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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**SOCIAL SECURITY AND OTHER LEGISLATION AMENDMENT
(FURTHER 2012 BUDGET AND OTHER MEASURES) BILL 2012**

EXPLANATORY MEMORANDUM

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

SOCIAL SECURITY AND OTHER LEGISLATION AMENDMENT (FURTHER 2012 BUDGET AND OTHER MEASURES) BILL 2012

OUTLINE

2012-13 Budget measures

Extending Cape York welfare reform trial

The Bill amends the *Social Security (Administration) Act 1999* to enable a proposed 12-month extension of the welfare reform trial in the Cape York area. The continuation of the welfare reform trial will help Indigenous families budget, increase school attendance and job opportunities, make communities safer, and improve care and protection of children.

Indigenous education payments

The Bill also amends the *Indigenous Education (Targeted Assistance) Act 2000* to increase the Act's legislative appropriation for the 2012 and 2013 calendar years. The increased appropriation for 2012 and 2013 will provide funding for several new initiatives in addition to existing activities under the Act.

Non-Budget amendments to clarify current Government policies and improve the operation of existing legislation

Social Security Appeals Tribunal

The Bill includes a package of minor amendments to improve the operation of the Social Security Appeals Tribunal in the social security, child support, family assistance and paid parental leave jurisdictions.

Amendments relating to certain child support declarations

Amendments are made to the child support legislation to confirm the longstanding policy and administration in cases where the amount of child support payable under a child support assessment is reduced because:

- a court decides that the payer is not a parent of one of the children in the assessment; but
- the payer remains liable for at least one other child in the assessment.

Other amendments

Clarifying and technical amendments are also made to the schoolkids bonus legislation, consistent with the intended policy.

Lastly, minor clarifications are made to portfolio legislation, such as the family assistance clean energy legislation – including to the rules for rounding of payment rates.

Financial impact statement

Extending Cape York welfare reform trial

The Government provided \$11.8 million in the 2012-13 Budget to support the continuation of the Cape York Welfare Reform Trial to December 2013. This includes funding for measures which are not related to this Bill, such as case management to encourage school attendance.

Indigenous education payments

The legislative appropriation under the *Indigenous Education (Targeted Assistance) Act 2000* will be increased for the 2012 calendar year to \$132.6 million (an increase of \$11.9 million) and, for the 2013 calendar year, to \$137.7 million (an increase of \$4.2 million).

Non-Budget amendments

Negligible financial impact.

STATEMENTS OF COMPATIBILITY WITH HUMAN RIGHTS

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

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(FURTHER 2012 BUDGET AND OTHER MEASURES) BILL 2012**

NOTES ON CLAUSES

Abbreviations used in this explanatory memorandum

- **Child Support Registration and Collection Act** means the *Child Support (Registration and Collection) Act 1988*
- **Family Assistance Act** means the *A New Tax System (Family Assistance) Act 1999*
- **Family Assistance Administration Act** means the *A New Tax System (Family Assistance) (Administration) Act 1999*
- **Social Security Act** means the *Social Security Act 1991*
- **Social Security Administration Act** means the *Social Security (Administration) Act 1999*

Clause 1 sets out how the new Act is to be cited, that is, as the *Social Security and Other Legislation Amendment (Further 2012 Budget and Other Measures) Act 2012*.

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

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

Schedule 1 – Extending Cape York welfare reform trial

Summary

This Schedule amends the Social Security Administration Act to enable a proposed 12-month extension of the welfare reform trial in the Cape York area. The continuation of the welfare reform trial will help Indigenous families budget, increase school attendance and job opportunities, make communities safer, and improve care and protection of children.

Background

The Cape York welfare reform trial is a partnership between the communities of Aurukun, Coen, Hope Vale and Mossman Gorge, the Australian Government, the Queensland Government and the Cape York Institute for Policy and Leadership. It aims to restore positive social norms, re-establish local Indigenous authority, and support community and individual engagement in the real economy.

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

A key plank of the trial is the Family Responsibilities Commission, established under Queensland Government legislation. Local Family Responsibility Commissioners hold conferences with community members, refer people to support services and, when necessary, arrange income management.

Currently, a person can be subject to income management under the trial only after a decision by the Family Responsibilities Commission made before 1 January 2013.

This Schedule amends the Social Security Administration Act to extend this date to 1 January 2014, enabling income management to continue in Cape York for a further 12 months.

The Queensland Government has also committed to continuing its support for the trial and to introducing legislation to extend the operation of the Family Responsibilities Commission.

Explanation of the changes

Amendments to the Social Security Administration Act

Paragraphs 123UF(1)(g) and 123UF(2)(h) of the Social Security Administration Act currently provide that a person can be subject to income management under section 123UF only after a decision by the Family Responsibilities Commission made before 1 January 2013.

Item 2 omits the references to 1 January 2013 in paragraph 123UF(1)(g) and paragraph 123UF(2)(h) and substitutes references to 1 January 2014.

Schedule 2 – Indigenous education payments

Summary

This Schedule amends the *Indigenous Education (Targeted Assistance) Act 2000* (Indigenous Education Act) to increase the Act's legislative appropriation for the 2012 and 2013 calendar years. The increased appropriation for 2012 and 2013 will provide funding for several new initiatives in addition to existing activities under the Indigenous Education Act.

Background

The increase in the appropriation for 2012 and 2013 will continue existing initiatives and provide funding for several new initiatives, including expansion of the *Sporting Chance* program, *Teach Remote Stage Two*, and *Student Education Trusts* delivered as part of the *Cape York Welfare Reform Trial*, and initiatives that support teachers, professional development and front line services to improve Aboriginal children's access to quality education.

Explanation of the changes

Amendments to the Indigenous Education Act

Item 1 amends subsection 14B(1) (table item 4). This prescribes the funding amounts appropriated out of the Consolidated Revenue Fund for each of the funding years for non-ABSTUDY payments. The funding amount in table item 4 refers to funding amounts in the period starting on 1 January 2012 and ending on 30 June 2013. The starting amount for the appropriation in table item 4 will be increased from \$120,701,000 to \$132,607,000.

Item 2 amends subsection 14C(1) (table item 1). This prescribes the funding amounts appropriated out of the Consolidated Revenue Fund for the funding of non-ABSTUDY payments in 2013. The funding amount in table item 1 refers to funding amounts in the period starting on 1 January 2013 and ending on 30 June 2014. The starting amount for the appropriation will be increased from \$133,527,000 to \$137,699,000.

Schedule 3 – Social Security Appeals Tribunal

Summary

This Schedule introduces a package of minor amendments to improve the operation of the Social Security Appeals Tribunal (SSAT) in the social security, child support, family assistance and paid parental leave jurisdictions. For example, some amendments will enable SSAT members to release protected information to relevant authorities in certain circumstances where there is a risk to the life, health or welfare of a person. Other amendments address current gaps in privacy protection for information and documents.

Background

SSAT members are currently prevented under family assistance, child support and social security legislation from informing relevant authorities of a threat to the life, health or welfare of a person where this could result in the release of protected information. Amendments permit an SSAT member to disclose otherwise protected information to a person (such as a law enforcement officer or a State or Territory welfare authority) if the information concerns a threat to the life, health or welfare of a person. Addressing this issue is consistent with actions under the National Framework for Protecting Australia's Children.

Amendments also address current gaps in privacy protection for information and documents. Currently, the Principal Member of the SSAT can direct a party not to disclose information or documents obtained at certain stages of the review. Changes are required so that a party can be directed not to disclose information or documents obtained by him or her at any stage of the review. Amendments also extend confidentiality obligations to all people providing services at the hearing of the review.

Amendments allow the Principal Member to reconstitute the SSAT in the same circumstances in which the Administrative Appeals Tribunal may be reconstituted.

Several amendments are made to facilitate the SSAT's achievement of its statutory objective and to harmonise the provisions governing review by the SSAT in the family assistance, social security, child support and paid parental leave legislation. These amendments:

- extend the grounds on which an application for review may be dismissed and enable parties to request reinstatement of a dismissed application;
- permit the Principal Member to order the Child Support Registrar or Secretary (as the case may be) to make written submissions (rather than both oral and written submissions) to the SSAT;

- clarify that the Principal Member has a discretion (exercisable having regard to the parties' wishes and the need to protect their privacy) as to who is permitted to make submissions on a party's behalf; and
- make each person who is responsible for a child, to whom the reviewable decision relates, a party to the review (thereby avoiding a joinder process).

