

2010-2011

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS
AFFAIRS AND OTHER LEGISLATION AMENDMENT (ELECTION
COMMITMENTS AND OTHER MEASURES) BILL 2011

EXPLANATORY MEMORANDUM

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

FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS AND OTHER LEGISLATION AMENDMENT (ELECTION COMMITMENTS AND OTHER MEASURES) BILL 2011

OUTLINE

The Bill contains three election commitments and two non-Budget measures, as described below.

Work bonus

As one of its election commitments, the Government committed to expanding the existing seniors' work bonus, which was introduced in September 2009 as part of its Secure and Sustainable Pension Reform package, to increase incentives for age pension recipients, and veterans' affairs income support pensioners of qualifying age, who work. The Bill extends the existing work bonus to enable people of age pension age, or qualifying age, who take up paid work, including occasional or variable work, to keep more of their pension when they are working.

Increasing FTB child rates for certain teenagers in secondary study

In a further election commitment, the Government announced significant improvements in family assistance for families with teenagers at school. From 1 January 2012, the maximum rate of family tax benefit (FTB) Part A paid to families with a child aged 16 to 19 in full-time secondary school or vocational education equivalent, or who are exempt from this requirement, will be aligned with the rate paid to families with a child aged 13 to 15. This means that, if the child remains in school, the family will not experience a drop in assistance when their child turns 16. The system of government assistance for families with children aged under 18 is also simplified by making FTB Part A the primary payment for children aged under 18 who are in full-time secondary school study or vocational education equivalent and under the primary care of their family. Eligibility for FTB Part B and multiple birth allowance will be limited to FTB children who are undertaking full-time secondary study, or are exempt from this requirement. Changes to the youth allowance parental income test will protect the entitlement of youth allowance recipients with a sibling aged 16 to 19 who remains in, or transfers to, the FTB system as a result of these new measures.

Baby bonus

The Bill provides for eligible baby bonus claimants to have a larger portion of their baby bonus paid to them upfront, from 1 July 2011, to assist them in meeting the initial costs of welcoming a child into the family. This is one of the measures in the Government's Better Access to Family Payments election commitment.

Thalidomide payments

The Bill ensures that payments made from the Thalidomide Australia Fixed Trust to beneficiaries of the Trust, or in respect of a beneficiary of the Trust, are exempt from income tax and from social security and veterans' affairs income tests. The Bill also ensures that Commonwealth ex gratia payments, made to beneficiaries of the Trust in respect of social security and veterans' affairs payments, forgone due to the income test exemption currently not being in effect, are also exempt from income tax.

Income management

The Bill makes some minor improvements to the income management provisions, including the matched savings scheme payment, debt recovery and nominee arrangements.

Financial impact statement

Work bonus

Total resourcing (all portfolios)

2010-11	2011-12	2012-13	2013-14
\$3.7 m	\$28.1 m	\$30.9 m	\$31.0 m

Increasing FTB child rates for certain teenagers in secondary study

Total resourcing (all portfolios)

2010-11	2011-12	2012-13	2013-14
\$1.0 m *#	\$84.0 m #	\$199.4 m	\$237.6 m

* Estimate only.

Does not include Centrelink capital costs of \$0.4 m in 2010-11 and \$5.5 m in 2011-12.

Baby bonus

Nil impact.

Thalidomide payments

Total resourcing (all portfolios)

2010-11	2011-12	2012-13	2013-14
\$0.2 m	\$0.3 m	\$0.3 m	\$0.3 m

This includes impacts for the Department of Families, Housing, Community Services, and Indigenous Affairs in relation to the payment of ex gratia payments prior to the commencement of the legislation.

Income management

Nil impact.

**FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS
AFFAIRS AND OTHER LEGISLATION AMENDMENT (ELECTION
COMMITMENTS AND OTHER MEASURES) BILL 2011**

NOTES ON CLAUSES

Clause 1 sets out how the Act is to be cited, that is, as the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Election Commitments and Other Measures) Act 2011*.

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

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

This explanatory memorandum uses the following abbreviations:

- ‘Family Assistance Administration Act’ means the *A New Tax System (Family Assistance) (Administration) Act 1999*.
- ‘Social Security Act’ means the *Social Security Act 1991*.
- ‘Veterans’ Entitlements Act’ means the *Veterans’ Entitlements Act 1986*.

Schedule 1 – Work bonus

Summary

As one of its election commitments, the Government committed to expanding the existing seniors' work bonus, which was introduced in September 2009 as part of its Secure and Sustainable Pension Reform package, to increase incentives for age pension recipients, and veterans' affairs income support pensioners of qualifying age, who work. This Schedule extends the existing work bonus to enable older pensioners who take up paid work, including occasional or variable work, to keep more of their pension when they are working.

Background

The current work bonus was introduced as part of the Secure and Sustainable Pension Reform package. It provides an incentive for pensioners of age pension age, and veterans' affairs income support pensioners of qualifying age, who wish to continue in employment, including occasional employment. The new measure will further increase the incentives for older pensioners to undertake paid work.

Section 1073AA in Division 1AAA of Part 3.10 of the Social Security Act, and Division 1A of Part IIIB of the Veterans' Entitlements Act, set out the current work bonus provisions. These provisions allow for a certain amount of employment income that is earned, derived or received in an instalment period by a person, who is of age pension age or qualifying age, and is in receipt of a rate of social security pension determined under Pension Rate Calculator A or Pension Rate Calculator C or an income support pension under the Veterans' Entitlements Act, to be disregarded for the purposes of the ordinary income test.

Currently, for an instalment period of 14 days, if a person earns \$500 or more, the disregarded amount is \$250. Where a person earns less than \$500 in a 14-day instalment period, the amount of disregarded income is half of the employment income earned. A proportional rule applies to instalment periods of less than 14 days.

The new, expanded, seniors' work bonus enables pensioners over age pension age or qualifying age to keep more of their pension when they are working. This mechanism supports those pensioners of age pension age or qualifying age who wish to undertake some paid work to supplement their pension.

The amendments contained in this Schedule have two main components:

- (i) the first \$250 of employment income a fortnight (rather than 50 per cent of the first \$500, as it is currently) is excluded from assessment under the income test for pensioners of age pension age or qualifying age; and
- (ii) an employment income concession bank is introduced, to enable pensioners to accrue any unused amounts of the \$250 fortnightly exemption, to a maximum of \$6,500; any credit in this 'bank' could then offset employment income that would otherwise be assessable in the future.

The proposed employment income concession bank would operate at an individual level. For couples, the amount of one partner's assessable income reduced by the work bonus will be combined with the other partner's income (if any) for pension assessment purposes in the same way that the work bonus currently operates, and thereby benefits both partners.

The amendments contained in this Schedule, other than **items 3 and 8**, commence on 1 July 2011 and apply in relation to an instalment period that includes 1 July 2011 and later instalment periods. **Items 3 and 8** of this Schedule commence on the later of 1 July 2011 or immediately after the commencement of Schedule 6 to the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Act 2011*.

Explanation of the changes

Amendments to the Social Security Act

Item 1 repeals subsections 1073AA(2) and (3) of the Social Security Act, which currently provide rules for working out how much employment income can be disregarded by the ordinary income tests in Pension Rate Calculators A and C. This item also inserts new subsections 1073AA(2) to (4C).

New subsection 1073AA(2) applies where a person's employment income for an instalment period is greater than or equal to the income concession amount, as defined in new subsection 1073AA(4C). In these circumstances, the person's employment income for that period is reduced by the income concession amount for the purposes of the ordinary income test in the relevant rate calculator.

The following two examples are provided at the end of subsection 1073AA(2):

Example 1: David earns \$2,250 of employment income in an instalment period of 14 days. David's rate of social security pension for that period is greater than nil.

David's employment income for that period is reduced by \$250, leaving David \$2,000 of employment income for that period.

Example 2: Amy earns \$1,000 of employment income in an instalment period of 14 days. Amy's rate of social security pension for that period is greater than nil.

Amy's employment income for that period is reduced by \$250, leaving Amy \$750 of employment income for that period.

New subsection 1073AA(3) applies where a person's unused concession balance, as defined in new section 1073AB (inserted by **item 4**), is greater than or equal to the amount of the person's employment income remaining after applying subsection (2) (the **current amount**) for the instalment period. In these circumstances, the person's employment income for that period is reduced to nil and, provided that the person's social security pension is payable to them for that instalment period, the person's unused concession balance is reduced by an amount equal to the current amount.

The following two examples are provided at the end of subsection 1073AA(3):

Example 1: To continue example 1 in subsection (2), assume David's unused concession balance is \$2,000. The current amount is \$2,000.

David's employment income for that period is further reduced to nil.

