

2010-2011

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Tax Laws Amendment (2011 Measures
No. 1) Bill 2011**

No. , 2011

(Treasury)

**A Bill for an Act to amend the law relating to
taxation and the *First Home Saver Accounts Act
2008*, and for related purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **taxation and the *First Home Saver Accounts Act***
3 **2008, and for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Tax Laws Amendment (2011*
7 *Measures No. 1) Act 2011*.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.
13

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, Part 1	The day this Act receives the Royal Assent.	
3. Schedule 1, Part 2	1 July 2014.	1 July 2014
4. Schedule 2, Part 1	The day this Act receives the Royal Assent.	
5. Schedule 2, Part 2	1 July 2014.	1 July 2014
6. Schedule 3	The day after this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.
12

1

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

3

Part 1—Main amendments

4

Income Tax Assessment Act 1997

5

1 Section 11-15 (table item headed “welfare”)

6

7 Before:

Income Recovery Subsidy for the North Queensland floods of
January and February 2009 51-30

8

insert:

Assistance for New Zealand non-protected special category
visa holders for a disaster that occurred in Australia during the
2010-11 financial year..... 51-30

Disaster Income Recovery Subsidy for the floods that
occurred in Australia during the period starting on
29 November 2010, or for Cyclone Yasi..... 51-30

2 Section 51-30 (after table item 5.1)

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10 Insert:

5.1A	an individual in receipt of an ex-gratia payment from the Commonwealth known as Disaster Income Recovery Subsidy for:	the payment	the payment must be claimed:
	(a) the floods that occurred in Australia during the period starting on 29 November 2010; or		(a) after 9 January 2011; and
	(b) Cyclone Yasi		(b) before 1 March 2011

5.1B	an individual in receipt of an ex-gratia payment from the	the payment	the payment must be claimed:
			(a) after

Schedule 1 Tax exemption for payments to individuals for recent disasters
Part 1 Main amendments

Commonwealth known as assistance for New Zealand non-protected special category visa holders for a disaster that occurred in Australia during the 2010-11 *financial year	30 January 2011; and (b) before 1 August 2011
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2 **Part 2—Sunsetting on 1 July 2014**

3 *Income Tax Assessment Act 1997*

4 **3 Section 11-15 (table item headed “welfare”)**

5 Omit:

Assistance for New Zealand non-protected special category
visa holders for a disaster that occurred in Australia during the
2010-11 financial year..... 51-30

Disaster Income Recovery Subsidy for the floods that
occurred in Australia during the period starting on
29 November 2010, or for Cyclone Yasi..... 51-30

6 **4 Section 51-30 (table items 5.1A and 5.1B)**

7 Repeal the items.

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2 **Schedule 2—Tax exemption for recovery**
3 **grants for the 2010-11 floods and**
4 **Cyclone Yasi**

4

5 **Part 1—Main amendments**

5

6 *Income Tax Assessment Act 1997*

6

7 **1 Section 11-55 (at the end of the table item headed**
8 **“disasters”)**

8

9

Add:

2010-11 floods—recovery grants for primary producers	59-55
2010-11 floods—recovery grants for small businesses	59-55
Cyclone Yasi—recovery grants for primary producers	59-60
Cyclone Yasi—recovery grants for small businesses	59-60

10 **2 At the end of Division 59**

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Add:

12 **59-55 2010-11 floods—recovery grants for small businesses and**
13 **primary producers**

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Payments under the Natural Disaster Relief and Recovery Arrangements (set out in a determination made by the Minister for Local Government, Territories and Roads on 21 February 2007) are not assessable income and are not *exempt income, if:

- (a) the payments are part of a Category C measure (within the meaning of the determination); and
- (b) the Category C measure relates to the floods that occurred in Australia during the period that:
 - (i) occurred during the 2010-11 *financial year; and
 - (ii) started on 29 November 2010; and
- (c) the payments are:
 - (i) recovery grants for small businesses; or
 - (ii) recovery grants for primary producers.

1 **59-60 Cyclone Yasi—recovery grants for small businesses and**
2 **primary producers**

3 Payments under the Natural Disaster Relief and Recovery
4 Arrangements (set out in a determination made by the Minister for
5 Local Government, Territories and Roads on 21 February 2007)
6 are not assessable income and are not *exempt income, if:

7 (a) the payments are part of a Category C measure (within the
8 meaning of the determination); and

9 (b) the Category C measure relates to Cyclone Yasi; and

10 (c) the payments are:

11 (i) recovery grants for small businesses; or

12 (ii) recovery grants for primary producers.

