2010-2011

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAX LAWS AMENDMENT (2011 MEASURES No. 1) BILL 2011

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Deputy Prime Minister and Treasurer, the Hon Wayne Swan MP)

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

Abbreviation	***Definition***
Commissioner	Commissioner of Taxation
FSHA	First Home Saver Account
ITAA 1997	*Income Tax Administration Act 1997*
TFN	tax file number

General outline and financial impact

Tax exemption for the Disaster Income Recovery Subsidy

Schedule 1 to this Bill amends the *Income Tax Assessment Act 1997* to exempt from income tax the Disaster Income Recovery Subsidy paid to those affected by the floods that occurred in Australia on or after 29 November 2010 and those affected by Cyclone Yasi.

Date of effect: 10 January 2011.

Proposal announced: This measure was announced in:

- the Prime Minister's Media Release of 10 January 2011 titled *Income recovery subsidy assistance to help those affected by the floods*;
- the Prime Minister's Media Release of 3 February 2011 titled *Commonwealth assistance for Queenslanders impacted by Tropical Cyclone Yasi*; and
- the Assistant Treasurer and Minister for Financial Services and Superannuation's Media Release No. 016 of 21 January 2011.

Financial impact: Nil.

Compliance cost impact: Nil.

Tax exemption for ex-gratia payments to New Zealand non-protected special category visa holders

Schedule 1 to this Bill also amends the *Income Tax Assessment Act 1997* to exempt from income tax ex-gratia payments to New Zealand non-protected special category visa holders for a disaster that occurred in Australia during the 2010-11 financial year.

Date of effect: 31 January 2011.

Proposal announced: Not announced.

Financial impact: Nil.

Compliance cost impact: Nil.

Tax exemption for recovery grants for the 2010-11 floods and Cyclone Yasi

Schedule 2 to this Bill amends the *Income Tax Assessment Act 1997* to provide an exemption from income tax for Category C Natural Disaster Relief and Recovery Arrangements grants paid to small businesses and primary producers, where the Category C grant relates to flooding that occurred in Australia on or after 29 November 2010 and those small businesses and primary producers affected by Cyclone Yasi.

Date of effect: This measure applies to Category C grants paid to small businesses and primary producers, where the grant relates to flooding that occurred in Australia on or after 29 November 2010 and those small businesses and primary producers affected by Cyclone Yasi.

Proposal announced: This measure was announced in the Assistant Treasurer and Minister for Financial Services and Superannuation's Media Release No. 016 of 21 January 2011 and in the Deputy Prime Minister and Treasurer, the Premier of Queensland and the Minister Assisting the Attorney-Generals' Joint Media Release No. 010 of 16 February 2011.

Financial impact: The preliminary estimate of the revenue impact of the tax exemption, based on the expected number of small businesses and primary producers affected by floods, is shown in the table below. These estimates do not include any allowance for the extension of assistance to small businesses and primary producers affected by Cyclone Yasi, which cannot be quantified until more information on businesses likely to have been affected is known. The estimates also do not include allowance for future Category C grants that may be made for future events.

2011-12	***2012-13***	***2013-14***	***2014-15***
−$45m	−$25m	−$10m	−$2.5m

Compliance cost impact: Nil.

Increasing the flexibility of First Home Saver Accounts

Schedule 3 to this Bill increases the flexibility of the *First Home Saver Accounts Act 2008* by allowing money in a First Home Saver Account to be paid into a genuine mortgage after the end of a minimum qualifying period (should the account-holder purchase a dwelling prior to the release conditions being satisfied) rather than requiring it to be transferred to a superannuation or retirement savings account.

Date of effect: The new rules apply only to persons who acquire a 'qualifying interest' in a dwelling (as defined in section 12 of the *First Home Saver Accounts Act 2008)* after the commencement of this Bill.

Proposal announced: This measure was announced in the 2010-11 Budget and in the Treasurer's Media Release No. 033 of 11 May 2010.

Financial impact: Nil.

Compliance cost impact: Low.

Chapter 1
Tax exemption for the Disaster Income Recovery Subsidy

Outline of chapter

1.1 Schedule 1 to this Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997) to exempt from income tax the Disaster Income Recovery Subsidy paid to those affected by the floods that occurred in Australia on or after 29 November 2010 and those affected by Cyclone Yasi.

Context of amendments

1.2 The Disaster Income Recovery Subsidy provides financial assistance to employees, small business persons and farmers who can demonstrate they have experienced a loss of income as a direct consequence of the flooding and severe weather that occurred in Australia on or after 29 November 2010.