David's unused concession balance is now nil.

Example 2: To continue example 2 in subsection (2), assume Amy's unused concession balance is \$1,600. The current amount is \$750.

Amy's employment income for that period is further reduced to nil.

Amy's unused concession balance is now \$850.

New subsection 1073AA(4) applies where the person's unused concession balance is greater than nil but less than the current amount of the person's employment income after applying subsection (2). In these circumstances, the person's employment income is further reduced by an amount equal to the unused concession balance and, provided that the person's social security pension is payable to them for that instalment period, the person's unused concession balance is reduced to nil.

The following example is provided at the end of subsection 1073AA(4):

Example: Bill earns \$1,250 of employment income in an instalment period of 14 days. Bill's rate of social security pension for that period is greater than nil.

Under subsection (2), Bill's employment income for that period is reduced by \$250, leaving Bill \$1,000 of employment income for that period.

Assume Bill's unused concession balance is \$800.

Under subsection (4), Bill's employment income for that period is further reduced by \$800 leaving Bill \$200 of employment income for that period.

Bill's unused concession balance is now nil.

New subsection 1073AA(4A) applies where the person's employment income for a period is less than the income concession amount. In these circumstances, the person's employment income is reduced to nil and, provided that the person's social security pension is payable to them for that instalment period, the person's unused concession balance will be increased by an amount equal to the difference between the income concession amount and the amount of the employment income.

The following example is provided at the end of subsection 1073AA(4A):

Example: Emma earns \$100 of employment income in an instalment period of 14 days. Emma's rate of social security pension for that period is greater than nil.

Emma's employment income for that period is reduced to nil.

Emma's unused concession balance is increased by \$150.

New subsection 1073AA(4B) provides that, where a person has zero employment income for an instalment period and the person's social security pension is payable to them, the person's employment income bank balance is increased by the income concession amount.

New subsection 1073AA(4C) defines the **income concession amount** as \$250 where the instalment period is 14 days. Where the instalment period is less than 14 days, the income concession amount is calculated on a pro-rata basis using the formula provided.

Item 2 repeals the examples at the end of subsection 1073AA(6).

Item 3 repeals subsection 1073AA(8), which is to be inserted by the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Act 2011*, and substitutes new subsection 1073AA(8), which deals with how the rate calculators, in particular, the modules relating to a couple's ordinary income, interact with section 1073AA, where one member of the couple is in receipt of a payment from the Department of Veterans' Affairs.

New subsection 1073AA(8) is inserted to clarify that, where one member of a couple has the benefit of any income reduction under the Veterans' Entitlements Act, then that reduction is to be taken into consideration when determining that person's partner's ordinary income under point 1064-E2 of the rate calculator at the end of section 1064 of the Social Security Act (Pension Rate Calculator A) or under point 1066-E2 of the rate calculator at the end of section 1066 of that Act (Pension Rate Calculator C).

This item commences either on 1 July 2011 or immediately after Schedule 6 to the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Act 2011*, whichever occurs later. However, the provision will not commence if Schedule 6 to the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Act 2011* does not commence.

Item 4 inserts new section 1073AB at the end of Division 1AAA of Part 3.10 to define the term 'unused concession balance'.

New subsection 1073AB(1) provides that, on the first day the work bonus provisions apply to a person, the person is taken to have an unused concession balance of zero on that day.

Subsection 1073AB(2) provides that the maximum unused concession balance for a person is \$6,500. At the end of this subsection, the following example is used to illustrate how the balance is capped at \$6,500:

Example: John has an unused concession balance of \$6,400. John earns \$50 of employment income in an instalment period of 14 days.

Instead of John's unused concession balance increasing to \$6,600 under subsection 1073AA(4A), John's unused concession balance increases to \$6,500.

New subsection 1073AB(3) provides that, if a person stops receiving one of the social security pensions referred to in paragraph 1073AA(1)(a), the person's unused concession balance will be retained.

The note at the end of new subsection 1073AB(3) confirms for the reader that, if the work bonus provisions apply to the person again, the person's unused concession balance will be that retained balance.

Item 5 is an application provision. The amendments in this Schedule, other than **item 3**, apply in relation to an instalment period that includes 1 July 2011 and later instalments periods. The commencement date for **item 3** is set out above.

Amendments to the Veterans' Entitlements Act

Item 6 repeals subsections 46AA(2) to (4) of the Veterans' Entitlements Act, which currently provide rules for working out how much employment income can be disregarded by the ordinary/adjusted income test in the Pension Rate Calculator. It inserts new subsections (2) to (4C).

New subsection 46AA(2) applies where a person's employment income for a pension period is greater than or equal to the income concession amount, as defined in subsection 46AA(4C). In those circumstances, the person's employment income for that period is reduced by the income concession amount for the purposes of the ordinary/adjusted income test in the Rate Calculator.

The following two examples are provided at the end of subsection 46AA(2):

Example 1: David earns \$2,250 of employment income in a pension period. David's rate of service pension or income support supplement for that period is greater than nil.

David's employment income for that period is reduced by \$250, leaving David \$2,000 of employment income for that period.

Example 2: Amy earns \$1,000 of employment income in a pension period. Amy's rate of service pension or income support supplement for that period is greater than nil.

Amy's employment income for that period is reduced by \$250, leaving Amy \$750 of employment income for that period.

New subsection 46AA(3) applies where a person's unused concession balance as defined in new section 46AC (inserted by **item 10** below) is greater than or equal to the amount of the person's employment income that remains after applying subsection (2) (the **current amount**) for the pension period. In these circumstances, the person's employment income for that period is reduced to nil and, provided service pension or income support supplement is payable for the pension period, the person's unused concession balance is reduced by an amount equal to the current amount.

The following two examples are provided at the end of this subsection:

Example 1: To continue example 1 in subsection (2), assume David's unused concession balance is \$2,000. The current amount is \$2,000.

David's employment income for that period is further reduced to nil.

David's unused concession balance is now nil.

Example 2: To continue example 2 in subsection (2), assume Amy's unused concession balance is \$1,600. The current amount is \$750.

Amy's employment income for that period is further reduced to nil.

Amy's unused concession balance is now \$850.

New subsection 46AA(4) applies where the person's unused concession balance is greater than nil but less than the current amount of the person's employment income after applying subsection (2) in relation to the relevant pension period. In these circumstances, the person's employment income is further reduced by an amount equal to that balance and, provided service pension or income support supplement is payable for the pension period, the person's unused concession balance is reduced to nil.

The following example is provided at the end of the subsection:

Example: Bill earns \$1,250 of employment income in a pension period. Bill's rate of service pension or income support supplement for that period is greater than nil.

Under subsection (2), Bill's employment income for that period is reduced by \$250, leaving Bill \$1,000 of employment income for that period.

Assume Bill's unused concession balance is \$800.

Under subsection (4), Bill's employment income for that period is further reduced by \$800 leaving Bill \$200 of employment income for that period.

Bill's unused concession balance is now nil.

New subsection 46AA(4A) applies where the person's employment income for a pension period is less than the income concession amount. In these circumstances, the person's employment income is reduced to nil and, provided service pension or income support supplement is payable for the pension period, the person's unused concession balance will be increased by an amount equal to the difference between the income concession amount and the amount of the employment income.

The following example is provided at the end of the subsection:

Example: Emma earns \$100 of employment income in a pension period. Emma's rate of service pension or income support supplement for that period is greater than nil.

Emma's employment income for that period is reduced to nil.

Emma's unused concession balance is increased by \$150.

New subsection 46AA(4B) provides that, where a person has zero employment income for a pension period and service pension or income support supplement is payable for the pension period, the person's employment income bank balance is increased by the income concession amount.

New subsection 46AA(4C) defines the *income concession amount* for a pension period as \$250.

Item 7 repeals the examples at the end of subsection 46AA(5).

Item 8 repeals subsection 46AA(5A), which is to be inserted by the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Act 2011*, and substitutes a new provision which deals with how the Rate Calculator interacts with section 46AA, where one member of the couple is in receipt of a payment under the Social Security Act.

New subsection 46AA(5A) is inserted to clarify that, where the employment income of the partner of a member of a couple is reduced under section 1073AA of the Social Security Act, the person's partner's ordinary/adjusted income is reduced by the amount of that reduction for the purposes of point SCH6-E3 of Schedule 6.

This item commences either on 1 July 2011 or immediately after Schedule 6 to the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Act 2011*, whichever occurs later. However, the provision will not commence if Schedule 6 to the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Act 2011* does not commence.

Item 9 repeals and substitutes subsection 46AA(6). Subsection 46AA(6) was applicable in the circumstances where an amount of employment income was earned by an invalidity service pensioner who, under section 115G, is a participant in the Veterans' Vocational Rehabilitation Scheme (VVRS).