13 ***Tax Laws Amendment (2009 Measures No. 2) Act 2009***

14 **3 Item 3 of Schedule 8**

15 Repeal the item, substitute:

16 **3 Section 11-55 (table item headed “disasters”)**

17 Omit:

2009 Victorian bushfires—Clean-up and Restoration

Grants for primary producers 59-50

2009 Victorian bushfires—Clean-up and Restoration

Grants for small businesses 59-50

18

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

Part 2 Sunsetting on 1 July 2014

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2 **Part 2—Sunsetting on 1 July 2014**

3 *Income Tax Assessment Act 1997*

4 **4 Section 11-55 (table item headed “disasters”)**

5 Repeal the item.

6 **5 Sections 59-55 and 59-60**

7 Repeal the sections.

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Schedule 3—First Home Saver Accounts

First Home Saver Accounts Act 2008

1 At the end of subsection 15(2)

Add:
; or (e) the FHSA was closed following the transfer of its balance to another FHSA as the initial contribution to the other FHSA.

2 At the end of section 15

Add:
Disregard requirement that person never held a qualifying interest
(3) Disregard paragraph (1)(c) if:
(a) the person has given a notice under section 20 that contains a statement under paragraph 20(4)(aa) (about the person intending to seek an FHSA mortgage payment); and
(b) the person has not given a revocation of that notice under subsection 20(5).

Note 1: The following heading to subsection 15(1) is inserted “*When person meets the FHSA eligibility requirements*”.

Note 2: The following heading to subsection 15(2) is inserted “*Requirement for each FHSA that was closed*”.

3 Section 16

Before “A”, insert “(1)”.

Note: The following heading to new subsection 16(1) is inserted “*When acquisition payments are ineligibility payments*”.

4 At the end of section 16

Add:
When mortgage payments are ineligibility payments
(2) A payment from an FHSA held by a person is an **FHSA ineligibility payment** if:
(a) the payment is an FHSA mortgage payment; and

1 (b) the person did not satisfy the FHSA eligibility requirements
2 when the payment was made.

3 Note 1: For paragraph (b), the person's acquisition of a qualifying interest in
4 his or her main residence can be disregarded (see subsection 15(3)).

5 Note 2: This Act does not provide for the consequences of the payment being
6 an FHSA ineligibility payment. However, the FHSA holder will be
7 liable for FHSA misuse tax in accordance with Subdivision 345-C of
8 the *Income Tax Assessment Act 1997*.

9 **5 At the end of subsection 17(2)**

10 Add:

11 Note: This Act does not provide for the consequences of a payment failing
12 to satisfy the FHSA payment conditions. However, the FHSA holder
13 will be liable for FHSA misuse tax in accordance with
14 Subdivision 345-C of the *Income Tax Assessment Act 1997*.

15 Note: The following heading to subsection 17(1) is inserted "*Payment conditions for FHSA*
16 *home acquisition payments*".

17 **6 At the end of subsection 17(4)**

18 Add:

19 Note: This Act does not provide for the consequences of a payment failing
20 to satisfy the FHSA payment conditions. However, the FHSA holder
21 will be liable for FHSA misuse tax in accordance with
22 Subdivision 345-C of the *Income Tax Assessment Act 1997*.

23 **7 At the end of section 17**

24 Add:

25 *Payment conditions for FHSA mortgage payments*

26 (5) An FHSA mortgage payment satisfies the ***FHSA payment***
27 ***conditions*** for a qualifying interest in a dwelling if:

28 (a) no later than 28 days after the payment is made, the person
29 who held the FHSA uses an amount equal to the payment in
30 repaying all or part of a loan secured by a genuine mortgage:

31 (i) over the qualifying interest; and

32 (ii) for which the person is a mortgagor; and

33 (b) for a continuous period that is at least 6 months long, and that
34 starts within the period mentioned in subsection (6):

35 (i) the person holds the qualifying interest; and

36 (ii) the dwelling is the person's main residence; and

1 (c) if the construction of the dwelling is not complete when the
 2 payment is made—that construction is complete within a
 3 reasonable period after the payment is made.

