABSTUDY student start-up loan (which, given the eligibility criteria of ABSTUDY, will mean that loan recipients are necessarily of Aboriginal or Torres Strait Islander descent), an equivalent student start-up loan will also be established for those who are eligible for austudy and youth allowance recipients (where austudy and youth allowance are available to non-Indigenous and Indigenous people). As the provisions for the student start-up loan mirror the provisions for the ABSTUDY student start-up loan, there will be no effective distinction between Indigenous and non-Indigenous recipients of these loans.

For these reasons, Schedule 6 to the Bill will not engage the right of equality and non-discrimination.

Conclusion

These amendments are compatible with human rights. To the extent that they may have limited adverse impact on a person's access to education, social security, an adequate standard of living or the right to equality and non-discrimination, the limitation is reasonable, proportionate to the policy objective and for legitimate reasons.

Schedule 7 – Paid parental leave

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the amendments

Schedule 7 makes amendments to the employer role in the Paid Parental Leave Act 2010. The amendments will remove the requirement for employers to provide Government-funded parental leave pay to their eligible long-term employees. From 1 March 2014, employees will be paid directly by the Department of Human Services, unless an employer opts in to provide parental leave pay to its employees and an employee agrees for their employer to pay them.

Human rights implications

The Paid Parental Leave scheme engages the right to social security in Article 9 of the *International Covenant on Economic, Social and Cultural Rights*, and the right to work in Article 10 (2) of the *International Covenant on Civil and Political Rights*.

However, the amendments in this Schedule are limited to changes to the administrative arrangements for delivering parental leave pay to customers. They do not affect a customer's eligibility to the payment, a customer's rate of pay, or a customer's entitlement to paid or unpaid leave from employment before and after the birth of a child. As such, the amendments do not engage any human rights.

Conclusion

Schedule 7 is compatible with human rights as it does not raise any human rights issues.

Schedule 8 – Pension bonus scheme

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the amendments

From 1 March 2014, the amendments will end late registrations in the pension bonus scheme. Subsections 92H(3) to (7) of the *Social Security Act 1991* provide for late registration and backdating of the commencement date. The amendment will repeal these sections. The amendment also inserts a new subsection 92D(2), which states that a person cannot apply to register in the scheme on or after 1 March 2014.

The scheme was implemented in 1998 to encourage workforce participation. The scheme provides a lump sum payment to people registered in the scheme who are qualified for the age pension but who choose to defer their pension and remain in the workforce.

The scheme was closed from 20 September 2009 because the 2009 *Pension Review* found the pension bonus scheme did not encourage older Australians to remain in work, with most participants saying they would have continued working anyway. The review also found pensioners thought the scheme was complex and inflexible.

While the scheme was closed from 20 September 2009, eligible people who were qualified for the age pension before then have remained able to apply for late registration in the scheme if they had not registered at the time of its closure.

To encourage senior Australians to continue working, the work bonus was introduced. The work bonus is a pension income test concession for age pensioners who have earnings from employment.

Under the work bonus, eligible pensioners can earn up to \$250 a fortnight (\$6,500 a year) without it being assessed as income under the pension income test. Any unused amount of the fortnightly concession can accumulate up to a maximum of \$6,500 and be used to offset future earnings.

Mirror amendments are made to the *Veterans' Entitlements Act 1986*.

Human rights implications

The pension bonus scheme is not a social security entitlement as described in section 23 of the *Social Security Act 1991* and, accordingly, is not considered an income support payment. Social security income support arrangements for senior Australians are unaffected by this legislation.

A pension bonus payment is a one-off lump sum bonus paid to senior Australians who are registered in the scheme but who keep working and defer their age pension receipt.

The scheme was intended to encourage workforce participation but, following the *Pension Review* findings, was closed and limited to people who were qualified before 20 September 2009. The legislation will further limit access to the pension bonus scheme. However, eligible people will still have until 1 March 2014 to backdate their registration in the scheme.

A work bonus was introduced when the pension bonus scheme was closed to new entrants. It provides a clear and immediate benefit to age pensioners who continue to work by providing a pension income test concession on employment income.

Conclusion

This legislation does not limit human rights because it does not affect social security income support entitlements for senior Australians. Workforce participation by age pensioners who wish to work continues to be well supported through the work bonus.

There are no human rights implications.