The new provision provides that section 46AA will be subject to new section 46AD (inserted by **item 10** below), which ensures that income reductions will not be duplicated under both section 46AA and section 115G.

Item 10 inserts new sections 46AC and 46AD at the end of Division 1A of Part IIIB to determine the amount of the 'unused concession balance' and provide that income reductions will not be duplicated under the operation of both section 46AA and section 115G.

New subsection 46AC(1) provides that, from the first day on which the work bonus provisions apply to a person on a day that is after the commencement of the Schedule, then the person is taken to have an unused concession balance of zero on that day.

Subsection 46AC(2) provides that the maximum unused concession balance for a person is \$6,500. At the end of this subsection, the following example is used to illustrate how the balance is capped at \$6,500:

Example: John has an unused concession balance of \$6,400. John earns \$50 of employment income in a pension period.

Instead of John's unused concession balance increasing to \$6,600 under subsection 46AA(4A), John's unused concession balance increases to \$6,500.

New subsection 46AC(3) provides that, if a person stops receiving service pension or income support supplement, the person's unused concession balance will be retained indefinitely.

The note at the end of new subsection 46AC(3) confirms for the reader that, if the work bonus provisions apply to the person again, the person's unused concession balance will be that retained balance.

New subsection 46AD(1) provides that new section 46AD will be applicable in the circumstances where it is determined that an invalidity service pensioner will be eligible for both the ordinary income concession (referred to as the 'initial amount') available under section 115G (to participants in the Veterans' Vocational Rehabilitation Scheme) and the employment income concession (referred to as the 'reduction amount') available under section 46AA.

New subsection 46AD(2) provides that the employment income concession under section 46AA will be applicable in the circumstances where the total of the 'reduction amounts' under subsections 46AA(2) to (4A) are greater than the 'initial amounts' determined under subsections 115G(1) and 2).

New subsection 46AD(3) provides that the ordinary income concession under section 115G will be applicable in the circumstances where the total of the 'reduction amounts' under subsections 46AA(2) to (4A) is less than the 'initial amounts' determined under subsections 115G(1) and 2).

A note to subsection 46AD(3) refers the reader to the effect of subsections 115G(1) and (2) on excluding income amounts for certain veterans.

The following example is provided at the end of this subsection:

Example: Jim earns \$100 of employment income in a pension period. Jim's rate of service pension or income support supplement for that period is greater than nil. Assume Jim also has an amount of \$100 worked out under subsection 115G(1) in relation to that period.

There is no reduction in Jim's employment income under section 46AA for that period, but \$100 is excluded under subsection 115G(1).

Under subsection 46AA(4A), Jim's unused concession balance is increased by \$150.

Item 11 repeals and substitutes subsection 115G(4). Repealed subsection 115G(4) had referred to the interaction of the provisions of section 115G and section 46AA.

New subsection 115G(4) provides that section 115G is subject to the provisions of new section 46AD concerning the interaction of sections 46AA and 115.

Item 12 is an application provision. The amendments made by **items 6, 7, 9, 10 and 11** of this Schedule apply in relation to the pension period that includes 1 July 2011 and later periods.

Schedule 2 – Increasing FTB child rates for certain teenagers in secondary study

Summary

As part of its election commitments, the Government announced significant improvements in family assistance for teenagers in school. The maximum rate of family tax benefit (FTB) Part A paid to families with a child aged 16 to 19 in full-time secondary school or vocational education equivalent will be aligned with the rate paid to families with a child aged 13 to 15. This means that, if the child remains in school, the family will not experience a drop in assistance when their child turns 16. The system of government assistance for families with children aged under 18 is also simplified by making FTB Part A the primary payment for children aged under 18 who are in full-time secondary school study or vocational education equivalent and under the primary care of their family; that is, they are both financially dependent and reliant on their family for day-to-day needs. The FTB Part B and multiple birth allowance eligibility rules for FTB children aged 16 or more will limit eligibility for these payments to FTB children who are undertaking full-time secondary study, or who are exempt from this requirement. The entitlement of youth allowance recipients whose sibling aged 16 to 19 remains in, or transfers to, the FTB system as a result of these changes will be protected by changes to the youth allowance parental income test. These measures commence on 1 January 2012.

Background

Currently, most low and middle-income families experience significant reductions in government assistance when their child turns 16. This is despite the fact that most 16 to 17 year olds, and a significant number of 18 and 19 year olds, remain in full-time secondary study and are under the primary care of their parents.

To address this issue, this Schedule makes the following amendments to the relevant FTB rates and eligibility rules:

- the FTB child rate for a full-time secondary student aged 16 to 19 years (potentially up to the end of the calendar year they turn 19) will be increased so as to align with the FTB child rate for a child aged 13 to 15 years;
- the higher base FTB child rate will only be available to an FTB child aged 18 or more who has completed their secondary schooling or equivalent, or, for an FTB child still in full-time secondary study, will not be available until after the end of the calendar year in which they turn 19;

- an FTB child aged 16 to 18 years would need to be in full-time secondary study, or be exempt from the FTB activity test, to not be disregarded in working out an individual's FTB Part B rate while tertiary students would be disregarded;
- older teenage children aged 16 to 18 years in a multiple birth would need to be in full-time secondary study, or be exempt from the FTB activity test, to attract multiple birth allowance for their parent or carer, while tertiary students would be excluded; and
- the child income test will no longer apply to an FTB child who is aged 16 to 19 years (potentially up to the end of the calendar year they turn 19) and in full-time secondary study. The child income limit will apply to an FTB child who is aged 16 to 19 (end of calendar year they turn 19) if they are exempt from the full-time secondary study requirement. The child income limit would apply to a 19 year old in the calendar year they turn 20, even if they were in full-time secondary study.

Changes to family assistance and youth allowance will simplify government assistance for families with teenagers and mean that many families no longer need to make complex decisions about which payment is better suited to their individual circumstances.

Family assistance will be the primary form of government support for children until they finish secondary education. This closely aligns with the Australia's Future Tax System Review recommendation that 'family payments should be the main form of assistance for families up to the end of the secondary school or the school year in which they turn 18 (the earlier of the two)'.

Complementary amendments to youth allowance will ensure this assistance continues to be available to teenagers aged under 18 who meet independence criteria, who need to live away from home in order to attend full-time secondary study, who are not in full-time secondary study, or who meet other eligibility criteria.

Teenagers aged 18 and 19 in full-time secondary study will continue to have the option to apply for youth allowance, in recognition that the youth allowance at home rate increases at age 18 and can be paid directly to the young person. Youth allowance will provide ongoing support to young people as they finish secondary study and progress to further education and training.

Further, amendments to the youth allowance parental income test protect the entitlement of youth allowance recipients whose sibling aged 16 to 19 remains in, or transfers to, the FTB system as a result of these changes. This will assist the Government's long-term goal to increase the number of students from lower socio-economic backgrounds in university study.

These changes build on the Government's earlier reform to youth allowance, which increased assistance for students aged 16 and over, from low to middle-income families, and the FTB Part A participation requirement, which requires young people aged 16 to 20 to have a Year 12 qualification, or be undertaking full-time secondary study, to be eligible for FTB Part A.

Explanation of the changes

Part 1 – Amendments to the A New Tax System (Family Assistance) Act 1999

Meaning of senior secondary school child

Item 1 inserts a new definition of **senior secondary school child** into subsection 3(1) of the *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act). 'Senior secondary school child' has the meaning given by new section 22B.

Item 3 inserts new section 22B into the Family Assistance Act. New section 22B outlines when an individual is a senior secondary school child in the various contexts in which the term will appear.

Subsection 22B(1) provides when an individual is a senior secondary school child. The requirements that must be satisfied differ depending upon the purpose for which the term is used. For the purposes of subclause 29(3) or 36(2) of Schedule 1 to the Family Assistance Act (relating to identifying a relevant FTB child for FTB Part B rate and multiple birth allowance respectively), the individual must be aged 16 or 17, or be aged 18 and the calendar year in which the individual turned 18 must not have ended. Substantive amendments are made at **items 8 and 9** below to insert references to a senior secondary school child for these purposes.

For the purposes of any other provision of the Family Assistance Act, the individual is a senior secondary school child if the individual is aged 16, 17 or 18, or is aged 19 and the calendar year in which the individual turned 19 has not ended.

Additionally, one of the following must apply before the individual will be a senior secondary school child:

- the individual is undertaking full-time study in an approved course of education or study that would, in the Secretary's opinion, assist or allow the individual to complete the final year of secondary school or an equivalent level of education; or
- except for the purposes of subsection 22A(1) or 35(1) of the Family Assistance Act or paragraph 32L(1)(aa) of the Family Assistance Administration Act (which relate to the income of the individual), the individual is exempt from the FTB activity test.