1.3 The Prime Minister announced the Disaster Income Recovery Subsidy on 10 January 2011.

1.4 The Disaster Income Recovery Subsidy is administered by Centrelink, and is equivalent to the maximum rate of the Newstart allowance depending on the person's circumstances.

1.5 A payment received by a taxpayer as replacement for lost salary, wages or other income is generally taxable. A legislative amendment is required to make the payment exempt from income tax.

1.6 Exempting these payments from income tax will lessen the financial hardship experienced by those individuals affected by the flooding events that began in late November 2010 and continued in 2011 in Queensland, New South Wales, Western Australia, Victoria and South Australia, as well as those individuals affected by Cyclone Yasi which devastated parts of Queensland in February 2011.

Summary of new law

1.7 This measure amends section 51-30 of the ITAA 1997 to list the Disaster Income Recovery Subsidy as exempt from income tax if it has been claimed after 9 January 2011 and before 1 March 2011.

Detailed explanation of new law

1.8 Section 11-15 of the ITAA 1997 lists income which is exempt from income tax. This list will be amended to include the Disaster Income Recovery Subsidy for the floods that occurred in Australia on or after 29 November 2010, or for Cyclone Yasi, as an exempt payment. ***[Schedule 1, item 1]***

1.9 Section 51-30 of the ITAA 1997 contains a table listing welfare payments that are exempt from income tax and any exceptions and special conditions that must be met to qualify for the exemption.

1.10 The amendment to section 51-30 will make the Disaster Income Recovery Subsidy for the floods that occurred in Australia on or after 29 November 2010, or for Cyclone Yasi, exempt from income tax. ***[Schedule 1, item 2]***

Application and transitional provisions

1.11 These amendments exempt from income tax the Disaster Income Recovery Subsidy payments made to victims of the 2010-11 floods or Cyclone Yasi where these payments are claimed after 9 January 2011.

1.12 These amendments will be repealed on 1 July 2014, by which time the amendments would have become inoperative. ***[Schedule 1, items 3 and 4]***

Chapter 2
Tax exemption for ex-gratia payments to New Zealand non-protected special category visa holders

Outline of chapter

2.1 Schedule 1 to this Bill also amends the *Income Tax Assessment Act 1997* (ITAA 1997) to exempt from income tax ex-gratia payments to New Zealand non-protected special category visa holders for a disaster that occurred in Australia during the 2010-11 financial year.

Context of amendments

2.2 New Zealand citizens who arrived in Australia after 26 February 2001 are classified as non-protected special category visa holders and are not eligible for the Australian Government Disaster Recovery Payment.

2.3 The Australian Government Disaster Recovery Payment provides short-term financial assistance to individuals adversely affected by a major or widespread disaster, such as the floods that occurred in Australia on or after 29 November 2010, Cyclone Yasi which devastated parts of Queensland in February 2011, or the Western Australian bushfires of February 2011.

2.4 In light of the hardship these recent disasters may have caused New Zealand special category visa holders, the Government agreed to make ex-gratia payments to affected eligible New Zealand special category visa holders.

2.5 The ex-gratia payment provides assistance to New Zealand non-protected special category visa holders who have been adversely affected by the 2010-11 disasters in Australia. This assistance is payable in local government areas where the Australian Government Disaster Recovery Payment has been made available due to the disasters which commenced in November 2010 and continued into 2011.

2.6 The ex-gratia payment will reflect the Australian Government Disaster Recovery Payment rates of $1,000 for eligible adults and $400 for eligible children.

2.7 The ex-gratia payment is administered by Centrelink, and can be claimed until and including 31 July 2011.

2.8 Exempting from income tax the ex-gratia payment to New Zealand special category visa holders who have been affected by the recent disasters ensures that the payment receives the same tax treatment as the Australian Government Disaster Recovery Payment made to eligible individuals.

Summary of new law

2.9 This measure amends section 51-30 of the ITAA 1997 to list the assistance for New Zealand non-protected special category visa holders as exempt from income tax if it has been claimed after 30 January 2011 and before 1 August 2011.

Detailed explanation of new law

2.10 Section 11-15 of the ITAA 1997 lists income which is exempt from income tax. This list will be amended to include the assistance for New Zealand non-protected special category visa holders for a disaster that occurred in Australia during the 2010-11 financial year, as an exempt payment. ***[Schedule 1, item 1]***

2.11 Section 51-30 of the ITAA 1997 contains a table listing welfare payments that are exempt from income tax and any exceptions and special conditions that must be met to qualify for the exemption.