Schedule 9 – Indexation – child care rebate limit

These amendments are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Background

The child care rebate is a payment that provides assistance for families who use approved child care by covering half of all their out-of-pocket fees (after child care benefit), up to a maximum limit per child per year. The child care rebate is currently not an indexed amount, and is capped at \$7,500 until the financial year ending 30 June 2014. To be eligible for the child care rebate, families must have used approved child care and met the work, training, study test and be eligible for child care benefit. Child care rebate is not income tested, and eligibility for child care benefit includes families who are entitled to child care benefit at the zero rate due to income.

The child care rebate payment was initially introduced to assist with up to 30 per cent of out-of-pocket costs per child per financial year, and the payment amount was indexed. To better assist families with the affordability of child care, the maximum child care rebate limit per child per financial year was increased to provide up to 50 per cent of out-of-pocket costs per child per financial year up to a maximum amount of \$7,500.

Specifically, legislative amendments were made to paragraph 84F of the *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act) by the *Family Assistance Legislation Amendment (Child Care Budget Measures) Act 2011* (the Budget Measures Act), which took effect on 15 September 2011, to introduce the cap and pause of the indexation of child care rebate payment amounts.

Overview of the amendments

The purpose of the child care rebate amendments is to extend the current child care rebate payment cap of a maximum of \$7,500 per financial year per child, and continue to pause the indexation of the child care rebate payment amounts for a further three financial years to 30 June 2017.

That is, the amendments to paragraph 84F(ea) of the Family Assistance Act preserve the current child care rebate payment amounts, and provide for an extension of the cap and pause measure that were originally introduced through the Budget Measures Act.

Human rights implications

The amendments engage the following human rights:

Rights of the child

The rights of the child are contained in the *Convention on the Rights of the Child* (CRC).

Article 3 of the CRC requires that, in all actions concerning children, the best interests of the child shall be a primary consideration.

To the extent that the amendments engage the rights of the child, it does not limit those rights as it maintains the provision of payments to assist the affordability of child care for families.

Right to social security

Providing additional payments to families in the context of childcare benefits, to an extent, also engages the right to social security contained in article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), as well as article 26 of the CRC, which specifically recognises the right of a child to benefit from social security.

The right to social security in article 9 of the ICESCR requires a social security system to be established and that a country must, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

Article 26 of the CRC requires countries to recognise the right of the child to benefit from social security. Benefits should take into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child.

The right to social security is not absolute and may be subject to permissible limitations. Article 4 of the ICESCR provides that rights in the Covenant may be subject to limitations that are determined by law which are compatible with the nature of these rights and are solely for the purpose of promoting the general welfare in a democratic society.

According to the Committee on Economic, Social and Cultural Rights, the right to social security includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage.^[1] Any removals in entitlements must be justified in line with Article 4 in the context of the full use of the maximum available resources of the State party.^[2]

^[1] Committee on Economic, Social and Cultural Rights, General Comment No. 19, 'The right to social security (art 9)', paragraph 9.

^[2] Ibid, paragraph 42.

The Government considers that maintaining the current cap on child care rebate payments and the pausing of indexation of child care rebate payments until 1 July 2017 is a reasonable, necessary and proportionate measure to ensure that the payments can continue to be realised for present and future generations, and the measure is in the interest of the general public and Australia's economic position.

Among other reasons, the effect of pausing indexation on child care rebate payments until 1 July 2017 will be, in relation to each child, only a small amount. The cap of a maximum of \$7,500 per financial year is currently set out in the legislation; the maximum amount of child care rebate payments is not being reduced through this Schedule.

Conclusion

To the extent that the amendments engage the rights of the child and to the extent it engages and places any limitation on the right to social security, such limitation is reasonable, necessary and proportionate to achieving a legitimate aim.

The amendments are compatible with human rights.

Schedule 9 – Indexation – family tax benefit, parental leave pay and dad and partner pay amounts

These amendments are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the amendments

These amendments will pause indexation of certain higher income limits until 30 June 2017. The indexation pauses will apply to the family tax benefit Part A higher income free area, the family tax benefit Part B primary earner income limit, and the parental leave pay and dad and partner pay individual income limits.

The Schedule also includes amendments to pause indexation of the family tax benefit end of year supplements until 30 June 2017.

Maintaining the higher income limits and supplement rates at their current levels until 30 July 2017 will ensure that Government assistance is targeted to low and middle-income families. This measure will result in savings and ensure that family and parental payments are sustainable into the future.

Human rights implications

These amendments are likely to engage the following human right:

Right to social security

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) recognises ‘the right of everyone to social security’. That right requires a social security system to be established, and states that a country must, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education. Article 26 of the *Convention on the Rights of the Child* (CRC) ensures that right to ‘every child’ and requires that ‘the benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child’.