These provisions are excluded so that the income of an individual aged 16 to 19 will only be disregarded where the individual is undertaking full-time study, either domestically or overseas. If the child is exempt from the FTB activity test, then the child income test would continue to apply.

The description in the first dot point above is consistent with the wording used in the FTB activity test (paragraph 17B(1)(b)).

The concept of 'undertaking full-time study' is defined in subsection 3(1) of the Family Assistance Act by reference to its meaning in the Social Security Act. The definition in subsection 23(1) of the Social Security Act then references section 541B of that Act, which uses the concept of a 'normal amount of full-time study' in defining full-time study. Subsection 17(3) of the Family Assistance Act expands the definition by enabling the Secretary to determine a different normal amount of full-time study for a particular FTB child. In practice, this discretion is applied where, for example, an FTB child's circumstances are such that a reduced study load is appropriate and, therefore, enough for the child to satisfy the FTB activity test.

Subsection 22B(2) provides that subsection 17B(3) applies in relation to subsection 22B(1) in the same way as it applies in relation to subsection 17B(1). The reference to undertaking full-time study in the first dot point above would also include circumstances where the Secretary has determined a child's normal amount of full-time study under subsection 17(3) and the child is undertaking the required amount of study.

Subsection 22B(3) extends the period for which the individual is a senior secondary school child, despite the individual completing the final year of secondary school or an equivalent level of education. If the individual completes the final year in December of a calendar year, the period is extended to the end of 31 December of that year. Alternatively, if the individual completes the final year of secondary school before December, the period is extended to the end of the period of 28 days beginning on the day after that day.

Subsection 22B(4) sets out how to work out the day when an individual completes the final year of secondary school or equivalent level of education. The day differs depending upon whether the individual was required to sit an examination in relation to that final year of secondary study (or equivalent level of education). If an examination was required, the day the individual completes the final year is the later of the last day of the examination period, or the last day of classes, as determined by the secondary school or provider of that education. If no examination was required, the day the individual completes the final year is the last day of classes for that year, as determined by the secondary school or provider of that education.

Subsection 22B(5) is an avoidance of doubt provision. It makes it clear that, if an individual ceases to be a senior secondary school child, nothing in the section prevents the individual again becoming a senior secondary school child.

Item 4 inserts a further subparagraph into new paragraph 22B(1)(b), providing an additional criterion which may result in an individual being a senior secondary school child through overseas study. The amendment provides that, if the individual is studying overseas full-time in a way that would, in the Secretary's opinion, assist or allow the individual to complete the final year of secondary school or an equivalent level of education, then paragraph 22B(1)(b) is satisfied.

The description in **item 4** picks up the wording of proposed new paragraph 17B(1)(c), which is to be inserted into the Family Assistance Act by Schedule 5 to the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Act 2011*. The relevant changes are to commence on Royal Assent. **Item 4** will commence on 1 January 2012 or at the start of the day on which Schedule 5 to the 2011 Act commences, whichever is later. However, **item 4** will not commence at all if Schedule 5 to the 2011 Act is not enacted.

Child income test

Section 22A of the Family Assistance Act sets out the circumstances in which an individual cannot be an FTB child. One of these circumstances is where the individual is aged 16 or more and has adjusted taxable income in a particular income year that equals or exceeds the cut-out amount (item 2(a) of the table at the end of subsection 22A(1) refers). This is the FTB child income test. The cut-out amount is specified in subsection 22A(2).

Item 2 amends section 22A to provide that the FTB child income test will no longer apply to an individual while that individual is a senior secondary school child under new section 22B. However, if the child is exempt from the FTB activity test, then the child income test would continue to apply.

There will be situations where the child income test applies to an individual for part of an income year only. If the individual's adjusted taxable income for the relevant income year equals or exceeds the cut-off amount, then the individual would not be an FTB child for that part of the income year when the child income test applied to the individual. Conversely, the individual's adjusted taxable income would not affect their FTB child status for that part of the income year when the child income test did not apply to the individual.

The relevant reconciliation time under the Family Assistance Administration Act in relation to an individual who has provided an estimate of income for an individual who would be an FTB child aged 16 or more is consequentially amended at **item 13** below.

A child who is in the care of an approved care organisation can also attract FTB for the organisation. Section 20 of the Family Assistance Act provides a definition of an approved care organisation. The circumstances in which an approved care organisation is, and is not, eligible for FTB are set out in sections 34 and 35 of the Family Assistance Act.

Section 35 has the same child income test for an individual in the care of an approved care organisation as section 22A has for an FTB child. **Item 5** amends section 35, to provide an exception to the general requirement that, for an individual to be an individual in respect of whom an approved care organisation may be eligible, the individual must have an adjusted taxable income of less than the cut-out amount. This requirement will only apply if the individual is not a senior secondary school child (defined at new section 22B). However, if the child is exempt from the FTB activity test, then the child income test would continue to apply.

FTB child rate for 16 to 19 year olds in full-time secondary study or equivalent

The FTB Rate calculator in Schedule 1 to the Family Assistance Act sets out the process for calculating an individual's rate of FTB. FTB comprises a Part A rate (which includes an amount for each FTB child of the individual) and a Part B rate (calculated by reference to the individual's youngest FTB child). There are a number of different methods of calculating an individual's Part A rate, depending on the individual's circumstances and adjusted taxable income. These different methods are set out in subclause 1(2) of Schedule 1.

Method 1 applies where the individual's adjusted taxable income does not exceed the higher income free area (currently \$94,316 a year, plus \$3,796 for each FTB child after the first) or where the individual or their partner is receiving prescribed social security or veterans' payments.

Clause 7 of Schedule 1 provides a table of FTB child rates for the different age groups (under 13, 13 to under 16, 16 to under 18, and 18 to under 25). The relevant FTB child rate under clause 7 for each FTB child of the individual is included in calculating an individual's Part A rate under method 1.

Item 6 repeals the table in clause 7 and substitutes a new table. In short, the new table ensures that an FTB child who has reached 16 years of age and is a senior secondary school child attracts the same higher FTB child rate applicable for an FTB child aged 13 to 15.

Items 1 and 2 of the new table are unchanged from the old table (although the actual FTB child rates have been updated). Item 3 sets the FTB child rate for a child who has reached 16 years and who is a senior secondary school child (as defined in new section 22B). The FTB child rate for this group is the same higher FTB child rate applicable for an FTB child who is aged 13 to 15. Items 4 and 5 of the new table are similar to old items 3 and 4 except that these items do not apply to a senior secondary school child (who is covered by new item 3).

Method 2 applies where the individual's adjusted taxable income exceeds the higher income free area and where neither the individual nor their partner is receiving prescribed social security or veterans' payments.

Clause 26 of Schedule 1 provides an FTB child rate for a child aged under 18 and another for a child who has turned 18. The relevant FTB child rate under clause 26 for each FTB child of the individual is included in calculating an individual's Part A rate under method 2, generally known as the base child rate.

Item 7 repeals subclause 26(2) and substitutes rates for either an FTB child who has not turned 18, or who has turned 18 and who is a senior secondary school child (paragraph 26(2)(a)), or for an FTB child who has turned 18 and who is not a senior secondary school child (paragraph 26(2)(b)). This results in the standard FTB child rate of a child who has turned 18 but is a senior secondary school child becoming the same lower standard FTB child rate for a child who has not yet turned 18 for the purposes of method 2. This is consistent with the current treatment of an FTB child under age 18. The actual rates are essentially unchanged, having been updated only by indexation.

Method 3 applies where the individual has no FTB children and does not incorporate an FTB child rate.

FTB Part B for students aged 16 to end of calendar year turned 18

Clause 29 of Schedule 1 to the Family Assistance Act provides some general rules for calculating an individual's Part B rate. According to subclause 29(3), an FTB child who has turned 16 is to be disregarded in the rate calculation process for Part B unless the child is undertaking full-time study and the calendar year in which the child turned 18 has not ended. The standard rate of Part B is worked out under the table in clause 30 of Schedule 1. The rate is different, depending upon whether the individual's youngest FTB child is under 5 years of age (covered by table item 1), or 5 years of age or older (covered by table item 2).

Item 8 amends subclause 29(3) to provide that an FTB child who has turned 16 years of age is to be disregarded unless the FTB child is a senior secondary school child. As a result of new subparagraph 22B(1)(a)(i), the individual may be aged 16 or 17, or aged 18 and the calendar year in which the individual turned 18 has not ended. The provision then clarifies that, if disregarding the FTB child means that neither item 1 nor item 2 of the table in clause 30 applies to the individual, the individual's Part B rate is nil.