2.12 The amendment to section 51-30 will make the assistance for New Zealand non-protected special category visa holders for a disaster that occurred in Australia during the 2010-11 financial year, exempt from income tax. ***[Schedule 1, item 2]***

Application and transitional provisions

2.13 These amendments exempt from income tax ex-gratia payments made to New Zealand non-protected special category visa holders who were adversely affected by a disaster that occurred in Australia during the

2010-11 financial year, where these payments are made after 30 January 2011.

2.14 These amendments will be repealed on 1 July 2014, by which time the amendments would have become inoperative. ***[Schedule 1, items 3 and 4]***

Chapter 3
Tax exemption for recovery grants for the 2010-11 floods and Cyclone Yasi

Outline of chapter

3.1 Schedule 2 to this Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997) to provide an exemption from income tax for Category C Natural Disaster Relief and Recovery Arrangements grants paid to small businesses and primary producers, where the Category C grant relates to flooding that occurred in Australia on or after 29 November 2010 and those small businesses and primary producers affected by Cyclone Yasi.

Context of amendments

3.2 The Australian Government and several State Governments have announced that they will be providing clean up and recovery grants under the Natural Disaster Relief and Recovery Arrangements to small businesses and primary producers who have been directly affected by recent flooding and Cyclone Yasi.

3.3 The grants vary from $5,000 up to $25,000.

3.4 Generally, such grants are treated as assessable income under the income tax law.

3.5 This measure was announced in the Assistant Treasurer and Minister for Financial Services and Superannuation's Media Release No. 016 of 21 January 2011 and in the Deputy Prime Minister and Treasurer, the Premier of Queensland and the Minister Assisting the Attorney-Generals' Joint Media Release No. 010 of 16 February 2011.

3.6 The Government is ensuring that the clean up and recovery grant payments for flood and Cyclone Yasi affected small businesses and primary producers receive the same tax treatment as the 'Clean up and restoration' grants that were paid to small businesses and primary producers who were affected by the 2009 Victorian bushfires.

Detailed explanation of new law

3.7 This measure defines certain Category C Natural Disaster Relief and Recovery Arrangements payments made to small businesses and primary producers affected by flooding on or after 29 November and by Cyclone Yasi as 'non-assessable non-exempt income'. This approach ensures that the grant is not subject to income tax, while avoiding interactions with the income tax law. Specifically, if the grant was treated as exempt income, taxpayers with losses brought forward from previous years would be required to first reduce these losses by the value of the exempt grant income (and any other exempt income) before they could apply any remaining losses to other income. For 'non-assessable non-exempt' income this treatment is not required, providing a more advantageous outcome for those in a carried forward loss position by retaining the losses that would otherwise be used up if the grant was treated as exempt income. ***[Schedule 2, item 2]***

3.8 While the Government has announced a number of measures to assist both individuals and businesses to recover from the recent flooding and from Cyclone Yasi, this measure only applies to the grants paid to small businesses and primary producers for clean up and recovery.

Consequential amendments

3.9 The table in section 11-55 of the ITAA 1997 is amended to add the Category C Natural Disaster Relief and Recovery Arrangements grants to the list of payments that are non-assessable non-exempt income. ***[Schedule 2, item 1]***

3.10 A technical amendment is made, to ensure that the tax exemption of grant payments made following the 2009 Victorian bushfires continues as originally intended. ***[Schedule 2, item 3]***

Application and transitional provisions

3.11 Given the short period for which the grants would be paid, a sunsetting clause is inserted to repeal this measure with effect on 1 July 2014. ***[Schedule 2, items 4 and 5]***

Chapter 4
Increasing the flexibility of First Home Saver Accounts

Outline of chapter

4.1 Schedule 3 to this Bill increases the flexibility of the *First Home Saver Accounts Act 2008* by allowing money in a First Home Saver Account (FHSA) to be paid into a genuine mortgage after the end of a minimum qualifying period (should the account-holder purchase a dwelling prior to the release conditions being satisfied) rather than requiring it to be transferred to a superannuation or retirement savings account.

Context of amendments

4.2 In the 2007 election, the Government indicated its commitment to assist aspiring first home buyers achieve the goal of owning their first home.

4.3 FHSAs are designed to encourage individuals, through tax concessions and Government contributions, to save for their first home over the medium to long term, and have been available since October 2008.