Further changes are made to ensure consistency of language, clearer headings and clearer definitions in the family assistance, social security, child support and paid parental leave legislation.

Explanation of the changes

Part 1 – Amendments

Amendments to the Family Assistance Administration Act

Item 1 adds a note at the end of the definition of Principal Member in subsection 3(1) of the Family Assistance Administration Act. This note directs the reader to Schedule 3 to the Social Security Administration Act, which deals with the constitution and membership of the SSAT. These rules may also be relevant to the SSAT's review powers under the family assistance law. For example, clause 20 of Schedule 3 provides:

The Principal Member may, in writing, delegate to a member of the SSAT, or a member of the staff of the SSAT, all or any of the powers and functions of the Principal Member under this Act, the family assistance law, the *Student Assistance Act 1973*, the *Employment Services Act 1994*, the *Child Support (Assessment) Act 1989* or the *Child Support (Registration and Collection) Act*.

Given the above, it is desirable to direct readers to Schedule 3 to the Social Security Administration Act. **Item 2** adds a similar note to the definition of **SSAT**.

Item 3 amends subsection 3(1) of the Family Assistance Administration Act by adding a new definition of **SSAT member**. SSAT member is defined to mean a member of the SSAT and includes the Principal Member. Like the other definitions relevant to the SSAT, this new definition also has a note that directs the reader to Schedule 3 to the Social Security Administration Act.

The amendment made by **item 4** is consequential to **item 5**. **Item 5** adds a new subsection 110(2) to the Family Assistance Administration Act. Section 110 currently provides that the SSAT must pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick in carrying out its functions under the Family Assistance Administration Act. New subsection 110(2) emphasises that this objective must also be pursued by the Principal Member in performing or exercising his or her functions and powers under that Act.

Item 6 amends subparagraph 112(3)(b)(i) by omitting ‘withdrawn’ and substituting ‘dismissed’ and is consequential to **item 26**.

Item 7 repeals subsection 117(3) and substitutes a new subsection 117(3).

Section 117 applies in circumstances where an officer has varied or set aside a decision after an application has been made to the SSAT for review of the decision but before the SSAT has determined the review.

Under current subsection 117(3), if the decision under review is varied by an officer, the SSAT applicant may either proceed with the application for review or withdraw their application.

Under new subsection 117(3), if the decision under review is varied or set aside by an officer, the SSAT applicant will have the option of:

- (a) proceeding with the application for review of the decision as varied or the new decision; or
- (b) requesting the Principal Member to dismiss the application under section 135; or
- (c) notifying the SSAT under section 136 that the application is discontinued or withdrawn.

This item is consequential to **item 26** and does not involve any change to policy.

Item 8 inserts a new paragraph 118(1)(c) of the Family Assistance Administration Act. Section 118 sets out who the parties to an SSAT review are. Currently, a person (other than the applicant) who may be affected by the decision must apply in writing to the Principal Member to be made a party to the review, and the Principal Member may order that the person be made a party.

New paragraph 118(1)(c) provides that, if the application is for a review of a care percentage decision, other parties will include each person who is a responsible person (within the meaning in the Child Support Assessment Act) for the child to whom the decision relates and who would therefore be affected by the decision.

Item 9 is consequential to **item 10**, which repeals subsections 120(2), (3) and (4) of the Family Assistance Administration Act.

The SSAT Principal Member will continue to be required to give each party a copy of the statement provided by the Secretary to the Principal Member about the decision under review, as per subsection 120(1).

Subsection 120(2) currently provides that the Principal Member may make an order directing a person who has received a copy of a statement in accordance with subsection (1) not to disclose information in the statement, or not to disclose information in the statement except in the circumstances or for the purposes specified in the order. Subsection 120(3) provides that an order under subsection (2) must be made by written notice given to the person to whom it is directed. Subsection (4) provides that a person who contravenes an order under subsection (2) is guilty of an offence. A penalty of imprisonment for two years applies.

Currently, apart from under subsection 120(2), the only information which the SSAT Principal Member can order a person not to disclose is information obtained by the person at a pre-hearing conference (subsection 129A(4)) and information obtained by the person during the course of a hearing (subsection 133(1)). This means that personal information in documents given to the SSAT by a party (which procedural fairness requires the SSAT to give to all parties) cannot be the subject of a non-disclosure order. To address this gap in the protection of parties' privacy, the SSAT Principal Member will be given the power to order non-disclosure of any information disclosed to a person for purposes relating to a review under new section 141C (see **item 28**).

Subsections 120(2), (3) and (4) are therefore being repealed as new section 141C will consolidate the powers of the SSAT Principal member to make non-disclosure orders.

Item 11 repeals existing subsection 123(3) of the Family Assistance Administration Act and inserts new subsections 123(3) and (3A).

Section 123 sets out the rules applicable to submissions from parties to a review. Subsection 123(3) currently provides that the party may have another person make submissions to the SSAT on their behalf.

There may be circumstances where the other party may wish to object to, or have concerns with, the person nominated to make submissions under existing subsection 123(3).

New subsections 123(3) and (3A) recognise the need to take account of these views, including the need to protect privacy. New subsection 123(3) provides that the party may, with the permission of the Principal Member, have another person make submissions on their behalf. New subsection 123(3A) provides that, in deciding whether to grant permission under subsection (3), the Principal Member must have regard to the wishes of the parties and the need to protect their privacy.

Item 12 amends subsection 126A(3) of the Family Assistance Administration Act by omitting the words, 'having regard to the objective laid down by section 110'. This amendment is consequential to **item 5**.

Item 13 amends subsection 126A(4) of the Family Assistance Administration Act by inserting a new paragraph 126A(4)(aa) after paragraph 126A(4)(a). New paragraph 126A(4)(aa) will enable the SSAT Principal Member to order an agency representative to make written submissions. This scenario is not explicitly covered under the current rules.

Item 14 amends subsection 126A(4) of the Family Assistance Administration Act by omitting the words, 'having regard to the objective laid down by section 110'. This amendment is consequential to **item 5**.

Items 15, 16, 17 and 18 amend the heading of Subdivision BC of Division 3 of Part 5, the heading to section 129A, subsection 129A(1) and subsection 129A(2) of the Family Assistance Administration Act respectively by replacing references to 'pre-hearing conferences' or 'conferences' with reference to 'directions hearings'. These amendments are not intended to change the legal effect of these provisions but use language that better reflects the purpose of these hearings in an SSAT review.

Item 19 amends paragraph 129A(2)(d) of the Family Assistance Administration Act by omitting the words, 'evidence is to be brought before', and substituting the words, 'information is to be given to'.

Under the current rules, paragraph 129A(2)(d) gives the SSAT Principal Member power to give directions about what evidence is to be brought before the SSAT. The amendment made by **item 19** will enable the SSAT Principal Member to give directions about what information is to be given to the SSAT in case there is any dispute about whether the information is evidence or not.

Item 20 repeals subsections 129A(3), (4) and (5) of the Family Assistance Administration Act.

Currently, subsection 129A(3) provides that paragraph (2)(d) does not limit the evidence that may be brought before the SSAT. This provision has become redundant because of the changes made by **item 19**.

Currently, subsection 129A(4) gives the SSAT Principal Member power to make an order directing a party to the review who is present at a pre-hearing conference not to disclose information obtained by the party at the conference. Subsection 129A(5) is a similar offence provision to that contained in subsection 120(4).

Subsections 129A(4) and (5) are being repealed because the amendment made by **item 28** will consolidate the powers of the SSAT Principal Member power to make non-disclosure orders.

Item 21 amends paragraph 129B(1)(a) of the Family Assistance Administration Act by omitting the words, 'pre-hearing conference', and substituting 'directions hearing'. This amendment is being made for similar reasons to **item 17**.

Item 22 amends paragraph 130(1)(b) of the Family Assistance Administration Act. This item is consequential to **item 23**, which repeals paragraph 130(1)(c).

Section 130 contains rules that govern the procedure at a hearing. Paragraph 130(1)(c) provides that the SSAT, in determining what a proper consideration of the review requires, must have regard to the objective laid down by section 110. The repeal of paragraph 130(1)(c) is consequential to **item 5**. There is no change to the legal effect of subsection 130(1).

Item 24 repeals section 133 of the Family Assistance Administration Act.