4 (6) The period:

5 (a) starts:

6 (i) if the construction of the dwelling is not complete when
 7 the payment is made—when the construction of the
 8 dwelling is complete; or

9 (ii) otherwise—when the payment is made; and

10 (b) ends 12 months after the period starts, or at a later time that
 11 the Commissioner considers reasonable in the circumstances.

12 Note: This Act does not provide for the consequences of a payment failing
 13 to satisfy the FHSA payment conditions. However, the FHSA holder
 14 will be liable for FHSA misuse tax in accordance with
 15 Subdivision 345-C of the *Income Tax Assessment Act 1997*.

16 **8 Section 18**

17 Insert:

18 *arm's length* has the same meaning as in the *Income Tax*
 19 *Assessment Act 1997*.

20 **9 Section 18**

21 Insert:

22 *associate* has the same meaning as in the *Income Tax Assessment*
 23 *Act 1997*.

24 **10 Section 18**

25 Insert:

26 *FHSA mortgage payment* means a payment from an FHSA if the
 27 FHSA provider must make the payment under section 32A (about a
 28 payment for repaying a mortgage if a home is acquired before the
 29 qualifying period ends).

30 **11 Section 18 (definition of FHSA payment conditions)**

31 Repeal the definition, substitute:

32 *FHSA payment conditions*:

- 1 (a) an FHSA home acquisition payment satisfies the *FHSA*
2 *payment conditions* in the circumstances set out in
3 subsections 17(1) to (4); and
4 (b) an FHSA mortgage payment satisfies the *FHSA payment*
5 *conditions* in the circumstances set out in subsections 17(5)
6 and (6).

7 **12 Section 18**

8 Insert:

9 *genuine mortgage*: a mortgage is a *genuine mortgage* if:

- 10 (a) when entering into the mortgage, the mortgagors and
11 mortgagees deal with each other at arm's length; and
12 (b) none of the mortgagors is an associate of any of the
13 mortgagees.

14 **13 At the end of paragraph 19(1)(b)**

15 Add:

- 16 (v) if the person already holds an FHSA that is inactive
17 only because of paragraph 23(1)(c) or (e)—the FHSA to
18 be opened or issued will be inactive because of
19 paragraph 23(1)(e); and

20 **14 Subsection 19(1) (note)**

21 Repeal the note, substitute:

- 22 Note 1: For paragraph (b), the person may still satisfy the FHSA eligibility
23 requirements even though the person has acquired a qualifying interest
24 in his or her main residence (see subsection 15(3)).
- 25 Note 2: Making a false statement in the application may constitute an offence:
26 see subsection 8J(9) and sections 8K and 8N of the *Taxation*
27 *Administration Act 1953*.

28 **15 After paragraph 20(4)(a)**

29 Insert:

- 30 (aa) if:
31 (i) the FHSA holder does not satisfy the FHSA eligibility
32 requirements only because of paragraph 15(1)(c) (about
33 never holding a qualifying interest); and
34 (ii) the FHSA holder wants the FHSA to remain open until
35 an FHSA mortgage payment can be paid;

1 a statement to that effect; or

2 **16 Paragraph 20(5)(a)**

3 Repeal the paragraph, substitute:

- 4 (a) if the notice contains a statement under paragraph (4)(a) or an
5 authority under paragraph (4)(b)—the FHSA holder becomes
6 satisfied that he or she satisfies the FHSA eligibility
7 requirements; and
8 (aa) if the notice contains a statement under paragraph (4)(aa)—
9 the FHSA holder becomes satisfied that he or she satisfies
10 paragraph 15(1)(c); and

11 **17 Subsection 21(1) (note)**

12 Repeal the note, substitute:

- 13 Note 1: The Commissioner may give the provider a notice under subsection
14 67(2) if a correct TFN was not quoted for the FHSA holder.
15 Note 2: The person may still satisfy the FHSA eligibility requirements even
16 though the person has acquired a qualifying interest in his or her main
17 residence (see subsection 15(3)).