4.4 The Government contributes 17 per cent on the first $5,500 (indexed) of individual contributions made each year. An individual who makes a contribution of $5,500 to their FHSA will be eligible for a Government contribution of $935.

4.5 There is a cap of $80,000 (indexed) on the overall account balance. If an individual reaches the account balance cap, no further individual contributions will be able to be made into the account. However, earnings and outstanding Government contributions are still able to be credited to the account after this time, allowing the account to continue to grow.

4.6 Individuals are able to pool their FHSAs to purchase a home together with another FHSA holder.

4.7 Earnings on FHSAs are taxed in the hands of the account provider at the statutory rate of 15 per cent rather than in the hands of the individual account holders at their marginal income tax rates.

4.8 Withdrawals are tax free where they are used to purchase a first home. A payment from an FHSA is neither assessable income nor exempt income of the individual account holder.

4.9 An FHSA can only be offered by certain prudentially regulated financial institutions:

- authorised deposit-taking institutions;
- life insurance companies (including friendly societies); and
- registrable superannuation entity licensees who can provide public offer superannuation funds and are authorised to offer FHSAs.

Summary of new law

4.10 This Schedule increases the flexibility of FHSAs.

4.11 Currently, in order to get the money in an FHSA released for use on the purchase of a home, one of the following release conditions must be met:

- the FHSA holder has made a minimum contribution of $1,000 in at least four financial years (not necessarily consecutive);
- the FHSA holder has exceeded the $80,000 cap and has held the account for more than four financial years; or
- the FHSA holder makes a declaration that they will purchase an interest in a property with another FHSA holder who has already met one of the above two conditions.

4.12 If a dwelling is purchased before these conditions are met, the FHSA must be promptly closed, and the money in the account must be paid to the individual FHSA holder's superannuation or retirement savings account.

4.13 The new law will allow the money in an FHSA to be paid to a genuine mortgage after the end of a minimum qualifying period, should

the account holder purchase a dwelling in the interim (and thus breach the existing qualifying conditions).

- A genuine mortgage requires that none of the parties to the mortgage are an associate of another party to the mortgage, and all parties to the mortgage are dealing with each other at arm's length.

4.14 If a dwelling has been purchased prior to the release conditions being met, the money will remain in the FHSA, and any interest will be taxed at the concessional tax rate of 15 per cent, however, no further contributions will be able to be made to the account.

4.15 Once the release conditions have been met, the money in the FHSA will be released to the FHSA holder to be paid towards a genuine mortgage, and the FHSA will be closed.

4.16 If the FHSA holder has no genuine mortgage (that is, the dwelling was purchased outright), the money will be transferred promptly to the account holder's superannuation or retirement savings account, as per the current operation of the law.

4.17 If a dwelling is purchased prior to the release conditions, the FHSA holder still has the option to close the account and pay any money in their FHSA to their superannuation or retirement savings account.

4.18 Other aspects of FHSAs will remain unchanged.

Comparison of key features of new law and current law

New law	*Current law*
The current minimum qualifying periods will still apply, however, an individual who opens an FHSA, then purchases a new home before satisfying the minimum release conditions of the account will be able to keep the FHSA open until the new minimum qualifying condition is met. The money in the account will then be paid towards their genuine mortgage. The money in an FHSA can still be paid into a superannuation or retirement savings account if a	The current minimum qualifying period to release the money in an FHSA for use as a deposit to purchase a first home is generally the earlier of one of three possible times: • the FHSA holder has made a minimum contribution of $1,000 in at least four financial years (not necessarily consecutive); • the FHSA holder has exceeded the $80,000 cap and has held the account during more than four consecutive financial years; or • the FHSA holder makes a

New law	*Current law*
dwelling is purchased before the release conditions are met.	declaration that they will purchase an interest in a property with another FHSA holder who has already met one of the above two conditions. If a dwelling is purchased before satisfying one of the release conditions, any money in the FHSA is paid to the individual's superannuation or retirement savings account.

Detailed explanation of new law

Existing rules governing First Home Saver Accounts

4.19 FHSAs have been available to open since 1 October 2008.

4.20 To achieve the objective of assisting aspiring first home buyers, it is necessary to ensure that these benefits are only provided to individuals who are saving for a first home in which to live. This is achieved by requiring individuals to satisfy certain eligibility criteria in order to open and hold an FHSA.

4.21 The eligibility conditions for opening an FHSA will remain the same as under existing law, as will the existing qualifying periods for those individuals who open an FHSA and satisfy the existing conditions for release of any money in their accounts to be put towards the deposit for their first home.