Section 133 enables restrictions to be imposed by the SSAT Principal Member on disclosure of information obtained at a hearing. Subsection 133(1) gives the SSAT Principal Member the power to make an order directing a person who is present at the hearing of a review not to disclose information obtained by the person in the course of the hearing and is similar to subsections 120(2) and 129A(4). Subsection 133(2) is a similar offence provision to that contained in subsections 120(4) and 129A(5). Subsection 133(3) provides that strict liability applies to the element of an offence against subsection (2) that an order is an order under subsection (1).

This section is being repealed because the amendment made by **item 28** will consolidate the powers of the SSAT Principal member to make non-disclosure orders. Under the new provision, the offence will not be one of strict liability.

Item 25 repeals paragraph 134(2)(b) of the Family Assistance Administration Act.

Section 134 applies to adjournment of SSAT hearings. Under subsection 134(2), the SSAT has discretion to refuse adjournment of a hearing. Paragraph 134(2)(b) provides that the SSAT may refuse to adjourn a hearing if satisfied that adjournment would be inconsistent with the pursuit of the objective laid down by section 110. Paragraph 134(2)(b) is no longer necessary due to the amendment to section 110 made by **item 5**. The removal of paragraph 134(2)(b) is not intended to change the legal effect of section 134.

Item 26 repeals sections 135 and 136 and replaces them with new sections with corresponding numbers. Broadly speaking, these changes align the rules relating to dismissals of applications in the Family Assistance Administration Act with similar rules in other legislation that confers jurisdiction upon the SSAT, namely, the Child Support Registration and Collection Act (see **items 48 and 50**), the *Paid Parental Leave Act 2010* (Paid Parental Leave Act) (see **item 113**) and the Social Security Administration Act (see **item 138**). In addition, the new rules provide for greater flexibility, for example, by expanding the circumstances in which an application can be dismissed and by providing the SSAT with the capacity to reinstate applications that have been dismissed in certain circumstances.

Under the current rules, section 135 sets out the rules applicable to withdrawal of SSAT applications and section 136 sets out the rules and processes applicable to dismissal of an application.

New subsection 135(1) expands the circumstances in which an application for review can be dismissed. Under the current rules (contained in subsection 136(1) of the Family Assistance Administration Act), the Principal Member could only dismiss an application in circumstances where the Principal Member is satisfied after having communicated with the person, or after having made reasonable attempts to communicate with the person and having failed to do so, that the person does not intend to proceed with the application.

Under new subsection 135(1), the Principal Member may, on the request of a party or on his or her own initiative, dismiss an application for review of a decision in the following circumstances:

- (a) the decision is not reviewable under the relevant Part (section 111 sets out decisions that are reviewable); or
- (b) the application is frivolous or vexatious; or
- (c) all of the parties consent; or
- (d) the Principal Member is satisfied that none of the parties intends to proceed with the application:
 - after having communicated with each party; or
 - after having made reasonable attempts to communicate with each party and having failed to do so; or
 - after a combination of both; or
- (e) all of the parties fail to attend the hearing.

However, processes apply before an application can be dismissed on the ground that it is frivolous or vexatious. New subsection 135(2) provides that the Principal Member can only dismiss an application on these grounds if:

- (a) one of the following applies:
 - the Principal Member has received and considered submissions from the applicant;
 - the Principal Member has otherwise communicated with the applicant in relation to the grounds of the application;
 - the Principal Member has made reasonable attempts to communicate with the applicant and has failed to do so; and

- (b) all of the parties (other than the applicant) consent to the dismissal.

New subsection 135(3) gives the Principal Member discretion to reinstate an application that has been dismissed under subsection 135(1) (other than an application dismissed under paragraph 135(1)(b)). Paragraph 135(1)(b) applies where an application has been dismissed on the grounds that it is frivolous or vexatious. Power to reinstate the application is not appropriate in this case because, in deciding that an application is frivolous or vexatious, the Principal Member would have concluded that the application for review had no prospects of success, and there would be no utility in permitting an application for reinstatement of an application for review which had already been found to be without merit. Accordingly, under new subsection 135(3), a party to the review may:

- (a) within 28 days after receiving notification that the application has been dismissed; or
- (b) within such longer period as the Principal Member, in special circumstances, allows;

request that the Principal Member reinstate the application.

New subsection 135(4) provides that, if the Principal Member considers it appropriate to do so, he or she may reinstate the application and give such directions as he or she considers appropriate in the circumstances.

New subsection 135(5) applies if an application has been dismissed under subsection (1) in error. In these circumstances, the Principal Member may, on the request of a party to the review or on his or her own initiative, reinstate the application and give such directions as he or she considers appropriate in the circumstances.

New subsection 135(6) clarifies that new section 136 does not apply in relation to a party if the party is the Secretary.

New subsection 136(1) provides that an applicant for review may notify the SSAT at any time that the application for review is discontinued or withdrawn. New subsection 136(2) applies where the applicant orally notifies the SSAT. In these circumstances, the person who receives the notification must make a written record of the day on which the notification was given. If a person notifies the SSAT under subsection 136(1) that he or she wishes to discontinue or withdraw their application, the Principal Member is taken to have dismissed the application.

New subsection 136(4) provides the Principal Member with discretion to reinstate an application that has been dismissed. If the Principal Member dismisses an application under subsection 136(3), a party to the review may:

- (a) within 28 days after receiving notification that the application has been dismissed; or
- (b) within such longer period as the Principal Member, in special circumstances, allows;

request that the Principal Member reinstate the application.

New subsection 136(5) provides that, if the Principal Member considers it appropriate to do so, he or she may reinstate the application and give such directions as he or she considers appropriate in the circumstances.

New subsection 136(6) clarifies that new section 136 does not apply in relation to a party if the party is the Secretary.

Item 27 repeals subsection 139(7) of the Family Assistance Administration Act, which enables the SSAT Principal Member to give directions in relation to procedures for hearings. Subsection 139(7) provides that directions under this section must have due regard to the objective laid down by section 110. This subsection is no longer required because of the amendment to section 110 made by **item 5** and is similar to the amendment made by **item 73**.

Item 28 adds new sections 141C, 141D and 141E at the end of Division 3 of Part 5 of the Family Assistance Administration Act.

Currently, the power of the SSAT Principal Member to make non-disclosure orders is limited to information contained in the statement provided by the Secretary to the Principal Member and then given to the parties (see subsection 120(2)), information obtained by a party at a pre-hearing conference (see subsection 129A(4)), and information obtained by a person during the course of a hearing (see subsection 133(1)).

New section 141C(1) enables the SSAT Principal Member to make an order directing a person not to disclose information. New subsection 141C(2) clarifies that the order may only specify information that was disclosed to the person for purposes relating to a review by the SSAT under Part 5 of the Family Assistance Administration Act.

New subsection 141C(3) provides for an offence for breach of an order given by the SSAT Principal Member. The offence carries a maximum penalty of two years' imprisonment. A person commits an offence if the SSAT Principal Member makes an order under subsection 141C(1) in relation to the person, and the person contravenes the order. This offence provision reflects the current offence provisions contained in subsections 120(3), 129A(5) and 133(2).

New subsection 141C(4) limits the application of the offence contained in subsection 141C(3). This provision has been included to take account of the possibility that a party subject to a non-disclosure order given by the SSAT Principal Member may have already been aware of some or all of the information covered by the non-disclosure order before that information was disclosed to the party at the review. Accordingly, subsection 141C(4) provides that an order made under subsection (1) in relation to a person does not apply to information which the person knew before the disclosure of the information referred to in subsection 141C(1).

The note to subsection 141C(4) states that a defendant bears an evidential burden in relation to the matter in subsection 141C(4) – see subsection 13.3(3) of the *Criminal Code*. It is considered appropriate to cast the evidential burden on the defendant in these circumstances. The recipient of the information that is subject to a ‘non-disclosure’ order given by the SSAT Principal Member will be best placed to know whether he or she knew the information before they were given the information at the review and produce appropriate evidence.

New section 141D gives the SSAT Principal Member power to vary an order under section 141C to permit certain disclosures. New subsection 141D(1) enables a person in relation to whom an order has been made under subsection 141C(1) to request the SSAT Principal Member for permission to disclose particular information specified in the order in particular circumstances or for particular purposes, or to a particular person or class of persons.

New subsection 141D(2) provides that the SSAT Principal Member may vary the order in accordance with the request.

New subsection 141D(3) clarifies that section 141D does not limit the SSAT Principal Member’s power to vary or revoke an order. The note to this subsection directs the reader to subsection 33(3) of the *Acts Interpretation Act 1901* on the subject of variation and revocation, apart from under this section.