The effect of this measure is that FTB Part B would no longer be available for tertiary students who have turned 16.

Multiple birth allowance for students aged 16 to end of calendar year turned 18

An individual's *maximum rate* under methods 1 and 2 include the relevant FTB child rate, large family supplement (if applicable), multiple birth allowance (if applicable), FTB Part A supplement (which is not included in the rate calculation process until reconciliation by virtue of section 32A of the Family Assistance Administration Act) and rent assistance (only under method 1).

Clause 36 of Schedule 1 sets out the eligibility conditions for multiple birth allowance. An amount of multiple birth allowance is to be added in working out an individual's maximum rate if the individual has three or more children and at least three of those children were born in the same multiple birth and are either under 16, or over 16 and undertaking full-time study and the calendar year has not ended in which the first born of the children in the multiple birth who are undertaking full-time study turns 18.

Item 9 modifies these multiple birth allowance eligibility requirements insofar as they relate to a child who has turned 16 by substituting the requirement that the child who has turned 16 be a senior secondary school child as defined in new section 22B. As a result of subparagraph 22B(1)(a)(i), the individual may be aged 16 or 17, or aged 18 and the calendar year in which the individual turned 18 has not ended.

The effect of this measure is that multiple birth allowance would no longer be available for tertiary students who have turned 16 and who are in a multiple birth.

Rent assistance

Rent assistance is a component of an individual's FTB Part A rate where the method 1 or method 3 calculation process applies.

Method 1 applies where an individual's adjusted taxable income does not exceed the higher income free area or where the individual or their partner is receiving a prescribed social security or veterans' payment (clause 1 of Schedule 1 to the Family Assistance Act refers). Clause 3 of Schedule 1 then sets out the overall rate calculation process for Part A where method 1 applies. Rent assistance is a possible component of an individual's maximum rate (step 1 of the method statement in clause 3 refers).

Method 3 applies where the individual has no FTB children (but has one or more regular care children). In these circumstances, an individual's Part A rate is essentially an income-tested rent assistance payment.

The rules for payment of rent assistance are set out in clauses 38B to 38K of Schedule 1 to the Family Assistance Act. Clause 38C outlines the eligibility conditions for rent assistance. One of these conditions is that the individual has at least one ***rent assistance child***. The concept of a rent assistance child is then defined in clause 38B.

An FTB child is a rent assistance child if the FTB child rate in clause 7 (amended as the result of the amendments above at item 6) for the child exceeds the base FTB child rate, putting aside any care percentage in relation to the child. The base FTB child rate is defined in clause 8, by reference to the FTB child rate in clause 26 (amended as the result of the amendments above to clause 26).

This will have a flow-on effect for the concept of rent assistance child and will mean that the FTB child rate for a 16 to 19 (end of calendar year they turn 19) year old in full-time secondary study (which will be equivalent to the higher 13 to 15 year FTB child rate) will exceed the base FTB child rate for the child and the child will therefore also be a rent assistance child.

A regular care child (defined in subsection 3(1) of the Family Assistance Act as a child who would be an FTB child of the individual except that the individual has 14 per cent or more and less than 35 per cent care) is a rent assistance child if the child is under 16 and is not an **absent overseas regular care child** (as defined in section 63AA of the Family Assistance Act).

Item 10 amends paragraph 38B(3)(a) of Schedule 1 to the Family Assistance Act so that the concept of rent assistance child also includes a regular care child who is a senior secondary school child as set out in new section 22B.

However, a regular care child aged 16 to 19 who is a senior secondary school child would not be a rent assistance child if the child is an absent overseas regular care child (in the same way as a regular care child under 16 who is an absent overseas regular care child is not a rent assistance child under the current rules).

Indexation

The new FTB child rates would be subject to indexation on 1 July of each year in accordance with movements in the Consumer Price Index, on the same basis as the indexation arrangements for other FTB child rates. Indexation is provided for in Schedule 4 to the Family Assistance Act. This would ensure continued parity between the new FTB child rates and the relevant existing FTB child rates.

Item 11 repeals items 1, 2 and 3 of the table at clause 2 of Schedule 4 and substitutes an item which covers all items in the table at clause 7 as amounts which are to be indexed. The items are given the abbreviation **FTB child rate (A1)**.

Item 12 then repeals items 1, 2 and 3 of the table at subclause 3(1) and inserts indexation of the FTB child rate (A1) as described above, having regard to the same reference and base quarter as currently occurs.

Amendments to the Family Assistance Administration Act

Where an individual has a rate of FTB calculated by reference to an estimate of their adjusted taxable income, their entitlement may be reconciled at a time set out in Subdivision D of Division 1, Part 3 of the Family Assistance Administration Act. The relevant reconciliation time for an individual who has provided an estimate of another individual's adjusted taxable income, where the other individual has turned 16 and would be an FTB child of the first individual if their adjusted taxable income were less than the cut-out amount in subsection 22A(2) of the Family Assistance Act, is the earlier of the following times after the end of the relevant income year:

- when the first individual notifies the amount of the other individual's adjusted taxable income; or
- when the Secretary becomes satisfied that the amount of the other individual's adjusted taxable income can be worked out without receiving a notification from the first individual.

The amendment made by **item 13** provides that section 32L only applies if the other individual is not a senior secondary school child. If the individual is a senior secondary school child, then the child income test does not apply (see amendments to section 22A of the Family Assistance Act at item 2 above). For the purpose of the child income test, an individual exempted from the FTB activity test is not a senior secondary school child (as the result of new subparagraph 22B(1)(b)(iii)).

Amendments to the Social Security Act

Item 14 is a technical amendment, consequential to **item 15**.

Item 15 inserts new subsections 543A(2AA) and (2AB).

The measure contained in this item will preclude full-time secondary school or vocational education and training (VET equivalent) students, aged 16 to 17, from receiving youth allowance unless they are independent, are required to live away from home or were receiving youth allowance immediately before starting that course. The amendments in this item preclude these students from receiving youth allowance by amending the provisions relating to the minimum age requirement for youth allowance.

Section 543A prescribes the minimum age requirement for youth allowance. Paragraph 543A(2)(b) provides that, subject to subsections 543A(2A) and (2B), a person is taken to have attained the minimum age for youth allowance where they are undertaking full-time study and are either at least 16 years old, or are 15 years old and independent.

New subsection 543A(2AA) provides that paragraph 543A(2)(b) does not apply to a person who is aged 16 or 17 and who is undertaking full-time study in respect of a secondary course* at a secondary school* or a VET institution* (*within the meaning of the *Student Assistance Act 1973*) unless:

- the person is independent;
- the person is taken by section 1067D to be required to live away from home; or
- the person was receiving youth allowance immediately before starting that course.

New subsection 543A(2AB) provides that, for the purposes of subsection (2AA), a secondary course is a course that is determined, under section 5D of the *Student Assistance Act 1973*, to be a secondary course for the purposes of that Act.

Item 16 inserts new points 1067G-F31 and 1067G-F32 into Submodule 6 of Module F of the Youth Allowance Rate Calculator.

A youth allowance recipient who is not independent may have their rate of youth allowance decreased under the parental income test (PIT) contained in Module F of section 1067G. Broadly, the PIT works by reducing a youth allowance recipient's rate of payment by 20 per cent of the recipient's parental income above a certain threshold amount for the **appropriate tax year**.

The 20 per cent reduction is spread across people who share the same combined parental income (the family pool) and who receive youth allowance or other income support payments under the ABSTUDY Living Allowance or Group 2 School Fees Allowance (means-tested component) and Assistance for Isolated Children (AIC) (Additional Boarding Allowance students) schemes. That is, if more than one person in a family pool receives youth allowance, or the abovementioned ABSTUDY or AIC payments, the 20 per cent reduction is split amongst those people in the family pool in proportion to their respective maximum basic rates of income support.

Where a person in the family pool becomes excluded from receiving youth allowance, the 20 per cent reduction will be spread amongst the remaining members of the family pool. This may occur where a person is precluded from receiving youth allowance as a result of the amendments at **item 15** which preclude full-time secondary students aged 16 to 17 from receiving youth allowance in certain circumstances.

The amendments in this item will address this issue, allowing people who meet the new definition of a **senior secondary school child** and are precluded from receiving youth allowance as a result of the amendments in **item 15** to be included in the family pool.

New section 1067G-F31 provides that submodule 6 of Module F applies in relation to an FTB child aged 16 or more who is a senior secondary school child as if the PIT under Module F applied to the person, and prescribes the maximum payment rates to be used for the purposes of submodule 6.

New section 1067G-F32 provides that, for the purposes of submodule 6, senior secondary school child has the same meaning as given by section 22B of the Family Assistance Act (disregarding subparagraph 22B(1)(a)(i) of that Act).