4.22 The new law clarifies that an individual will not breach the eligibility condition of never having had an FHSA before if they choose to close the account and move to another FHSA provider. ***[Schedule 3, item 1, paragraph 15(2)(e)]***

4.23 Any aspects of FHSAs that are not discussed below will remain as in the existing law.

4.24 A detailed explanation of the existing rules for FHSAs was explained in the explanatory memorandum to the First Home Saver Accounts Bill 2008.

Altered minimum qualifying period (for future payment into a genuine mortgage)

4.25 Currently, in order to get the money in an FHSA released for use on the purchase of a home, certain release conditions must be met. The current release condition is the earliest of:

- the FHSA holder has made a minimum contribution of $1,000 in at least four financial years (not necessarily consecutive);
- the FHSA holder has exceeded the $80,000 (indexed) cap and has held the account for more than four consecutive financial years; or
- the FHSA holder has purchased a property with another FHSA holder who has already met one of the above two conditions.

4.26 If a dwelling is purchased prior to the conditions being met, the money in the FHSA is transferred to the individual's superannuation or retirement savings account.

4.27 Under the new law, if a dwelling is purchased prior to the FHSA holder meeting the minimum release conditions, the account does not need to be closed.

4.28 A new minimum qualifying period will mandate when the money can be released towards a genuine mortgage.

4.29 This means that an individual who purchases a dwelling prior to meeting the existing release conditions will be able to keep their account open until they are deemed to have met one of the minimum qualifying periods so that the money can be released for payment to a genuine mortgage.

4.30 The new law contains a minimum qualifying period for payment to a genuine mortgage that assumes the minimum $1,000 contribution be continued to be paid in each financial year, until a person is deemed to have made contributions of $1,000 in four financial years. Any financial years in which a $1,000 personal contribution was made prior to the account being made inactive (that is, they purchased a dwelling) will count towards the four financial year accumulation period. ***[Schedule 3, items 24 and 25, subparagraph 31(1)(a)(ia) and paragraph 32A(1)(e)]***

4.31 Hence, from when an individual purchases a dwelling, they will have been deemed to have made a $1,000 contribution each year until one of the existing minimum release conditions is met.

4.32 The other minimum release conditions remain unchanged.

4.33 Similar conditions to those for a payment from an FHSA for the purposes of acquiring a home exist for payments from an FHSA for repaying a mortgage (when a dwelling is purchased prior to the individual meeting the minimum release conditions), such as the FHSA holder never previously having held a qualifying interest in a dwelling in Australia or Norfolk Island before, and the application for release of money being given in the approved form. ***[Schedule 3, items 24 and 25, subparagraph 31(1)(a)(ia) and section 32A]***

4.34 This means that, from the time the individual purchases the dwelling, they will be able to keep their account open until such a time when they would have met the minimum release conditions, if they were taken to have made personal FHSA contributions of at least $1,000 for the financial year that includes the acquisition year and for each later financial year.

Example 4.1: Release of money to a genuine mortgage

In August 2009, Nina opens an FHSA. In that financial year she contributes $2,000 to the account. The following July (July 2010, in the next financial year) she only contributes $500. In the 2011-12 financial year, Nina purchases a dwelling as her first home.

Although Nina's FHSA has been open over three financial years, she has only contributed the minimum contribution of $1,000 in one year.

Being:	**2009-10**	**$2,000**
	2010-11	$500
	2011-12	$0

Therefore the account will need to be open for a further three financial years (with the acquisition year of 2011-12 (in which the dwelling was purchased) counting as one of these years) before the money will be released to go towards Nina's genuine mortgage. The years which will contribute towards the release conditions are 2009-10 ($2,000 deposited), 2011-12 (acquisition year), 2012-13 and 2013-14 (deemed under the new minimum qualifying period).

She will not be able to contribute any further money to her FHSA now that she has purchased her first home.

Nina will be able to withdraw her money for putting towards her genuine mortgage from 1 July 2013 (in the 2013-14 financial year).

4.35 If one of the other qualifying conditions is reached first (for example, the $80,000 cap is breached and the account has been open for a minimum of four financial years), then the relevant minimum qualifying period will still apply.

Example 4.2: Release of money to a genuine mortgage

After receiving an inheritance of $75,000, James opens an FHSA and contributes the full amount of his inheritance. The following year, James does not contribute any further funds to his FHSA.

Due to the account earning interest and James receiving the maximum Government FHSA contribution, by the end of the second year, the balance in James's FHSA is now $77,000.