New section 141E empowers the SSAT Principal Member to make orders restricting secondary disclosures of information. These will apply to any person in respect of whom the person the subject of the original (primary order) has sought permission to disclose.

Accordingly, new subsection 141E(1) provides that, if an order (the **primary order**) under subsection 141C(1) directs a person not to disclose information specified in the order except to a specified person or a member of a class of persons (**an authorised recipient**), the SSAT Principal Member may make another order, directing the authorised recipient not to disclose the information specified in the primary order. A person who is the subject of a secondary non-disclosure order will not be permitted to make further disclosure of the information. If the person who is the subject of the primary non-disclosure order wishes to disclose to a further person, the person will need to seek permission from the SSAT Principal Member.

New subsection 141E(2) is similar to subsection 141C(3) and new subsection 141E(3) is similar to subsection 141C(4).

Amendments to the Child Support Registration and Collection Act

Item 29 amends subsection 4(1) of the Child Support Registration and Collection Act by inserting a new definition of **Human Services Department**. This is defined to mean the Department administered by the Minister administering the *Human Services (Centrelink) Act 1997*. This item is consequential to **item 39**.

Item 30 adds a note at the end of the definition of **SSAT** in section 4 of the Child Support Registration and Collection Act.

Schedule 3 to the Social Security Administration Act contains rules relevant to the constitution and membership of the Social Security Appeals Tribunal. These rules may also be relevant to the SSAT's review powers under the Child Support Registration and Collection Act. Accordingly, it is desirable to direct readers to Schedule 3 of the Social Security Administration Act. **Item 32** adds a similar note to the definition of **SSAT Principal Member**.

Item 31 inserts a new definition of **SSAT member** into subsection 4(1) of the Child Support Registration and Collection Act. SSAT member is defined to mean a member of the SSAT, and includes the SSAT Principal Member. This new definition also has a note that is similar to that being added by **items 30 and 32**.

Item 33 amends paragraph 16(2AB)(a) of the Child Support Registration and Collection Act by substituting the word, 'review', for 'proceedings'. **Item 35** makes a similar amendment to paragraph 16(2AB)(c).

The amendments make the provisions consistent with the wording of Part VIIA of the Child Support Registration and Collection Act, which refers to 'review', rather than 'proceedings'.

Item 34 amends paragraph 16(2AB)(b) of the Child Support Registration and Collection Act for the same reasons as **item 33**. This item omits the words, 'proceedings concerned or is, or is alleged to be, in any other way concerned in the matter to which the proceedings concerned relate', and substitutes 'review concerned or is, or is alleged to be, in any other way concerned in the matter to which the review concerned relates'.

Item 36 amends section 16 of the Child Support Registration and Collection Act.

Section 16 covers a range of people, including members of the SSAT, and operates to protect certain information (defined as **protected information**, which is information that concerns a person and is disclosed to or obtained by another person in the course of, or because of, the other person's duties under or in relation to the Child Support Registration and Collection Act).

Subsection 16(2) prohibits a person to whom section 16 applies from making a record of any protected information or communicating to a person any protected information concerning another person, and creates an offence punishable by imprisonment for one year.

Section 16 also contains a number of subsections which permit disclosure of protected information by specified people in certain circumstances. Relevantly, paragraph 16(3)(e) permits the Child Support Registrar, or a person authorised by the Registrar, to communicate protected information to any person, if the information concerns a credible threat to the life, health or welfare of a person and either of the following applies:

- (i) the Registrar, or the person authorised by the Registrar, believes on reasonable grounds that the communication is necessary to prevent or lessen the threat;
- (ii) there is reason to suspect that the threat may afford evidence that an offence may be, or has been, committed against a person and the information is communicated for the purpose of preventing, investigating or prosecuting such an offence.

There is currently no equivalent exemption for SSAT members.

This item, therefore, amends section 16 by adding a new subsection 16(3A) to permit an SSAT member to communicate protected information to a person if the information concerns a threat to the life, health or welfare of a person and either of the following applies:

- (a) the member believes on reasonable grounds that the communication is necessary to prevent or lessen the threat;

- (b) there is reason to suspect that the threat may afford evidence that an offence may be, or has been, committed against a person and the information is communicated for the purpose of preventing, investigating or prosecuting such an offence.

Items 37 and 38 amend section 88 of the Child Support Registration and Collection Act, which specifies the objective to be pursued by the SSAT in carrying out its functions. New subsection 88(2) clarifies that the SSAT Principal Member must pursue the same objective in performing or exercising his or her functions and powers under the Child Support Registration and Collection Act.

Item 39 amends subparagraph 94(1)(a)(ii) of the Child Support Registration and Collection Act by replacing 'Department' with 'Human Services Department'. This amendment clarifies that a person can apply to the SSAT for review by delivering a written application to the Department of Human Services.

Item 40 amends subsection 95(1) of the Child Support Registration and Collection Act by replacing 'Department' (wherever occurring) with 'Human Services Department'. This amendment is consequential to **item 39** and clarifies the procedures that apply when an application to the SSAT for review is made to the Human Services Department.

Item 41 amends subsection 96(1) of the Child Support Registration and Collection Act by omitting the reference to '(1)'. This amendment is consequential to **item 42**, which repeals subsections 96(2) and (3).

Currently, under subsection 96(2), the SSAT Principal Member can give a direction to a party not to disclose information contained in a statement or document provided by the Child Support Registrar (the statement and documents are described in subsection 95(3)). Under subsection 96(3), a person commits an offence if the SSAT Principal Member gives a direction to the person under subsection 96(2), and the person contravenes the direction. A penalty of imprisonment for two years applies.

Currently, apart from under subsection 96(2), the only information which the SSAT Principal Member can order a person not to disclose is information obtained by the person in the course of a hearing (section 103Q). This means that personal information in documents given to the SSAT by a party (which procedural fairness requires the SSAT to give to all parties) cannot be the subject of a non-disclosure order. To address this gap in the protection of parties' privacy, the SSAT Principal Member will be given the power, by new section 103ZAA (see **item 74**), to order non-disclosure of any information disclosed to a person for purposes relating to a review.

Subsections 96(2) and (3) are therefore being repealed as new section 103ZAA will consolidate all the powers of the SSAT Principal Member to make non-disclosure orders.

Items 43, 44 and 45 amend subsections 97(1A) and (2) and section 98 of the Child Support Registration and Collection Act by replacing references to 'subsection 96(1)' with 'section 96'. These items are consequential to **item 41**.

Item 46 amends subsection 100(1) of the Child Support Registration and Collection Act by inserting a new paragraph 100(1)(ca).

Subsection 100(1) of the Child Support Registration and Collection Act sets out the circumstances in which the SSAT Principal Member may, on the request of a party or on his or her own initiative, dismiss an application for review of a decision. Those circumstances are currently:

- the decision is not reviewable under this Part; or
 - the application is frivolous or vexatious; or
 - all of the parties consent; or
 - the SSAT Principal Member is satisfied:
 - (i) after having communicated with each party; or
 - (ii) after having made reasonable attempts to communicate with each party and having failed to do so;
- or a combination of both, that none of the parties intends to proceed with the application; or
- all of the parties fail to attend the hearing; or
 - all of the parties have been removed from the proceeding under subsection 101(5)

This item adds a new ground where an application for review can be dismissed where the applicant has been removed from the review under subsection 101(5) and all of the other parties consent to the dismissal. This circumstance is not explicitly covered by paragraph 100(1)(a), (b), (c), (d), (e) or (f).

Item 47 amends paragraph 100(1)(f) of the Child Support Registration and Collection Act by substituting 'review' for 'proceeding' for the same reason as the amendment made by **item 33**.

Item 48 makes a further amendment to section 100 of the Child Support Registration and Collection Act by adding new subsections (3), (4) and (5).

Currently, if an application for review to the SSAT under Part VIIA is dismissed by the SSAT Principal Member, there is no power to reinstate the application. This amendment recognises that there may be compelling reasons for the dismissed application to be reinstated, for example, where the parties could not be contacted at the time of the hearing (or could not make contact with the SSAT) because of technology faults.