Part 2 – Application and transitional provisions

Item 17 provides application and transitional provisions for the Schedule.

Subitem 17(1) provides that the amendment made by **item 2** (relating to the child income test) applies in relation to working out if an individual is an FTB child for days on or after 1 January 2012.

Subitem 17(2) provides that the amendment made by **item 5** (relating to the child income test for an approved care organisation) applies in relation to working out whether an approved care organisation is eligible for FTB for days on or after 1 January 2012.

Subitem 17(3) provides that the amendments made by **items 6 to 10** (relating to the FTB child rate for 16 to 19 year olds in full-time secondary study or equivalent, and consequential changes to calculations for FTB Part B, multiple birth allowance and rent assistance) apply in relation to working out the rate of FTB for days on or after 1 January 2012.

Subitem 17(4) provides a transitional approach to the application of the new child standard rate (base child rate) for method 2 resulting from the amendments to paragraphs 26(2)(a) and (b) by **item 7**. If, on or after 1 January 2012, it is necessary to work out an individual's standard rate under Division 2 of Part 3 of Schedule 1 to the Family Assistance Act in relation to an FTB child who turned 18 before 1 January 2012 and who is a senior secondary school child, then the higher base child rate in paragraph 26(2)(b) continues to apply to the FTB child, in substitution for the lower base child rate in paragraph 26(2)(a).

Subitem 17(5) provides that the amendment made by **item 13** (relating to the relevant reconciliation time if the child income test applies for a child who has turned 16) applies in relation to same-rate benefit periods beginning on or after 1 January 2012.

Subitem 17(6) contains a transitional provision which will 'grandfather' existing youth allowance recipients and those people who would have been receiving youth allowance except for the application of a compliance penalty period. This provision ensures that youth allowance recipients have the choice, at the time of implementation, to continue to receive student income support or to transfer to FTB.

The subitem provides that the amendments made by **items 14 and 15** do not apply in relation to:

- a person who was receiving youth allowance immediately before the commencement of those items; or
- a person who would have been receiving youth allowance immediately before the commencement of those items except for the application of a compliance penalty period.

Schedule 3 – Baby bonus

Summary

This Schedule provides for eligible baby bonus claimants to have a larger portion of their baby bonus paid to them upfront, from 1 July 2011, to assist them in meeting the initial costs of welcoming a child into the family. This is one of the measures in the Government's Better Access to Family Payments election commitment.

Background

This measure is intended to assist with the upfront costs associated with a birth or adoption, such as buying a pram, baby clothes or setting up a bedroom.

Baby bonus is paid in 13 fortnightly instalments (or, in limited circumstances, 26 weekly payments). As a result of the changes made by this measure, from 1 July 2011, claimants will receive more (\$500 more in 2011-12) in the first fortnightly instalment than in the 12 subsequent fortnightly instalments. The 12 subsequent payments will help parents meet ongoing costs during the baby's first six months.

The total amount of baby bonus will not change under this measure (currently \$5,294), and the amount of baby bonus will continue to be indexed on 1 July each year in accordance with existing arrangements.

The amendments made by this Schedule commence on 1 July 2011.

Explanation of the changes

Item 1 repeals subsections 47(1) and (2) of the Family Assistance Administration Act and substitutes new subsections 47(1), (2) and (2A).

New subsection 47(1) sets out how baby bonus will be paid to claimants who are entitled to receive baby bonus as 13 fortnightly instalment payments. New paragraph 47(1)(a) provides that the Secretary must pay the claimant the **upfront part** of the amount of baby bonus that the claimant is entitled to at the end of the claimant's first instalment period. The **upfront part** is the amount set out in new subsection 47(2A).

New paragraph 47(1)(b) provides that, following the payment of the upfront part amount, the remainder of the baby bonus entitlement is paid over 12 fortnightly instalment periods. The amount for each of the remaining fortnightly periods is worked out by subtracting the upfront part from the total baby bonus entitlement and dividing the remaining amount by 12.

The note following new subsection 47(1) notes that section 47AB provides for rounding of the amounts of baby bonus payments.

New subsection 47(2) sets out how baby bonus will be paid to claimants who are entitled to be paid baby bonus as 26 weekly instalment payments. For claimants who are entitled to receive weekly payments, the payment for the first two weekly instalment periods is half of the upfront part of the amount of baby bonus the claimant is entitled to.

Paragraph 47(2)(d) provides that, for the remaining 24-week period the amount for each of the weekly periods is worked out by subtracting the upfront part from the total baby bonus entitlement and dividing the remaining amount by 24.

The note following new subsection 47(2) notes that section 47AB provides for rounding of the amounts of baby bonus payments.

New subsection 47(2A) sets out the amount that is the upfront part. For the 2011-2012 financial year the upfront part is \$879.77. For the 2012-13 financial year and later financial years, the upfront part will be 16.18 per cent of the total amount of baby bonus that the claimant is entitled to.

Item 2 is an application provision providing that **item 1** only applies to individuals who become eligible for baby bonus on or after 1 July 2011.

Schedule 4 – Thalidomide payments

Summary

This Schedule ensures that payments made from the Thalidomide Australia Fixed Trust to beneficiaries of the Trust, or in respect of a beneficiary of the Trust, are exempt from income tax and from social security and veterans' affairs income tests. This Schedule also ensures that Commonwealth ex gratia payments, made to beneficiaries of the Trust in respect of social security and veterans' affairs payments, forgone due to the income test exemption currently not being in effect, are also exempt from income tax.

Background

The morning sickness drug, thalidomide, which has been associated with a range of birth defects, was distributed by the Distillers Company (Bio-chemicals) Australia Pty Ltd to Australians from 1958 to 1962.

The majority of thalidomide survivors received common law settlements around 1974. However, as a result of negotiations initiated in September 2008 with Diageo plc (the British company which acquired the companies that initially distributed the drug), Diageo plc has agreed to make payments of varying amounts to the 36 Australian thalidomide survivors by way of an annuity.

Under the social security law and the Veterans' Entitlements Act, a person's rate of income support payment is subject to an income and assets test. Currently, payments such as these annuity payments are assessable as income for social security and veterans' affairs purposes, which has resulted in any thalidomide survivors who receive income support payments either having their rate reduced or their payment suspended or cancelled. Payments such as the annuity payments are also assessable for income tax purposes.

Subsection 8(8) of the Social Security Act and subsection 5H(8) of the Veterans' Entitlements Act specify certain amounts that are not income for the purposes of the social security law and the Veterans' Entitlements Act.

This Schedule amends both subsection 8(8) and subsection 5H(8) and provides for these annuity payments to be excluded from the income test under the social security law and the Veterans' Entitlements Act. The Schedule also amends section 51-30 of the *Income Tax Assessment Act 1997* (the Income Tax Assessment Act) to ensure the annuity payments are included in a list of income that is exempt from income tax.

As a result of being paid these thalidomide payments, survivors who were in receipt of a social security payment or income support under the Veterans' Entitlements Act may have had their social security or veterans' affairs payment suspended due to the effect of the social security or veterans' affairs income test.

Because legislative amendments to exempt the payments from the income tests could not be enacted immediately, Commonwealth ex gratia payments were made to survivors whose income support had been affected. These payments are assessable income in the hands of survivors due to the operation of the income tax law. This Schedule amends section 51-30 of the Income Tax Assessment Act to include the ex gratia payments made to survivors in the list of exempt income.

Under the pension reform measures that occurred in 2009, a person who was receiving certain social security or veterans' affairs payments on 19 September 2009 can continue to have their payment calculated under transitional rules if those rules provide a higher payment rate than new rules introduced under the pension reforms, provided the person remains continuously on the payment. As a result, a number of social security and veterans' affairs recipients continue to have their payment calculated under the transitional rules as this gives them a higher rate of payment than under the new rules.

However, where the person's social security or veterans' affairs payment is no longer payable — for example, when their assessable income exceeds the disqualifying limit — access to the transitional rules is lost and cannot be regained. As a consequence, if the person's social security or veterans' affairs payment subsequently becomes payable again, the person's rate would be calculated according to the new rules which could be at a lower rate. Most of the thalidomide survivors who were receiving a social security or veterans' affairs payment are no longer receiving their payment. As a result, those who were paid under the transitional rules have lost access to those rules.

This Schedule provides for thalidomide survivors to regain access to the transitional rules as soon as their social security or veterans' affairs payment becomes payable on commencement of the amendments to subsection 8(8) of the Social Security Act or subsection 5H(8) of the Veterans' Entitlements Act.

The amendments made by this Schedule commence the day this Act receives Royal Assent.