In the third year, James places a further $3,000 in his account.

Later in that year, James purchases a home.

Although James has only made contributions of $1,000 or more in two different financial years, he has reached the $80,000 cap allowed on funds in the account, and his account has been open for three financial years.

In the following financial year (open for four financial years), James will be able to use the funds in his FHSA to pay towards the genuine mortgage on his new home.

Example 4.3: The existing qualifying periods still apply

Sarah opens an FHSA, and contributes $1,000 in year one, and $1,000 the following financial year.

The next year Sarah and her partner purchase a dwelling to be their first home. Sarah's partner opened an FHSA five years ago, and has contributed $2,000 in every financial year since.

Since Sarah's partner has met the required release conditions, and Sarah is purchasing a home with him, she will be able to access the money in her FHSA to help towards the deposit.

No more contributions allowed to be paid into an FHSA following purchase

4.36 Under the new law, once a dwelling has been purchased before the minimum qualifying conditions have been met, an FHSA no longer needs to be closed but, if it remains open, will be inactive. ***[Schedule 3, item 21, paragraph 23(1)(a)]***

4.37 The account will be classed as inactive following the acquisition time. The acquisition time is when the holder of an FHSA acquires a qualifying interest in a dwelling in Australia or Norfolk Island.

4.38 No personal contributions will be allowed to be paid to the account once the account becomes inactive (that is, a dwelling is purchased).

4.39 However, any outstanding Government contributions will be credited to accounts that become inactive under these changes. ***[Schedule 3, item 23, paragraph 265(2)(b)]***

Example 4.4: No more contributions following purchase

Ciara opens an FHSA during February 2010, and deposits $5,000 into the account in the same financial year (the 2009-10 financial year). In July 2010 (the 2010-11 financial year), she places $5,000 in the account, and then further contributes $5,000 in September 2010 (also the 2010-11 financial year), and $5,000 in July 2011 (the 2011-12 financial year).

In August 2011, Ciara purchases her first home.

From this date, Ciara cannot contribute any further money to her account. However, since she has already contributed $5,000 in the same financial year as she purchased a house, the relevant amount of Government FHSA contribution will still be paid to her account.

The money will be released to go towards her loan from 1 July 2012.

4.40 Individual FHSA holders will be required to notify their account provider when they purchase a home ***[Schedule 3, items 15 and 16, paragraphs 20(4)(aa) and 20(5)(a)]***. Failure to do so will result in penalties to the FHSA holder.

4.41 If an individual contributes to an FHSA following the purchase of a home, and does not satisfy the eligibility requirements when this payment is made, penalties will apply to the FHSA account provider, as the provider is obliged not to accept such payments (provided the FHSA holder has notified their provider that they have purchased a home).

4.42 As under the existing rules, if the FHSA provider repays any contribution amount from the FHSA to the FHSA holder within 30 days of receiving it, no penalties will apply. ***[Schedule 3, item 23, paragraph 265(2)(a)]***

4.43 However, failure to repay will result in the account provider committing an offence, and may result in a penalty of up to 100 penalty units.

4.44 Any interest earned from money in the account will still be taxed at the concessional rate of 15 per cent.

Inactive FHSAs

4.45 An FHSA is inactive if:

- an FHSA holder is over 60, and they notify their FHSA provider that they want the balance of their FHSA paid to them, and they provide no revocation of this notice;
- an individual provides a notice to their FHSA provider notifying them they wish the balance of their FHSA be paid to their superannuation or retirement savings account, and they provide no revocation of this notice;
- the FHSA provider receives a notice from the Commissioner of Taxation (Commissioner) stating the Commissioner believes the FHSA holder does not satisfy the FHSA eligibility requirements, and does not receive a revocation of this notice, and within 30 days the FHSA provider does not receive a notice from the FHSA account holder stating that the only reason they do not meet the eligibility criteria is due to purchasing a dwelling prior to meeting the minimum release conditions, and that they wish to keep their account open until they meet the new deemed release conditions (that is, they wish to hold an inactive but not yet closed FHSA);
- the FHSA provider receives a notice from the FHSA holder stating that the only reason they do not meet the eligibility criteria is due to purchasing a dwelling prior to meeting the minimum release conditions, and that they wish to keep their account open until they meet the new deemed release conditions (that is, they wish to hold an inactive but not yet closed FHSA) and they provide no revocation of this notice;
- the FHSA provider receives a notice from the Commissioner stating the Commissioner believes an incorrect tax file number (TFN) has been quoted and the Commissioner is also not satisfied that the holder has a TFN and the FHSA provider does not receive a revocation of this notice; or
- an individual opens a new and already inactive FHSA (due to the individual having already purchased a home and being barred from further contributions) and transfers the balance of an already inactive account into the new account and they

provide no revocation of this notice (the individual chooses to change their FHSA provider).