This item enables the SSAT Principal Member to reinstate an application for review dismissed under paragraph 100(1)(a), (c), (d) or (e). The power to reinstate does not extend to applications dismissed under paragraph 100(1)(b) or (f). Paragraph 100(1)(b) applies where an application has been dismissed on the grounds that it is frivolous or vexatious. Power to reinstate the application is not appropriate in this case because, in deciding that an application is frivolous or vexatious, the SSAT Principal Member would have concluded that the application for review had no prospects of success, and there would be no utility in permitting an application for reinstatement of an application for review which had already been found to be without merit. Paragraph 100(1)(f) applies where all parties have been removed under subsection 101(5). As there are no provisions for a removed party to be rejoined, there is no party who could apply for reinstatement (as Subdivision E, which deals with dismissal of applications, does not apply to the Registrar).

New subsection 100(3) allows a party to the review to request the Principal Member to reinstate an application that has been dismissed under paragraph 100(1)(a), (c), (d) or (e) within 28 days after receiving notification that the application has been dismissed, or within such longer period as the SSAT Principal Member, in special circumstances, allows.

New subsection 100(4) provides that, if the SSAT Principal Member considers it appropriate to do so, he or she may reinstate the application and give such directions as he or she considers appropriate in the circumstances. This makes clear that the power of reinstatement is discretionary.

New subsection 100(5) provides that, if it appears to the SSAT Principal Member that an application has been dismissed under subsection 100(1) in error, he or she may, on the request of a party to the review or on his or her own initiative, reinstate the application and give such directions as he or she considers appropriate in the circumstances.

Items 49 and 50 amend section 100A of the Child Support Registration and Collection Act.

Section 100A enables an application for review to be dismissed on request of the applicant. Under subsection 100A(1) an applicant may, in writing lodged with the SSAT, at any time notify the SSAT that the application for review is discontinued or withdrawn. If notification is so given, the SSAT is taken to have dismissed the application without proceeding to review the decision (subsection 100A(2)).

In Part VIIA of the Child Support Registration and Collection Act, there is a division of powers between the SSAT Principal Member and the SSAT. The amendment made by **item 49** makes subsection 100A(2) consistent with section 100, in which the powers of dismissal are conferred on the SSAT Principal Member.

The new subsections added by **item 50** confer the power of reinstatement on the SSAT Principal Member for the same reason as explained in **item 49**.

Additionally, new subsection 100A(3) permits the SSAT Principal Member to grant an application for reinstatement made outside the 28-day period if there are special circumstances.

New subsection 100A(4) changes the repository of the power from the SSAT to the SSAT Principal Member.

Subsection 100A(5) is repealed. This subsection allows the SSAT to reinstate an application if it has been dismissed under subsection 100A(2) in error. Because an application is dismissed by force of subsection 100A(2) only if the applicant notifies the SSAT in writing that the application is discontinued or withdrawn, it follows that an application is not dismissed if there was no such notification to the SSAT.

Item 51 changes the title of Division 3A of Part VIIA of the Child Support Registration and Collection Act from 'Prehearing conferences' to 'Directions hearings'. This better reflects the nature of what is convened. **Item 52** makes a similar amendment to the heading of section 103 of the Child Support Registration and Collection Act. To reflect the new headings, **items 53 and 54** amend subsections 103(1) and (2) respectively by omitting the word, 'conference', and substituting 'directions hearings'.

Item 55 amends subsection 103(2) of the Child Support Registration and Collection Act by adding a new paragraph 103(2)(d) to clarify that the SSAT Principal Member may give directions about what information is to be brought before the SSAT.

Under subsection 103(1), the SSAT Principal Member may convene one or more conferences with the parties to a review. Currently, subsection 103(2) refers only to the fixing of a day or days for the hearing, giving directions about the time within which submissions are to be made to the SSAT, and giving directions about the time within which evidence is to be brought before the SSAT. This amendment clarifies that the SSAT Principal Member also has power to give directions about what information is to be brought before the SSAT and is made for similar reasons as for **item 19**.

Items 56 and 57 amend the note to each of subsection 103(2) and paragraph 103A(1)(c) of the Child Support Registration and Collection Act by omitting the words, 'pre-hearing conference', and substituting 'directions hearing'. These amendments are consequential to the amendment made by **item 53**.

Item 58 repeals subsection 103C(2) of the Child Support Registration and Collection Act and inserts new subsections 103C(2) and (2A).

Section 103C of the Child Support Registration and Collection Act applies to submissions. Subsection 103C(2) provides that a party to a review may have another person make submissions to the SSAT on his or her behalf.

In child support proceedings under Part VIIA of the Child Support Registration and Collection Act, it is not uncommon for parties to ask that their current partners be their representatives. It is also common for the other party to be strongly opposed to such representation.

The question which then arises is whether subsection 103C(2) is paramount over subsection 103P(1) (which provides that the hearing of a review must be in private) and subsection 103P(2) (which provides that the SSAT Principal Member may give directions, in writing or otherwise, as to the people who may be present at any hearing of a review and must have regard to the wishes of the parties and the need to protect their privacy in making such directions – see subsection 103P(3)).

Subsection 103C is amended to clarify that the permission of the SSAT Principal Member is required for a party to have another person make submissions on their behalf. New subsection 103C(2A) mirrors current subsection 103P(3) by requiring that the wishes of the other party and the need to protect their privacy be taken into account by the SSAT Principal Member in deciding whether to give permission.

These amendments are in harmony with the amendment made by **item 11**.

The SSAT Principal Member is also required to pursue the SSAT's statutory objective in the exercise of the power conferred by section 103C as a result of **item 38**.

Item 59 amends subsection 103F(3) of the Child Support Registration and Collection Act by omitting the words, 'having regard to the objective laid down by section 88'. This item is consequential to **item 38**.

Item 60 amends the heading of subsection 103F(4) of the Child Support Registration and Collection Act. This item is consequential to **item 61**.

Item 61 amends subsection 103F(4) of the Child Support Registration and Collection Act by adding a new paragraph 103F(4)(aa) after paragraph 103F(4)(a), which refers to written submissions.

Under subsection 103F(4), the SSAT Principal Member may order the Registrar to make oral submissions to the SSAT, or both oral and written submissions to the SSAT, if, in the opinion of the SSAT Principal Member having regard to the objective laid down by section 88, such submissions would assist the SSAT.

Currently, the SSAT Principal Member is not able to order the Registrar to make only written submissions. The amendment made by this item addresses this deficiency.

Item 62 amends subsection 103F(4) of the Child Support Registration and Collection Act by omitting the words, ‘having regard to the objective laid down by section 88’. This item is consequential to **item 38**.

Item 63 amends paragraph 103N(1)(b) of the Child Support Registration and Collection Act by omitting the words, ‘allows; and’, and substituting the word, ‘allows’. This item is consequential to **item 64** because it reflects the repeal of paragraph 103N(1)(c), which is consequential to **item 38**.

Item 65 repeals section 103Q of the Child Support Registration and Collection Act.

Subsection 103Q(1) permits the SSAT Principal Member to make an order directing a person who is present at the hearing of a review not to disclose information obtained by the person in the course of the hearing; or not to disclose information obtained by the person in the course of the hearing except in the circumstances, or for the purposes, specified in the order. Subsection 103Q(2) makes it an offence, with a penalty of two years’ imprisonment, for a person to contravene an order under subsection (1).

Section 103Q is being repealed for the same reason as the repeal of subsections 96(2) and (3) (see **item 42**).

Item 66 repeals subsection 103R(2) of the Child Support Registration and Collection Act, which applies to adjournment of SSAT hearings, and substitutes new subsection 103R(2). This change does not change the legal effect of subsection 103R(2) and is consequential to the change made by **item 38**.

Item 67 amends subsection 103W(1) of the Child Support Registration and Collection Act by omitting the words, ‘a proceeding for a review (including at a pre-hearing conference’, and substituting the words, ‘a review (including at a directions hearing’. This amendment is made for similar reasons to the amendment made by **item 33**.

Items 68, 69, 70 and 71 are aimed at replacing various references to ‘proceeding’ in the Child Support Registration and Collection Act with references to ‘review’. The reason for these amendments is the same as for **item 33**.

Item 72 amends section 103X of the Child Support Registration and Collection Act by adding a new subsection 103X(6).

Section 103X sets out detailed procedures to be followed after the SSAT has made a decision.

Under subsection 103X(1), if the SSAT makes a decision on a review, the SSAT must, within 14 days after making the decision, give a written notice to the parties that sets out the decision and any applicable review rights (depending upon the nature of the decision).