These amendments maintain the current income test that applies to the higher income limits for family and parental payments. These amendments will not affect the assistance currently provided to low and middle-income families.

There may be families on higher incomes who do experience a reduction in family tax benefit Part A, or who cease to be eligible for assistance if their income exceeds:

- \$94,316 plus \$3,796 for each child after the first – the family tax benefit Part A higher income free area; or

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- \$150,000 – the family tax benefit Part B primary earner income limit, paid parental leave and dad and partner pay income limit.

Families at these income levels are considered to have reasonable levels of private income which would enable them to maintain their current living standards.

Maintaining supplements at their current rates until 30 June 2017 (\$726.35 for each family tax benefit Part A child, and \$354.05 for each family tax benefit Part B family) supports the sustainability of the family assistance program, without reducing assistance provided to low and middle-income families. Indexation will continue to apply to all other components of family tax benefit, ensuring that fortnightly rates continue to increase each year, and assist families with the direct cost of raising children.

Conclusion

These amendments are compatible with human rights because they advance the protection of human rights and, to the extent that these changes limit access to family and parental payments, these limitations are reasonable and proportionate.

Schedule 10 – Reduction of period for temporary absence from Australia

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the amendments

This Schedule makes amendments to the allowed period of temporary absence from Australia for accessing certain family and parental payments. The period of allowed temporary absence will be reduced from three years to 56 weeks. The amendments will apply to individuals eligible for family tax benefit Part A and Paid Parental Leave.

Exemptions will apply to allow some individuals to continue to access payments while overseas for up to three years. Exemptions will apply to individuals who are members of the Australian Defence Force or Australian Federal Police and who are deployed overseas, assisted by the Medical Treatment Overseas Program, or unable to return to Australia for a specified reason (such as a serious accident, or natural disaster).

Human rights implications

These amendments are likely to engage the following human right:

Right to social security

The amendment to reduce the period of temporary period of absence to 56 weeks continues to allow families to access family and parental payments for a reasonable period of time while overseas. The 56-week period ensures that those individuals who may be overseas for one year for work reasons have time to return to Australia before ceasing to be eligible for family assistance or parental payments.

The amendments also continue to allow for a reasonable period of access while overseas as families can become eligible for these payments again if they return to Australia for six weeks or more. The 56-week time period remains more than the maximum six-week period allowed for other payments of government assistance while a person is overseas.

Exemptions to the 56-week rule will allow certain individuals who are temporarily absent from Australia to remain eligible for family and parental payments for up to three years. Exemptions will apply to individuals who are members of the Australian Defence Force or Australian Federal Police who are on an overseas deployment. Exemptions for family assistance will also apply to individuals accessing Government-funded medical treatment under the Medical Treatment Overseas Program, and individuals who are unable to return to Australia due to circumstances out of their control. Exemptions for parental payment purposes would be available in circumstances to be prescribed under the Paid Parental Leave Rules.

Conclusion

These amendments are compatible with human rights because they advance the protection of human rights and, to the extent that these changes limit access to family and parental payments, these limitations are reasonable and proportionate.

Schedule 11 – Extending the deeming rules to account-based income streams

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative amendments

This Schedule will change the social security and veterans' entitlements income test treatment of account-based superannuation income streams for new products assessed.

For account-based income stream products assessed from 1 January 2015, the deeming provisions will apply. In effect, the deeming rates will apply to the combined value of a person's financial assets, including the current account balance of any account-based income streams, to calculate the amount of deemed income that is to be assessed under the income test to determine a person's pension entitlement.

Under the current income test rules for account-based income streams, income received by a person is reduced by an amount reflecting 'return of capital'. This amount is calculated by purchase price by the person's life expectancy at purchase. These rules often result in little or no income being assessed for these products and, accordingly, higher rates of income support payments and social security outlays.

The current income test rules favour people who can only afford to draw down the minimum amount from their income stream each year. Many of these people have no income from their income stream assessed against their pension.

People who draw down significantly larger amounts, including those who need to, would be better off under deeming rules compared to the current income test rules.

The change will improve the sustainability and equity of the income support system. It will assess financial investments held within account-based income streams in the superannuation environment in the same way as the majority of financial investments held outside of the superannuation system.

Account-based income streams held by income support recipients immediately before 1 January 2015 are grandfathered, and continue to be assessed under existing income test rules.

Human rights implications

From 1 January 2015, this change to the social security income test treatment for account-based income streams will affect account-based income streams held by new income support recipients, current income support recipients who purchase a new account-based income stream, or people whose partners are receiving income support.

These people will have their account-based income stream assessed on the same basis as similar financial investments under the current income test deeming rules.