[Schedule 3, items 13, 18, 19, 21 and 27, subparagraph 19(1)(b)(v), paragraphs 21(3)(aa) and 21(4)(a), subsection 23(1) and paragraph 35(1)(c)]

Release of money to a genuine mortgage

4.46 Once an individual buys a home prior to meeting the conditions of release, the FHSA will remain open, although it will be inactive and yet to be closed.

4.47 Once a minimum release condition is met, the money will then be released to the account holder, and the FHSA closed. ***[Schedule 3, items 4, 7 and 20, subsections 16(2) and 17(5) and paragraph 22(1)(c)]***

4.48 The individual will be required to pay this amount to their genuine mortgage account (and satisfy the mortgage payment requirements). ***[Schedule 3, item 7, subsection 17(5)]***

4.49 The money will only be released to the individual if:

- the mortgage is on the first home that made the individual ineligible to hold an FHSA; and
- the mortgage is a genuine mortgage.

4.50 To be a genuine mortgage, none of the parties to the mortgage can be an associate of another party to the mortgage, and both parties to the mortgage must be dealing with each other at arm's length. ***[Schedule 3, item 12, section 18]***

4.51 In order to get the money transferred by their FHSA provider to their genuine mortgage, the individual FHSA holder will be required to sign the approved form. What is included in the approved form is at the discretion of the Commissioner, however the Commissioner is expected to include:

- that the mortgage is in the FHSA holder's name (individual or joint);
- the address of the qualifying interest;
- that the mortgage is in relation to the qualifying interest the FHSA was opened for; and
- that the parties to the mortgage are dealing at arm's length.

4.52 Failure to meet these conditions will result in penalties applying to the account holder.

Payment conditions for FHSA mortgage payments

4.53 In order to satisfy the FHSA mortgage payment conditions, the individual must:

- within 28 days after the mortgage payment is made, use the full amount of the FHSA to repay all or part of a loan secured by a genuine mortgage over the qualifying interest, for which the FHSA holder is a mortgagor; and
- hold and have the qualifying interest as their main residence for a continuous period of at least six months.

[Schedule 3, items 7 and 11, subsection 17(5), definition of 'FHSA payment conditions' in section 18]

4.54 This period of six months must commence between:

- the time when the construction of the dwelling is complete (if it was not complete when the payment was made) or when the payment was made; and
- twelve months after the period starts (or at a later time that the Commissioner considers reasonable in the circumstances).

[Schedule 3, item 7, subsection 17(6)]

4.55 An individual will be liable to pay tax imposed by the *Income Tax (First Home Saver Accounts Misuse Tax) Act 2008* if they fail to satisfy these conditions. ***[Schedule 3, item 34, subsection 345-100(2) of the Income Tax Assessment Act 1997]***

Consequential changes

Disregarding the requirements for holding a qualifying interest

4.56 An individual will still be classed as meeting the eligibility requirements of an FHSA (which include never having held a qualifying interest in a dwelling before) when they have purchased a house but have not yet met the release conditions. ***[Schedule 3, item 2, subsection 15(3)]***

4.57 Therefore a payment from an FHSA for repaying a genuine mortgage, if a dwelling is acquired before the qualifying period ends, will not be an FHSA ineligibility payment and therefore the holder will not be

subject to misuse tax if the only eligibility requirement that the FHSA holder did not satisfy is 'has never held a qualifying interest in a dwelling that was the holder's main residence'. ***[Schedule 3, item 2, subsection 15(3)]***

4.58 It also means that an individual's failure of the FHSA eligibility requirements will not mean that a Government FHSA contribution becomes a non-recognised Government FHSA contribution in the *Income Tax (First Home Saver Accounts Misuse Tax) Act 2008.* ***[Schedule 3, item 23, paragraph 265(2)(b)]***

Example 4.5: Keeping a First Home Saver Account open following purchase of a home

Karl opens an FHSA and purchases a home before satisfying the minimum release conditions.

Karl keeps his FHSA open until he meets a release condition.

During this time, the criteria of never having owned a dwelling to have an active FHSA is disregarded until Karl has satisfied the release conditions.

When a release condition is satisfied, the money will be paid to Karl to be paid towards his genuine mortgage.