Subsection 103X(3) applies to statements of reasons. Under this subsection, the SSAT must, within 14 days after making the decision, either:

- (a) do both of the following:
 - (i) give reasons for the decision orally to the parties; and
 - (ii) explain that the parties may request a written notice under paragraph (b) within 14 days after the notice is given under paragraph (1)(a); or
- (b) give to each party a written notice (whether or not as part of the notice under paragraph (1)(a)) that:
 - (i) sets out the reasons for the decision; and
 - (ii) sets out the findings on any material questions of fact; and
 - (iii) refers to evidence or other material on which the findings of fact are based.

Subsection 103X(4) provides that, if the SSAT does not give a statement of reasons to a party under paragraph (3)(b), the party may, within 14 days after the day on which notice of the decision under paragraph (1)(a) is given to the party, request a statement of reasons from the SSAT. Under subsection 103X(5), the SSAT must comply with a request under subsection 103X(4) within 14 days after the day on which it receives the request.

Currently, the SSAT is required to give a person who was removed as a party to the review under subsection 101(5) a copy of the reasons for the decision. **Item 72** addresses this deficiency by adding a new subsection 103X(6), which requires the SSAT to do the following in relation to a party to the review who was removed under subsection 101(5):

- (a) provide a copy of the notice under paragraph (1)(a), within 14 days after making the decision (this is the decision and any applicable review rights); and
- (b) if a notice under paragraph (3)(b) was not part of the notice under paragraph (1)(a) – do at least one of the following:
 - (i) give reasons for the decision orally to the person, within 14 days after making the decision;

- (ii) give the person a copy of any notice under paragraph (3)(b), at the same time as giving that notice to the parties to the review.

Item 73 repeals subsection 103ZA(7) of the Child Support Registration and Collection Act. This amendment is consequential to **item 38**.

Item 74 adds new sections 103ZAA, 103ZAB and 103ZAC at the end of Division 6 of Part VIIA of the Child Support Registration and Collection Act.

Currently, the power of the SSAT Principal Member to make non-disclosure directions or orders is limited to the information contained in a statement or document provided by the Child Support Registrar to the parties, and information obtained by a person in the course of the hearing. This means that personal information disclosed during a directions hearing or in documents given to the SSAT by a party (which procedural fairness requires the SSAT to give to all parties) cannot be the subject of a non-disclosure order.

New section 103ZAA enables the SSAT Principal Member to make an order directing a person not to disclose information that was disclosed to the person for purposes relating to a review by the SSAT under the Child Support Registration and Collection Act. This is in the same terms as new section 141C, inserted by **item 28**, which applies to reviews under the Family Assistance Administration Act.

New section 103ZAB gives the SSAT Principal Member power to vary an order under section 103ZAA to permit certain disclosures. This is in the same terms as new section 141B, inserted by **item 28**.

New section 103ZAC empowers the SSAT Principal Member to make orders restricting secondary disclosures of information. This is in the same terms as new section 141C, inserted by **item 28**.

Item 75 amends section 103ZB of the Child Support Registration and Collection Act by omitting the word, 'proceeding', and substituting 'review'. **Item 76** makes a similar amendment to section 110A of the Child Support Registration and Collection Act. These amendments are made for similar reasons to the amendment made by **item 33**.

Item 77 repeals section 110B of the Child Support Registration and Collection Act and substitutes a new section 110B.

Existing section 110B simply provides that a party to a proceeding before the SSAT under Part VIIA may appeal to a court, on a question of law, from any decision of the SSAT in that proceeding.

A number of appeals have been brought by applicants who have argued that section 110B encompasses directions made by the SSAT Principal Member, such as the removal of a person as a party to the review.

New section 110B clarifies that it is only decisions made by the SSAT on the review which may be appealed under that provision. Directions or orders of the SSAT Principal Member remain amenable to judicial review.

Item 78 amends section 110D of the Child Support Registration and Collection Act by omitting the words, ‘the people who were’, because those words are unnecessary.

Item 79 further amends section 110D by omitting the word, ‘proceeding’ (second occurring), and substituting ‘review’. This amendment is made for similar reasons as the amendment made by **item 33**.

Amendments made by **items 78 and 79** are not intended to change the legal effect of section 110D.

Item 80 amends section 110D of the Child Support Registration and Collection Act by adding a note that directs the reader to subsections 101(4) and (5), which set out the circumstances in which the SSAT Principal Member may add a person as a party to a review or remove a party to the review.

Items 81, 82, 83, 84, 85 and 86 replace various references to ‘proceeding’ in the Child Support Registration and Collection Act with references to ‘review’. The reason for these amendments is the same as for **item 33**.

Amendments to the Paid Parental Leave Act

Item 87 amends section 6 of the Paid Parental Leave Act by adding a note to the definition of **Principal Member**, directing the reader to Schedule 3 to the Social Security Administration Act, which deals with the constitution and membership of the SSAT. These rules may also be relevant to the SSAT’s review powers under the Paid Parental Leave Act (note the amendment of clause 20 of Schedule 3 to the Social Security Administration Act made by **item 157**, which adds a reference to the Paid Parental Leave Act in clause 20). Given this, it is desirable to direct readers to Schedule 3. **Item 88** makes a similar amendment to the definition of **SSAT** in section 6. Both amendments are made for similar reasons as for **items 1 and 30**.

Item 89 amends section 6 of the Paid Parental Leave Act by inserting a new definition of **SSAT member**. The note to this new definition also directs the reader to Schedule 3 to the Social Security Administration Act, which deals with the constitution and membership of the SSAT.

Item 90 inserts a new section 130A to the Paid Parental Leave Act. This item is being made for similar reasons as for **item 36**.

Item 91 amends section 214 of the Paid Parental Leave Act. This item is consequential to **item 92**.

Item 92 creates a new subsection 214(2), which provides that the SSAT objective must be pursued by the Principal Member in performing or exercising his or her functions and powers under this Act. These amendments reflect the amendments made by **items 5 and 38** and are made for the same reason.

Item 93 repeals subsection 221(4) and substitutes a new subsection 221(4).

Section 221 of the Paid Parental Leave Act clarifies what happens when a decision that has been appealed to the SSAT is varied or set aside (and a new decision substituted) by an officer before the SSAT review is completed.

If a decision that has been appealed to the SSAT is changed by an officer, new subsection 221(4) provides that the person seeking review may:

- (a) proceed with the application for review of the decision as varied or the new decision; or
- (b) request the Principal Member to dismiss the application under section 251; or
- (c) notify the SSAT under section 252 that their application is discontinued or withdrawn.

The changes are similar to those made to the Family Assistance Administration Act by **item 7**.

Item 94 repeals subsection 229(4) and replaces it with a new subsection 229(4).

Section 229 of the Paid Parental Leave Act is similar to section 221, but applies to SSAT reviews of employer decisions which are varied or set aside by an officer before the review is completed.

New subsection 229(4) gives the employer the same options with respect to their SSAT application as a claimant under new subsection 221(4) (see **item 93**).

Item 95 amends section 231 of the Paid Parental Leave Act by omitting the reference to 'pre-hearing conferences' and substituting a reference to 'directions hearings'. **Item 96** makes a similar amendment. These amendments are made for similar reasons as for **items 16 to 21**.

Item 97 repeals subsections 233(3) and (4) of the Paid Parental Leave Act.

Section 233 requires the Secretary to give to each party to an SSAT review a copy of statements about the decision under review and relevant documents. Subsection 233(3) provides that the Principal Member may direct, in writing, a person who is required to be given a copy of a statement or a document in accordance with subsection (1) or (2) not to disclose information in the statement or document, or not to disclose information in the statement or document except in the circumstances, or for the purposes, specified in the direction. Subsection 233(4) provides for an offence if a person contravenes a direction under subsection (3). The maximum penalty for contravention of this subsection is imprisonment for two years.

Subsections 233(3) and (4) are being repealed because of **item 116**, which will consolidate the powers of the SSAT Principal Member to make non-disclosure orders.

Item 98 repeals existing subsection 237(2) of the Paid Parental Leave Act and substitutes new subsections 237(2) and (2A). This amendment is similar to the amendment made by **items 11 and 58** and is made for similar reasons.

Item 99 amends subsection 240(3) of the Paid Parental Leave Act by omitting the words, 'taking into account the objective laid down by section 214'. This amendment is consequential to **item 92**.

Item 100 amends subsection 240(4) of the Paid Parental Leave Act by adding a new paragraph 240(4)(aa) after paragraph 240(4)(a). This amendment is similar to the amendment made by each of **items 11 and 61** and is made for the same reason.

Item 101 amends subsection 240(4) of the Paid Parental Leave Act by omitting the words, 'taking into account the objective laid down by section 214'. This amendment is consequential to **item 92**.