A proportion of these people will receive a higher level of income support under the change, or receive the same amount of income support.

Another proportion will receive lower income support than they otherwise would have under the current rules. However, it is the same amount of income support that an identical person would receive if the assets backing the account-based income stream were held directly in financial investments.

The change will improve the equity of the income testing of social security payments for account-based income streams.

Conclusion

The Schedule is compatible with human rights because it does not limit or preclude people from gaining or maintaining access to social security.

There are no human rights implications.

Parts 2, 4, 5 and 6 of Schedule 12 (Miscellaneous amendments)

These amendments are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the amendments

This Schedule makes clarifying and technical amendments to portfolio legislation, consistent with intended policy.

Part 2 – Time periods and FTB reconciliation conditions

Amendments are made to simplify current reconciliation provisions for family tax benefit, addressing some gaps and unintended consequences in the operation of these provisions. For consistency, minor amendments are also made to the review time limit provisions to reflect recent changes that reduced the period allowed for lodgement of relevant tax returns.

Part 4 – Use of tax file numbers

Minor amendments are made to the tax file number (TFN) provisions in the family assistance law. These provisions simplify the TFN provisions, including to enable the Commissioner of Taxation to provide the Secretary with income information about an individual who is not required to lodge a tax return using TFNs as the primary matching key.

Part 5 – Child support amendments

Child support administration involves the Department of Social Services with responsibility for child support policy and the Department of Human Services with responsibility for child support service delivery. Minor amendments of a technical nature to the child support law will ensure that the provisions operate consistently with these arrangements for child support administration.

Part 6 – Other amendments

This Schedule also makes some minor adjustments to provisions relating to the newborn supplement and newborn upfront payment of family tax benefit and the stillborn baby payment, which commence on 1 March 2014, including to:

- ensure that the newborn upfront payment of family tax benefit is treated in the same way as the newborn supplement where the relevant tax returns have not been lodged on time and the non-lodger provisions apply;
- ensure that percentage determinations that allow family tax benefit to be split in blended families and in certain situations where couples separate, are taken into account in determining eligibility for the newborn supplement and amount of the newborn upfront payment;

- allow a claim for stillborn baby payment to be made more than 52 weeks after the birth of the stillborn child in further specified circumstances;
- clarify that the higher rate of newborn supplement is available in relation to the first child aged less than one year who is entrusted to the care of an individual or their partner;
- ensure that a stillborn child in a multiple birth is taken into account in determining the amount of newborn supplement.

Human rights implications

This Schedule is likely to engage the following human rights:

Right to social security

Parts 2, 4, 5 and 6

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and article 26 of the *Convention on the Rights of the Child* (CRC) recognise the right to social security.

As the amendments are of a minor or technical nature and are designed to ensure the legislation is consistent with the intended policy, this right is advanced by the amendments, and to the extent that the right is limited, the limitations are reasonable and proportionate.

Right to privacy

Part 4 – Use of tax file numbers

The disclosure of personal information engages the right to privacy under article 17 of the *International Covenant on Civil and Political Rights* (ICCPR). The protection may be limited where such limitations are authorised by law and are not arbitrary.

The increase to the tax free threshold has increased the number of family tax benefit recipients who are not required to lodge a tax return. This Schedule introduces simpler TFN provisions which more closely align with the model of TFN provisions used in other portfolio acts. The information is relevant for determining the adjusted taxable income of individuals who are not required to lodge tax returns and may be relevant in verifying eligibility for family assistance or to determine an individual's correct rate of payment. The provisions also deal with the transfer of TFN data for debt related purposes. This information is currently provided for individuals who are required to lodge a tax return.

The disclosure of personal information does not treat any group of persons differently, but rather, ensures that income verification at the time of reconciliation for all recipients of family assistance includes relevant information available from the Commissioner of Taxation.

Conclusion

These amendments are compatible with human rights because they advance the protection of human rights and, to the extent that these changes limit access to family assistance, these limitations are reasonable and proportionate.

Part 3 of Schedule 12 (Protection of amounts under the National Disability Insurance Scheme)

These amendments are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the amendments

This measure amends the *National Disability Insurance Scheme Act 2013* (the NDIS Act) to ensure that amounts paid under the National Disability Insurance Scheme in relation to funding for supports are inalienable. It also seeks to prevent third parties from seeking to recover debts by obtaining a garnishee order over bank accounts kept for the purpose of managing funding for supports under the National Disability Insurance Scheme. The amendments therefore extend protection to participants to ensure that the funding for the reasonable and necessary supports under their individual support plans can only be used that purpose.