4.59 An individual will still be able to change FHSA providers for an inactive but yet to be closed FHSA. ***[Schedule 3, items 23 and 27, paragraphs 26(2)(c) and 35(1)(c)]***

Example 4.6: Changing providers

Jeremy opened an FHSA with ZXC Bank. Subsequently he purchased a dwelling but he did not yet satisfy the minimum release conditions of his FHSA.

Jeremy notifies his FHSA provider that he obtained a qualifying interest in a dwelling and his FHSA is made inactive. Jeremy cannot access his funds until he meets one of the new release conditions. During this period, Jeremy discovers another financial institution is offering a better savings rate on their accounts.

Jeremy is able to transfer his inactive FHSA to the other provider.

Selling before the release of FHSA money

4.60 If the individual FHSA holder purchases a first home in which to live, but sells the dwelling before the minimum qualifying period is complete, the current ineligibility rules will apply, and the money must be paid to their superannuation or retirement savings account.

Example 4.7: Selling a dwelling before the release conditions are satisfied

Sarah opens an FHSA, contributing $3,000. In the next financial year, she buys a first home and informs her provider.

Her FHSA is now inactive, and will remain open for three further financial years (including the year of purchase) before the money will be released to pay towards her genuine mortgage.

In the second financial year after opening the FHSA, and purchasing a home, Sarah's circumstances change, and she is forced to sell her home.

Since the home has been sold before the minimum qualifying period is up, the money from her account must be paid into her superannuation account.

Commissioner discretion

4.61 The Commissioner may pay a Government contribution to an individual's FHSA, to their interest in a complying superannuation plan, to the individual themselves or to the individual's legal personal representative. In all these cases the amount of the contribution is neither assessable income nor exempt income of the individual.

4.62 If an individual's mortgage is less than the total balance in their FHSA, any remaining balance will be paid to their superannuation or retirement savings account. ***[Schedule 3, item 20, paragraph 22(1)(c)]***

Ineligibility payments

4.63 An individual account holder fails the eligibility conditions if they are not eligible to open an account or if they become ineligible and do not notify the account provider (and thus have the money transferred to superannuation). The current eligibility conditions are that the individual be aged at least 18 and under 65 years, not previously have owned their home in Australia or Norfolk Island and have never (except in limited circumstances) held another FHSA.

4.64 The release of money for payment towards a mortgage is an FHSA ineligibility payment if the individual receives the money to pay towards their genuine mortgage, and they did not satisfy the FHSA eligibility requirements when the payment was made. However, as explained in paragraph 3.56, the individual's purchase of a dwelling after opening the account but prior to meeting the release conditions will be disregarded. ***[Schedule 3, item 4, subsection 16(2)]***

4.65 The *First Home Saver Accounts Act 2008* allows for future eligibility conditions to be added by way of regulation. These changes ensure that there are appropriate consequences should any eligibility conditions be breached.

Other amendments

4.66 There are also other amendments which tidy-up assorted references, headings and other things that need to be removed or changed because of this Schedule, and the addition of guide material. ***[Schedule 3, items 3, 5, 6, 8 to 10, 14, 17, 22, 26, 28 to 33 and 35]***

Application and transitional provisions

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

4.68 The new rules apply only to persons who acquire a 'qualifying interest' in a dwelling (as defined in section 12 of the *First Home Saver Accounts Act 2008)* after the commencement of this Bill. ***[Schedule 3, item 36]***

- This will be the date the individual acquires a legal interest in the property (registration date).

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Schedule 1: Tax exemption for payments to individuals for recent disasters

Bill reference	Paragraph number
Item 1	1.8, 2.10
Item 2	1.10, 2.12
Items 3 and 4	1.12, 2.14

Schedule 2: Tax exemption for recovery grants for the 2010-11 floods and Cyclone Yasi

Bill reference	Paragraph number
Item 1	3.9
Item 2	3.7
Item 3	3.10
Items 4 and 5	3.11

Schedule 3: First Home Saver Accounts

Bill reference	Paragraph number
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Item 7, subsection 17(5)	4.48
Items 7 and 11, subsection 17(5), definition of 'FHSA payment conditions' in section 18	4.53
Item 7, subsection 17(6)	4.54
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Bill reference	***Paragraph number***
Items 13, 18, 19, 21 and 27, subparagraph 19(1)(b)(v), paragraphs 21(3)(aa) and 21(4)(a), subsection 23(1) and paragraph 35(1)(c)	4.45
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