18 **18 After paragraph 21(3)(a)**

19 Insert:

- 20 (aa) if the FHSA holder does not satisfy the FHSA eligibility
21 requirements only because of paragraph 15(1)(c) (about
22 never holding a qualifying interest)—subparagraph
23 23(1)(b)(iii) (about holder needing to notify provider if wants
24 FHSA to remain open until an FHSA mortgage payment can
25 be paid);

26 **19 Paragraph 21(4)(a)**

27 Repeal the paragraph, substitute:

- 28 (a) if paragraph (3)(aa) applies to the notice—the Commissioner
29 becomes satisfied that the FHSA holder satisfies paragraph
30 15(1)(c); and
31 (aa) if paragraph (3)(aa) does not apply to the notice—the
32 Commissioner becomes satisfied that the FHSA holder
33 satisfies the FHSA eligibility requirements; and

34 **20 At the end of subsection 22(1)**

35 Add:

1 ; or (c) the provider of an FHSA makes an FHSA mortgage payment
2 from the FHSA on a particular day (also the *trigger day*), and
3 the balance of the FHSA immediately after the payment is
4 more than nil.

5 Note: The heading to section 22 is replaced by the heading “**FHSA provider to close FHSA**
6 **if inactive in some cases or FHSA mortgage payment made**”.

7 **21 Subsection 23(1)**

8 Repeal the subsection, substitute:

9 (1) An FHSA is *inactive* if:

10 (a) the FHSA provider receives a notice from the FHSA holder
11 under subsection 20(1) that contains:

12 (i) a statement under paragraph 20(4)(a); or

13 (ii) an authority under paragraph 20(4)(b);

14 (and does not receive a revocation of that notice under
15 subsection 20(5)); or

16 (b) all of the following subparagraphs apply:

17 (i) the FHSA provider receives a notice from the
18 Commissioner under subsection 21(1);

19 (ii) the FHSA provider does not receive a revocation of that
20 notice under subsection 21(4);

21 (iii) within 30 days after receiving that notice, the FHSA
22 provider does not receive a notice from the FHSA
23 holder under subsection 20(1) that contains a statement
24 under paragraph 20(4)(aa); or

25 (c) the FHSA provider receives a notice from the FHSA holder
26 under subsection 20(1) that contains a statement under
27 paragraph 20(4)(aa) (and does not receive a revocation of that
28 notice under subsection 20(5)); or

29 (d) the FHSA provider receives a notice from the Commissioner
30 under subsection 67(2) (and does not receive a revocation of
31 that notice); or

32 (e) the FHSA is opened or issued in response to an application to
33 which subparagraph 19(1)(b)(ii) applies, where the other
34 FHSA referred to in that subparagraph was inactive only
35 because of:

36 (i) paragraph (c) of this subsection; or

37 (ii) an earlier application of this paragraph.

1 Note: Paragraph (a) or (b) applies if the FHSA holder does not satisfy the
 2 FHSA eligibility requirements. However, neither paragraph need
 3 apply if the only one of those requirements not satisfied is the one
 4 about never holding an interest in a main residence. In that case, the
 5 FHSA holder can cause paragraph (c) to apply, keeping the FHSA
 6 open until an FHSA mortgage payment can be paid.

7 **22 At the end of section 23**

8 Add:

- 9 (5) An FHSA can become inactive under a provision even if it has
 10 already become inactive under another provision.

11 **23 Subsection 26(2)**

12 Repeal the subsection, substitute:

- 13 (2) The FHSA provider does not contravene subsection (1) if:
 14 (a) the provider repays the amount from the FHSA to the FHSA
 15 holder within 30 days after receiving it; or
 16 (b) the amount is a Government FHSA contribution; or
 17 (c) the FHSA is inactive only because of paragraph 23(1)(e), and
 18 the amount:
 19 (i) was the initial contribution to the FHSA; and
 20 (ii) immediately before being contributed, was the balance
 21 of another FHSA.

22 **24 After subparagraph 31(1)(a)(i)**

23 Insert:

- 24 (ia) section 32A (FHSA mortgage payment); or

25 **25 After section 32**

26 Insert:

27 **32A Payment from FHSA for repaying a mortgage if home acquired**
 28 **before qualifying period ends**

- 29 (1) This section applies if:
 30 (a) the holder of an FHSA acquires at a particular time (the
 31 *acquisition time*) a qualifying interest in a dwelling in
 32 Australia or Norfolk Island; and