Explanation of the changes

Part 1 – Main amendments

Amendments to the Income Tax Assessment Act

Item 1 includes payments from the Thalidomide Australia Fixed Trust and the Commonwealth ex gratia thalidomide payments in the list of exempt income in section 11-15.

Item 2 amends section 51-30, which lists tax-exempt 'Welfare' payments, to include payments from the Thalidomide Australia Fixed Trust and the Commonwealth ex gratia thalidomide payments.

The exemption will apply provided the payments are made to a beneficiary of the Trust or to another individual in respect of a beneficiary of the Trust. Payments applied for the benefit of a beneficiary of the Trust to cover specific expenses will also be tax exempt to the beneficiary of the Trust. However, the amendment does not exempt these payments in the hands of any third party recipient.

Item 3 is an application provision and provides that the amendments made to exempt the Commonwealth ex gratia thalidomide payments will apply for the 2010-11 and 2011-12 income years only. As the payments will only be made until such time as payments from the Thalidomide Australia Fixed Trust are made exempt from social security income tests, it is not necessary for this exemption to be ongoing.

Item 3 also provides that the amendments made to exempt payments from the Thalidomide Australia Fixed Trust from income tax commence in the 2010-11 income year and apply thereafter.

Amendments to the Social Security Act

Item 4 inserts new paragraph 8(8)(vc) into subsection 8(8). New paragraph 8(8)(vc) provides that a payment by the Thalidomide Australia Fixed Trust that is made to, or applied for the benefit of, a beneficiary of the Trust or is made to a person in respect of a beneficiary of the Trust is not income for the purposes of the Social Security Act.

Item 5 repeals paragraph 146(1)(b) of Schedule 1A to the Social Security Act and substitutes a new paragraph 146(1)(b). New paragraph 146(1)(b) provides that the transitional rules under clause 146 continue to apply to a person as long as they continuously receive one of the pensions listed in paragraph 146(1)(a) (even if the person transfers between a number of those pensions or otherwise stops receiving one and starts receiving another without a gap of a day or more between the receipt of either pension) or subclause 146(1A) applies.

Item 6 inserts new subclause 146(1A) into clause 146 of Schedule 1A of the Social Security Act. New subclause 146(1A) applies to a person if:

- (a) a payment by the Thalidomide Australia Fixed Trust:
 - is made to, or applied for the benefit of, the person or the person's partner as a beneficiary of the Trust; or
 - is made to the person or the person's partner in respect of a beneficiary of the Trust; and
- (b) subparagraph 146(1)(b)(i) applies to the person immediately before the payment is made; and
- (c) at the commencement of **item 4** of Schedule 4 to this Act, the person receives a social security payment mentioned in paragraph 146(1)(a); and
- (d) after the commencement of **item 4**, the person continues, without a break, to receive that social security payment or any of the other payments listed in paragraph 146(1)(a).

The purpose of this subclause is to ensure that any thalidomide survivors, who have received an annuity payment which has resulted in their social security payment being cancelled or suspended, will regain access to the transitional rules, provided they receive one of the listed payments and the other requirements of clause 146 apply.

Amendments to the Veterans' Entitlements Act

Item 7 inserts new paragraph 5H(8)(xb) into subsection 5H(8). New paragraph 5H(8)(xb) provides that a payment by the Thalidomide Australia Fixed Trust that is made to, or applied for the benefit of, a beneficiary of the Trust or is made to a person in respect of a beneficiary of the Trust is not income for the purposes of the Veterans' Entitlements Act.

Item 8 repeals paragraph 30(1)(b) of Schedule 5 to the Veterans' Entitlements Act and substitutes a new paragraph 30(1)(b). New paragraph 30(1)(b) provides that the transitional rules under clause 30 continue to apply to a person as long as they continuously receive one of the pensions listed in paragraph 30(1)(a) (even if the person transfers between a number of those pensions or otherwise stops receiving one and starts receiving another without a gap of a day or more between the receipt of either pension) or subclause 30(1A) applies.

Item 9 inserts new subclause 30(1A) into clause 30 of Schedule 5 to the Veterans' Entitlements Act. New subclause 30(1A) applies to a person if:

- (a) a payment by the Thalidomide Australia Fixed Trust:
 - is made to, or applied for the benefit of, the person or the person's partner as a beneficiary of the Trust; or
 - is made to the person or the person's partner in respect of a beneficiary of the Trust; and
- (b) subparagraph 30(1)(b)(i) applies to the person immediately before the payment is made; and
- (c) at the commencement of **item 7** of Schedule 4 to this Act, the person receives a payment mentioned in paragraph 30(1)(a); and
- (d) after the commencement of **item 7**, the person continues, without a break, to receive that payment or any of the other payments listed in paragraph 30(1)(a).

The purpose of this subclause is to ensure that any thalidomide survivors, who have received an annuity payment which has resulted in their social security or Veterans' Entitlements Act payment being cancelled or suspended, will regain access to the transitional rules, provided they receive one of the listed payments and the other requirements of clause 30 apply.

Part 2 – Amendments commencing on 1 July 2014

Amendments to the Income Tax Assessment Act

Item 10 repeals, with effect from 1 July 2014, the Commonwealth ex gratia thalidomide payment from the list of exempt income in section 11-15. It is not anticipated that ex gratia payments will be made from 1 July 2014, as they will only be made while the payments from the Trust are assessed as income for social security means test purposes.

Item 11 repeals, with effect from 1 July 2014, the exemption for the Commonwealth ex gratia thalidomide payments in section 51-30. The ex gratia payments are not anticipated to be made from 1 July 2014.

Schedule 5 – Income management

Summary

This Schedule makes some minor improvements to the income management provisions, including the matched savings scheme payment, debt recovery and nominee arrangements.

Background

Matched savings scheme payment

The matched savings scheme payment is designed to assist those on compulsory income management to improve their financial literacy and to encourage saving. The payment is payable to people who are subject to compulsory income management, who undertake an approved financial management or money management course and accumulate savings.

To qualify for the matched savings payment, a person must be subject to income management, in the qualifying savings period, under the child protection, vulnerable welfare payment recipients, school enrolment, school attendance, disengaged youth or long-term welfare payment recipient measures under Subdivision A of Division 2 of Part 3B of the *Social Security (Administration) Act 1999* (Social Security Administration Act).

The person must also maintain a pattern of regular savings throughout the qualifying savings period of at least 13 consecutive weeks. Currently, the qualifying savings period begins at any time after the person has commenced an approved course.

This Schedule makes changes to subparagraph 1061WG(1)(b)(i) of the Social Security Act to clarify that a person's qualifying savings period starts from the date of registration for, not commencement of, a course.

This change seeks to clarify the starting date for the commencement of the qualifying savings period for the matched savings scheme payment.

Nominees

This Schedule also makes changes to the income management measure with respect to nominees, including the concept of who is a nominee, the requirement for consent in certain circumstances, the giving of stored value cards to the principal or nominee, and the nominee's status if the nominee becomes subject to the income management measure under the child protection measure.

Currently, Part 3B of the Social Security Administration Act provides for two types of nominee, a 'designated nominee' and a 'payment nominee'. This has resulted in some inconsistency in the treatment of nominees in relation to 16 to 17 year old dependent youth allowance recipients. This Schedule simplifies the concept of nominee and resolves the inconsistency in the treatment of welfare recipients by combining designated and payment nominees into one entity.

Under subsection 123E(1A) of the Social Security Administration Act, if a payment nominee becomes subject to income management under the child protection measure, the Secretary must cancel the appointment of the nominee. This requirement could have some unintended consequences for youth allowance recipients, as cancellation of the youth allowance recipient's parent's nominee status would result in the youth allowance recipient's payment no longer being subject to income management. This was not the intention of the income management measure. This Schedule addresses this problem, although the Secretary will continue to have a general revocation power under subsection 33(3) of the *Acts Interpretation Act 1901*.

Currently, a person who is a payment nominee must obtain the principal's permission to enter into a written agreement with the Secretary to be subject voluntarily to income management. This may result in parents having to obtain that permission from their child. While this may have been appropriate when voluntary income management was originally introduced as an alternative to the child protection measure, with the expansion of voluntary income management, and those people on voluntary income management no longer being considered inappropriate to act as nominees, this is no longer the case. This Schedule removes the requirement for the principal's consent.

Under Part 3B of the Social Security Administration Act, a person who is subject to income management (or the person's nominee) may, with the person's consent (or the nominee's consent), give a third person a stored value card that enables the third person to acquire goods or services. This Schedule makes amendments so that a nominee may consent to the principal, rather than the third person, being given a stored value card.