Item 102 repeals the heading to Division 6 of Part 5-3 of the Paid Parental Leave Act and substitutes a new heading, 'Division 6 – Directions hearings'. **Item 103** makes a similar amendment to the heading of section 245. **Items 104 and 105** make similar amendments to subsections 245(1) and (2) respectively. These amendments are made for the same reasons as for **items 15 to 18, 21, 51 to 54, 56 and 95**.

Item 106 amends paragraph 245(2)(d) of the Paid Parental Leave Act by omitting the words, 'evidence is to be brought before', and substituting 'information is to be given to'. This amendment is made for similar reasons as for **items 28 and 55**.

Item 107 repeals subsections 245(3), (4) and (5) of the Paid Parental Leave Act.

Subsection 245(3) provides that paragraph 245(2)(d) does not limit the evidence that may be brought before the SSAT. This provision has become redundant because of the changes made by **item 106**.

Under subsection 245(4), the Principal Member may direct, in writing, a person who is present at a conference not to disclose information obtained by the person at the conference, or not to disclose information obtained by the person at the conference except in the circumstances, or for the purposes, specified in the direction. Subsection 245(5) sets out an offence for conduct that contravenes a direction under subsection 245(4). The maximum penalty for contravention is imprisonment for two years.

Subsections 245(4) and (5) are being repealed as new section 273A, inserted by **item 116**, will consolidate all the powers of the SSAT Principal Member to make non-disclosure orders.

Item 108 amends paragraph 246(1)(a) of the Paid Parental Leave Act by omitting the words, 'pre-hearing conference', and substituting 'directions hearing'. This amendment is made for similar reasons as for **items 92 and 95**.

Item 109 amends paragraph 247(1)(b) of the Paid Parental Leave Act by omitting the words, 'allows; and', and substituting 'allows.' This item is consequential to **item 110**, which repeals paragraph 247(1)(c). Both items are consequential to **item 92**.

Item 111 repeals section 249 of the Paid Parental Leave Act.

Subsection 249(1) provides that the Principal Member may direct, in writing, a person who is present at the hearing of a review not to disclose information obtained by the person in the course of the hearing, or not to disclose information obtained by the person in the course of the hearing except in the circumstances, or for the purposes, specified in the direction. Subsection 249(2) establishes an offence if a person engages in conduct in contravention of a direction under subsection (1). The maximum penalty for contravention of this subsection is imprisonment for two years.

Section 249 is being repealed because new section 273A, inserted by **item 116**, will consolidate all the powers of the SSAT Principal Member to make non-disclosure orders.

Item 112 repeals subsection 250(2) of the Paid Parental Leave Act and substitutes a new subsection 250(2). This change reflects the changes to section 214 made by **item 92** and does not change the legal effect of subsection 250(2).

Item 113 repeals sections 251 and 252 of the Paid Parental Leave Act and replaces them with new sections with corresponding numbers. Broadly speaking, these changes align the rules relating to dismissals of applications in the Paid Parental Leave Act with similar rules in other Acts that confer jurisdiction upon the SSAT. In addition, the new rules provide for greater flexibility, for example, by expanding the circumstances in which an application can be dismissed and by providing the SSAT with the capacity to reinstate applications that have been dismissed in certain circumstances.

Under the current rules, section 251 sets out the rules applicable to withdrawal of SSAT applications and section 252 sets out the rules and processes applicable to dismissal of an application.

New subsection 251(1) expands the circumstances in which the SSAT can dismiss an application. Under the current rules (contained in subsection 252(1) of the Paid Parental Leave Act), the Principal Member could only dismiss an application in circumstances where the Principal Member is satisfied, after having communicated with the person or after having made reasonable attempts to communicate with the person and having failed to do so, that the person does not intend to proceed with the application.

Under new subsection 251(1), the Principal Member may, on the request of a party or on his or her own initiative, dismiss an application for review of a decision in the following circumstances:

- (a) the decision is not reviewable under Part 5-2; or
- (b) the application is frivolous or vexatious; or
- (c) all of the parties consent; or
- (d) the applicant has been removed as a party under subsection 222(4) and all of the remaining parties consent to the dismissal; or
- (e) the Principal Member is satisfied:
 - after having communicated with each party; or
 - after having made reasonable attempts to communicate with each party and having failed to do so; ora combination of both, that none of the parties intends to proceed with the application; or
- (f) all of the parties fail to attend the hearing; or
- (g) all of the parties have been removed from the review under subsection 222(4).

New subsections 251(2), (3), (4), (5) and (6) are similar to new subsections 135(2), (3), (4), (5) and (6) of the Family Assistance Administration Act (see **item 26**).

New subsection 252 is similar to new section 136 of the Family Assistance Administration Act (see **item 26**).

Item 114 repeals subsection 255(7) of the Paid Parental Leave Act because the amendment made by **item 92** makes subsection 255(7) redundant.

Item 115 adds a new section 257A at the end of Division 9 of Part 5-3 of the Paid Parental Leave Act.

The purpose of new section 257A is to impose a requirement on the SSAT to provide a copy of the reasons for the decision to a person who was removed as a party to the review under subsection 222(4). This is because, under the current rules, the SSAT is under no legal obligation to do so.

New subsection 257A(1) applies if the SSAT affirms the decision. If the decision is affirmed, the SSAT must, in relation to any person who was removed as a party to the review under subsection 222(4):

- (a) give the person a copy of the initial statement referred to in paragraph 257(1)(a), within 14 days after making the decision; and
- (b) if a written statement referred to in subparagraph 257(1)(c)(ii) was not part of the initial statement – do at least one of the following:
 - (i) give reasons for the decision orally to the person, within 14 days after making the decision;
 - (ii) give the person a copy of any written statement referred to in subparagraph 257(1)(c)(ii), at the same time as giving it to the parties to the review.

New subsection 257A(2) applies if the SSAT varies or sets aside a decision. If this occurs, the SSAT must give any person who was removed as a party to the review under subsection 222(4) a copy of the statement referred to in paragraph 257(5)(a), within 14 days after making the decision.

These amendments are made for the same reasons as for the amendments made by **item 72**.

Item 116 adds new sections 273A, 273B and 273C at the end of Division 2 of Part 5-5 of the Paid Parental Leave Act.

Under the current rules, the powers of the SSAT Principal Member to make non-disclosure orders is limited to the information contained in a statement and documents about the decision under review provided by the Secretary to each party to a review (see subsection 233(3)), to information obtained by a person at a conference (see subsection 245(4)), and to information obtained by a person in the course of a hearing (see subsection 249(1)).

New section 273A enables the SSAT Principal Member to make an order directing a person not to disclose information that was disclosed to the person for purposes relating to a review under Part 5-5 of the Paid Parental Leave Act. This is in the same terms as new section 141C inserted by **item 28**, which applies to reviews under the Family Assistance Administration Act, **item 74**, which applies to reviews under the Child Support Registration and Collection Act, and **item 140**, which applies to reviews under the Social Security Administration Act.

New section 273B gives the SSAT Principal Member power to vary an order under section 273A to permit certain disclosures. This is in the same terms as new section 141B, inserted by **item 28**.

New section 273C empowers the SSAT Principal Member to make orders restricting secondary disclosures of information. This is in the same terms as new section 141C, inserted by **item 28**.

Amendments to the Social Security Administration Act

Item 117 amends section 141 of the Social Security Administration Act. This item is consequential to **item 118**.

Item 118 adds new subsection 141(2), which provides that the SSAT objective must also be pursued by the Principal Member in performing or exercising his or her functions and powers under the Social Security Administration Act. These amendments are made for the similar reasons to those for **items 5, 38 and 91**.

Item 119 amends subparagraph 145(4)(b)(i) by omitting, 'withdrawn' (wherever occurring), and substituting 'dismissed'.

Item 120 repeals subsection 155(3) and substitutes a new subsection 155(3), which is similar to new subsection 117(3) of the Family Assistance Administration Act (see **item 7**).

Item 121 amends subsection 158(1) of the Social Security Administration Act. This amendment is consequential to **item 122**, which repeals subsections 158(2), (3) and (4).

Subsection 158(1) provides that the Principal Member must give each party (other than the Secretary) a copy of the statement about the decision under review. Under subsection 158(2), the Principal Member may make an order directing a person who has received a copy of a statement in accordance with subsection (1) not to disclose information in the statement, or not to disclose information in the statement except in the circumstances, or for the purposes, specified in the order. Under subsection 158(3), an order must be given by written notice. Subsection 158(4) provides that a person must not contravene an order under subsection (2).