- 1 (b) before that time, the FHSA holder had never held a
2 qualifying interest in a dwelling in Australia or Norfolk
3 Island at a time when the dwelling was the FHSA holder's
4 main residence; and
- 5 (c) the FHSA holder gives the FHSA provider an application in
6 the approved form requesting an amount to be paid from the
7 FHSA; and
- 8 (d) the FHSA holder declares in the application that the payment
9 will satisfy the FHSA payment conditions mentioned in
10 subsection 17(5) for the qualifying interest; and
- 11 (e) any of the following requirements are met:
- 12 (i) the requirement in subparagraph 32(1)(c)(i) would be
13 met if the FHSA holder were taken to have made a
14 personal FHSA contribution of at least \$1,000 for the
15 financial year that includes the acquisition time and for
16 each later financial year;
- 17 (ii) the FHSA holder is in breach of the account balance
18 cap, and has held an FHSA in at least 4 financial years
19 (one of which may be the financial year in which the
20 payment is to be made);
- 21 (iii) the FHSA holder declares in the application that he or
22 she holds the qualifying interest together with another
23 FHSA holder in respect of whom the requirement in
24 subparagraph 32(1)(c)(i), or in subparagraph (i) or (ii) of
25 this paragraph, is met; and
- 26 (f) the provider is satisfied that the requirements (if any)
27 specified in the regulations are met; and
- 28 (g) the FHSA is inactive only because of paragraph 23(1)(c) or
29 (e) (about an FHSA remaining open until an FHSA mortgage
30 payment can be paid), and is yet to be closed.
- 31 Note 1: The FHSA holder will need to use the payment to repay all or part of a
32 loan secured by a genuine mortgage over the qualifying interest (see
33 subsection 17(5)).
- 34 Note 2: Making a false or misleading statement in the application may
35 constitute an offence: see subsection 8J(9) and sections 8K and 8N of
36 the *Taxation Administration Act 1953*.
- 37 (2) The FHSA provider must pay the amount as requested:
- 38 (a) as soon as practicable after the application is made; and
39 (b) no later than 30 days after the application is made.

Offence

(3) A person commits an offence if the person contravenes subsection (2).

Penalty: 100 penalty units.

Validity of transaction not affected by contravention

(4) A contravention of subsection (2) does not affect the validity of a transaction.

26 Paragraph 35(1)(a)

After “of the FHSA”, insert “(the *first FHSA*)”.

27 Paragraph 35(1)(c)

Repeal the paragraph, substitute:

(c) either:

(i) the first FHSA is not inactive; or

(ii) the first FHSA is inactive only because of paragraph 23(1)(c) or (e) (about an FHSA remaining open until an FHSA mortgage payment can be paid).

28 At the end of subsection 36(1)

Add:

Note: A person’s acquisition of a qualifying interest in a dwelling after a personal FHSA contribution has been made for the person in that financial year, does not of itself stop a Government FHSA contribution from being payable for the financial year.

29 At the end of subsection 51C(2) (after the penalty)

Add:

Note: For subparagraph (b)(i), the person may still satisfy the FHSA eligibility requirements even though the person has acquired a qualifying interest in his or her main residence (see subsection 15(3)).

30 Subparagraph 67(2)(c)(iii)

After “32,”, insert “32A,”.

31 At the end of subsection 128A(5)

Add:

1 Note: The person may still satisfy the FHSA eligibility requirements even
2 though the person has acquired a qualifying interest in his or her main
3 residence (see subsection 15(3)).

4 ***Income Tax Assessment Act 1997***

5 **32 Section 345-100 (after the heading)**

6 Insert:

7 *Payments to acquire a home*

8 **33 Section 345-100**

9 Before “A”, insert “(1)”.

10 **34 At the end of section 345-100**

11 Add:

12 *Payments for repaying a mortgage*

- 13 (2) A person is liable to pay tax imposed by the *Income Tax (First*
14 *Home Saver Accounts Misuse Tax) Act 2008* in respect of an
15 *FHSA mortgage payment from an *FHSA held by the person if:
16 (a) the payment fails to satisfy the *FHSA payment conditions;
17 or
18 (b) the payment satisfies the FHSA payment conditions, but is an
19 *FHSA ineligibility payment.

20 Note: The Commissioner may make an assessment of the amount of the tax
21 under section 169 of the *Income Tax Assessment Act 1936*.

22 **35 Subsection 995-1(1)**

23 Insert:

24 *FHSA mortgage payment* has the meaning given by the *First*
25 *Home Saver Accounts Act 2008*.

26 **36 Application provision**

27 The amendments made by this Schedule apply in relation to acquisitions
28 of qualifying interests in dwellings on or after the commencement of
29 this Schedule.