Debt recovery

Section 123ZF of the Social Security Administration Act currently provides that, if a person obtains the value of a cheque, which was issued to another person who is subject to income management, without the endorsement of the payee, this will result in a debt being due by that unauthorised person to the Commonwealth. Under section 123ZF, if the Commonwealth receives an amount, by way of reimbursement, from the unauthorised person, the customer's income management account is credited by the amount received, but only after the actual recovery of the funds. This can leave the customer out-of-pocket until the funds are actually recovered.

This Schedule seeks to remedy this situation by allowing the Secretary to credit the customer's income management account by the amount of any debt raised under section 123ZF prior to the debt actually being recovered. This will mean that the person will not have to wait for the funds to be actually recovered.

This Schedule also makes a minor technical amendment to the legislative instrument making power in paragraph 123YL(2)(b) of the Social Security Administration Act.

The amendments made by this Schedule commence on the day after Royal Assent.

Explanation of the changes

Part 1 – General amendments

Amendments to the Family Assistance Administration Act

Item 1 repeals subsection 219TE(1A). This subsection was originally inserted by the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007*. The requirement to cancel the appointment of a nominee under subsection 219TE(1A) has unintended consequences if a person, who is a payment nominee of a family assistance recipient, becomes subject to income management under the child protection measure. In these circumstances, the person's nominee status must be cancelled, with the result that the family assistance recipient's payment is no longer subject to income management. This was not the intention of subsection 219TE(1A). The Secretary does, however, under section 219TO, have the general power to revoke, vary or amend under subsection 33(3) of the *Acts Interpretation Act 1901* (due to the reference to 'writing' in section 219TB) the instrument appointing a nominee.

Amendments to the Social Security Act

Item 2 removes the word 'commenced' in subparagraph 1061WG(1)(b)(i) and replaces it with 'is registered for'. This makes it clear that the relevant date that a person's qualifying savings period starts from is the day the course operator registers the person, not the day the person takes action to become registered for the course. For example, where the course provider sends out a confirmation letter in response to a customer's application to undertake an approved course, the date of the letter would be taken to be the date of acceptance for the course. The start date would, therefore, be the date of the letter.

Amendments to the Social Security Administration Act

Item 3 repeals subsection 123E(1A). As with **item 1**, this subsection was inserted by the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007*. The requirement to cancel the appointment of a nominee under subsection 123E(1A) has unintended consequences if a parent, who is a payment nominee of a youth allowance recipient, becomes subject to income management under the child protection measure. In these circumstances, the parent's nominee status must be cancelled, with the result that the youth allowance recipient's payment is no longer subject to income management. This was not the intention of subsection 123E(1A). The Secretary does, however, under section 123P have the general power to revoke, vary or amend under subsection 33(3) of the *Acts Interpretation Act 1901* (due to the reference to 'writing' in section 123B) the instrument appointing a nominee.

Item 4 repeals the definition of **designated nominee** in section 123TC because the amendment made by **item 7** below makes the definition redundant.

Item 5 inserts into section 123TC a definition of **excluded Part 3B payment nominee**, which means the Public Trustee of a State or Territory or a Part 3B payment nominee who is not subject to the income management measure.

Item 6 repeals the definition of **excluded payment nominee** in section 123TC because the amendment made by **item 5** above makes the definition redundant.

Item 7 inserts into section 123TC a definition of **Part 3B payment nominee**, which means:

- a person who, by virtue of an appointment in force under section 123B of the Social Security Administration Act or under section 219TB of the Family Assistance Administration Act, is a payment nominee; or
- a person to whom payment of another person's service pension is made by virtue of an approval under section 58 of the Veterans' Entitlements Act or an appointment under section 202 of the Veterans' Entitlements Act; or
- a person to whom another person's instalments of youth allowance are to be paid in accordance with subsection 45(1) of the Social Security Administration Act.

Item 8 repeals the definition of **payment nominee** in section 123TC because the amendment made by **item 7** above makes the definition redundant.

Item 9 makes a minor technical amendment to section 123UC.

Item 10 adds new subsection 123UC(2). New subsection 123UC(2) provides a further rule for when a person is subject to income management under the child protection measure. It provides that a person is subject to income management under this measure at a particular time if the person is not otherwise subject to income management under any other provision of Subdivision A of Division 2 of Part 3B of the Social Security Administration Act, and the person has a payment nominee who is subject to income management under subsection 123UC(1).

Item 11 repeals paragraph 123UM(3)(c) and replaces it with a new paragraph 123UM(3)(c) due to the amendment made by **item 5**.

Items 12, 13 and 14 repeal paragraph 123UM(3)(d) and subparagraphs 123UN(1)(a)(iv) and 123UO(3)(b)(iv) respectively. These provisions relate to the requirement that a person, who is a payment nominee, must obtain the principal's permission under section 123UP (which is being repealed by **item 15**) to enter into a written agreement with the Secretary to be subject voluntarily to income management.

Item 15 repeals section 123UP.

Item 16 repeals paragraph 123YE(2)(b).

Item 17 makes a minor technical amendment to subparagraph 123YE(2)(c)(ii) due to the amendment made by **item 18**.

Item 18 repeals paragraph 123YE(2)(d).

Item 19 makes a minor technical amendment to paragraph 123YE(2)(e) due to the amendment made by **item 16** above.

Item 20 makes a minor technical amendment to paragraph 123YE(2)(f) due to the amendment made by **item 18** above.

Items 21, 22, 23 and 25 remove the words 'or a third person' from the provisions identified in these items.

Items 24, 26, 43 and 54 remove the words 'or the third person, as the case may be' from the provisions identified in these items.

Item 27, 44 and 55 remove the words 'a third person a stored value card that enables the third person' from the provisions identified in these items and replaces them with 'the first person a stored value card that enables the first person'.

Items 28 to 32, 34, 45, 48 and 56 remove the words 'a third person' from the provisions identified in these items and replaces them with 'the first person'.

Items 33, 35, 47, 49 and 57 remove the words ‘the first person or the third person’ from the provisions identified in these items and replaces them with ‘or the first person’.

Item 36 removes the word ‘Minister’ from subparagraph 123YL(2)(b)(ii) and replaces it with ‘Secretary’. This gives the power to make a legislative instrument for the purposes of this subparagraph to the Secretary, which is consistent with other provisions in section 123YL.

Item 37 makes a minor technical amendment to paragraph 123YM(2)(h) due to the amendment made by **item 38**.

Item 38 repeals paragraph 123YM(2)(i).

Item 39 makes a minor technical amendment to paragraph 123YM(2)(k) due to the amendment made by **item 38** above.

Items 40 and 42 remove the words ‘or (i), the Secretary gives the first person or a third person’ from the provisions identified in these items and replaces them with ‘, the Secretary gives the first person’.

Item 41 removes the words ‘or a third person a stored value card under paragraph (2)(h) or (i)’ from subsections 123YM(4) and (6) and replaces them with ‘a stored value card under paragraph (2)(h)’.

Item 46 removes the words ‘the designated nominee’ from subsection 123YN(8) and replaces them with ‘the Part 3B payment nominee or the first person’.

Item 50 makes a minor technical amendment to paragraph 123YO(2)(g) due to the amendment made by **item 51**.

Item 51 repeals paragraph 123YO(2)(h).

Item 52 makes a minor technical amendment to paragraph 123YO(2)(j) due to the amendment made by **item 51** above.

Item 53 removes the words ‘or (h), the Secretary gives the first person or a third person’ from the provisions identified in this item and replaces them with the phrase ‘, the Secretary gives the first person’.

Item 58 makes a minor technical amendment to section 123ZC due to the amendment made by **item 9** above.

Item 59 makes a minor technical amendment to section 123ZE due to the amendment made by **item 9** above.

Item 60 repeals subsections 123ZF(3) and (4) and replaces them with new subsections 123ZF(3) and (4). These provisions relate to the misuse of cheques.

New subsection 123ZF(3) provides that, where a customer has been issued with a cheque and, without the person's consent, the cheque has been used by a third party, then the Secretary may re-credit the person's income management account by an amount equal to the value of the cheque.

New subsection 123ZF(4) provides that, where the Secretary decides to re-credit a person's income management account under subsection (3), then the value of the cheque in question is credited to both the Income Management Record and the person's income management account.

Item 61 is an application provision for **item 60**. It provides that **item 60** applies to the use of a cheque after the commencement of that item, or to its use prior to the commencement of that item where no amount has yet been recovered by the Secretary from the unauthorised person.

Part 2 – Part 3B payment nominee amendments

Items 62 to 96 remove the words 'payment nominee' and 'designated nominee' (wherever they occur) from the provisions identified in these items and replace them with 'Part 3B payment nominee'.

A note after each of **items 73, 76, 81, 84, 89, 92 and 95** signposts that the heading to the provision identified in each note is altered by removing the reference to 'designated nominee' and replacing it with 'Part 3B payment nominee'.