Human rights implications

Article 19 of the *Convention on the Rights of Persons with Disabilities* (CRPD) recognises the equal right of all persons with disabilities to live in the community, with choices equal to others, and requires that effective and appropriate measures be taken to facilitate full enjoyment by persons with disability of this right and their full inclusion and participation in the community.

Article 26 of the CPRD provides that nation states should take effective and appropriate measures to enable people with disability to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. The Article requires that parties should organise, strengthen and extend comprehensive habilitate and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services. Parties should ensure that these services: are available at the earliest possible stage; are based on a multidisciplinary assessment of an individual's needs and strengths; support participation in society; are voluntary; and are available as close as possible to people in their own communities.

The NDIS will also provide opportunities for people with disability to take part in cultural life, consistent with Article 15 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

Participant plans

Consistent with the provisions of Article 26 outlined above, the NDIS Act provides for the provision and funding of reasonable and necessary supports for participants in the National Disability Insurance Scheme if:

- the support will assist the participant to pursue the goals, objectives and aspirations included in the participant's statement of goals and aspirations;

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- the support will assist the participant to undertake activities, so as to facilitate the participant's social and economic participation;
- the support represents value for money in that the costs of supports are reasonable, relative to both the benefits being achieved and the cost of alternative supports;
- the support will be, or is likely to be, effective and beneficial for the participant, having regard to current good practice;
- the funding or provision of the support takes account of what it is reasonable to expect families, carers, informal networks and the community to provide;
- the support is most appropriately provided through the National Disability Insurance Scheme, and is not more appropriately provided through other general systems of service delivery or support services offered by a person, agency or body, or systems of service delivery or support services offered:
 - as part of a universal service obligation; or
 - in accordance with reasonable adjustments required under a law dealing with discrimination on the basis of disability;
- the support is not specified in the National Disability Insurance Scheme rules as a support that will not be funded or provided under the National Disability Insurance Scheme; and
- the funding or provision of the support complies with the methods or criteria (if any) specified in the National Disability Insurance Scheme rules for deciding the reasonable and necessary supports that will be funded or provided under the National Disability Insurance Scheme.

Plans are to be approved by the CEO in accordance with prescribed rules (disallowable instruments) and remain in effect until replaced by another plan, or they are revoked. Participants must be provided with a copy of the plan.

The provision and funding of support for participants are individualised and articulated through participant plans. The NDIS Act (sections 31 to 41) requires that preparation, review and replacement of plans, and management of funding and supports provided under them should:

- be individualised;
- be directed by the participant;
- where relevant, consider and respect the role of family, carers and other persons who are significant in the life of the participant;
- where possible, strengthen and build capacity of families and carers to support participants who are children;

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- consider the availability to the participant of informal support and other support services generally available to any person in the community;
- support communities to respond to the individual goals and needs of participants;
- be underpinned by the right of the participant to exercise control over his or her own life;
- advance the inclusion and participation in the community of the participant with the aim of achieving his or her individual aspirations;
- maximise the choice and independence of the participant;
- facilitate tailored and flexible responses to the individual goals and needs of the participant; and
- provide the context for the provision of disability services to the participant and where appropriate coordinate the delivery of disability services where there is more than one disability service provider.

These individual plans must be approved by the CEO in accordance with prescribed rules and remain in effect until replaced by another plan, or the plan is revoked.

Managing plans

Funding for supports provided under plans must be managed. This means:

- purchasing the supports identified in the plan;
- receiving and managing any funding provided by the Agency; and
- acquitting any funding provided by the Agency.

Plans may be managed by the participant, by a registered plan management service provider, by the Agency, or by a plan nominee. In most cases, the plan management arrangements put in place will be those requested by the participant.

Payments (known as NDIS amounts) will be paid either to a participant or to the person managing the participant's plan. National Disability Insurance Scheme rules will govern the timing and manner of payments. NDIS amounts must be spent in accordance with the participant's plan, and records of payments and receipts retained for a period to be specified under the National Disability Insurance Scheme rules.

These amendments to the NDIS Act ensure that amounts paid in relation to funding for supports are inalienable. They also seek to prevent third parties from seeking to recover debts by obtaining a garnishee order over bank accounts kept for the purpose of managing funding for supports under the National Disability Insurance Scheme. The amendments therefore extend protection to participants to ensure that the funding for the reasonable and necessary supports under their plans can only be used that purpose.

Conclusion

These amendments are compatible with human rights and extend protections to persons with disabilities that have been afforded by the National Disability Insurance Scheme.

Minister for Social Services, the Hon Kevin Andrews MP