Subsections 158(2), (3) and (4) are being repealed because of **item 140**, which will consolidate the powers of the SSAT Principal member to make non-disclosure orders.

Item 123 repeals subsection 161(3) of the Social Security Administration Act and substitutes new subsections 161(2) and (3).

Existing subsection 161(3) provides that a party to a review may have another person make submissions to the SSAT on their behalf. New subsection 161(2) requires parties to seek permission from the SSAT Principal Member to have another person make submissions on their behalf. In deciding whether to grant permission, the SSAT Principal Member is required, under new subsection 161(3), to have regard to the wishes of the parties and the need to protect their privacy. These amendments reflect the amendments made by **items 11 and 58** and are made for the same reasons.

Item 124 amends subsection 163A(3) of the Social Security Administration Act by omitting the words, 'having regard to the objective laid down by section 141'. This amendment is consequential to **item 118**.

Item 125 adds a new paragraph 163A(4)(aa) to subsection 163A(4) of the Social Security Administration Act.

Subsection 163A(4) provides that the Principal Member may order the Secretary to make oral submissions to the SSAT, or both oral and written submissions. This amendment will enable to Principal Member to order the Secretary to provide only written submissions as this scenario is not explicitly covered by the current rules. Similar amendments are made by **items 61 and 100**.

Item 126 amends subsection 163A(4) of the Social Security Administration Act by omitting the words, 'having regard to the objective laid down by section 141'. This amendment is consequential to **item 118**.

Items 127, 128, 129 and 130 replace various references to 'conference' in the Social Security Administration Act with references to 'directions hearing'. These amendments are not intended to change the legal effect of these provisions but use language that better reflects the purpose of these conferences in an SSAT review.

Item 131 amends paragraph 166A(2)(d) of the Social Security Administration Act by omitting the words, 'evidence is to be brought before', and substituting 'information is to be given to'. This amendment is made for similar reasons as for **item 19**.

Item 132 repeals subsections 166A(3), (4) and (5) of the Social Security Administration Act.

Subsection 166A(3) provides that paragraph 166A(2)(d) does not limit the evidence that may be brought before the SSAT. This provision has become redundant because of the changes made by **item 131**.

Subsection 166A(4) provides that the Principal Member may make an order directing a party to the review who is present at a conference not to disclose information obtained by the party at the conference, or not to disclose information obtained by the party at the conference except in the circumstances, or for the purposes, specified in the order. Subsection 166A(5) establishes an offence for contravention of an order given under subsection 166A(4). A maximum penalty of imprisonment for two years applies for contravention of this subsection.

Subsections 166A(4) and (5) are being repealed because of **item 140**, which will consolidate the powers of the SSAT Principal member to make non-disclosure orders.

Item 133 amends paragraph 166B(1)(a) of the Social Security Administration Act by replacing the words, 'pre-hearing conference', with the words, 'directions hearing'. This amendment mirrors amendments made by **items 127 to 130**.

Item 134 amends paragraph 167(1)(b) of the Social Security Administration Act by omitting 'allows; and', and substituting 'allows.'. This item is consequential to **item 135**, which repeals paragraph 167(1)(c). Both items are consequential to **item 118**.

Item 136 repeals section 169 of the Social Security Administration Act.

Section 169 applies to the hearing of a review. Under subsection 169(1), the Principal Member may make an order directing a person who is present at the hearing of a review not to disclose information obtained by the person in the course of the hearing, or not to disclose information obtained by the person in the course of the hearing except in the circumstances, or for the purposes, specified in the order. Subsection 169(2) provides that a person must not contravene an order under subsection (1). A maximum penalty of imprisonment for two years is specified for a contravention of subsection 169(2).

Section 169 is being repealed because of **item 140**, which will consolidate the powers of the SSAT Principal member to make non-disclosure orders.

Item 137 repeals paragraph 170(2)(b) of the Social Security Administration Act.

Section 170 sets out rules for adjournment of SSAT hearings. Under subsection 170(1), the SSAT may adjourn the hearing of a review of a decision from time to time. Paragraph 170(2)(b) provides that the SSAT may refuse to adjourn a hearing if satisfied that adjournment would be inconsistent with the pursuit of the objective laid down by section 141. Paragraph 170(2)(b) is no longer necessary due to the amendment made by **item 118**. The removal of paragraph 170(2)(b) is not intended to change the legal effect of section 170.

Item 138 repeals sections 171 and 172 of the Social Security Administration Act and replaces them with new sections with corresponding numbers. Broadly speaking, these changes align the rules relating to dismissals of applications in the Social Security Administration Act with similar rules in other Acts that confer jurisdiction upon the SSAT. In addition, the new rules provide for greater flexibility, for example, by expanding the circumstances in which an application can be dismissed and by providing the SSAT with the capacity to reinstate applications that have been dismissed in certain circumstances.

Under the current rules, section 171 sets out the rules applicable to withdrawal of SSAT applications and section 172 sets out the rules and processes applicable to dismissal of an application.

New section 171 expands the circumstances in which an application for review can be dismissed. Under the current rules (contained in subsection 172(1) of the Social Security Administration Act), the Principal Member could only dismiss an application in circumstances where the Principal Member is satisfied, after having communicated with the person or after having made reasonable attempts to communicate with the person and having failed to do so, that the person does not intend to proceed with the application.

Under new subsection 171(1), the Principal Member may, on the request of a party or on his or her own initiative, dismiss an application for review of a decision in the following circumstances:

- (a) the decision is not reviewable under Division 4 of Part 4; or
- (b) the application is frivolous or vexatious; or
- (c) all of the parties consent; or
- (d) the Principal Member is satisfied:
 - after having communicated with each party; or
 - after having made reasonable attempts to communicate with each party and having failed to do so;

or a combination of both, that none of the parties intend to proceed with the application; or

(e) all of the parties fail to attend the hearing.

New subsections 171(2), (3), (4), (5) and (6) are similar to new subsections 135(2), (3), (4), (5) and (6) of the Family Assistance Administration Act (see **item 26**).

New subsection 172 is similar to new section 136 of the Family Assistance Administration Act (see **item 26**).

Item 139 repeals subsection 175(7) of the Social Security Administration Act.

Section 175 enables the Principal Member to give directions as to the procedure for hearings. Subsection 175(7) provides that directions under this section must have due regard to the objective laid down by section 141. This amendment does not change the legal effect of section 175 and is consequential to the amendment of section 141 made by **item 118**.

Item 140 adds new sections 177B, 177C and 177D to the Social Security Administration Act.

Under the current rules, the power of the SSAT Principal Member to make non-disclosure orders is limited to: (a) information contained in a statement about the decision under review provided by the Secretary to the SSAT Principal Member (see subsection 158(2)); (b) to information obtained by a party at the conference (see subsection 166A(4)); and (c) to information obtained by a person at the hearing (see subsection 169(2)).

New section 177B enables the SSAT Principal Member to make an order directing a person not to disclose information that was disclosed to the person for purposes relating to a review by the SSAT under Part 4 of the Social Security Administration Act. This is in the same terms as new section 141C, inserted by **item 28**, which applies to reviews under the Family Assistance Administration Act, **item 74**, which applies to reviews under the Child Support Registration and Collection Act, and **item 116**, applicable to reviews under the Paid Parental Leave Act.

New section 177C gives the SSAT Principal Member power to vary an order under section 177B to permit certain disclosures. This is in the same terms as new section 141B, inserted by **item 28**.

New section 177D empowers the SSAT Principal Member to make orders restricting secondary disclosures of information. This is in the same terms as new section 141C inserted by **item 28**.

Item 141 amends subclause 1(1) of Schedule 1 to the Social Security Administration Act by inserting a new definition of **Principal Member** to mean the Principal Member of the SSAT. The note to this definition draws the reader's attention to Schedule 3, dealing with the constitution and membership of the SSAT.

Item 142 further amends subclause 1(1) of Schedule 1 to the Social Security Administration Act by adding a new note at the end of the definition of **SSAT**, which draws the reader's attention to Schedule 3.

Item 143 amends paragraph 1(a) of Schedule 3 by adding a new paragraph 152(1)(aa), which provides for the appointment of Deputy Principal Members in accordance with the Act. This will better align the SSAT with other Commonwealth merits review tribunals. **Item 144** amends subclauses 7(1) and (2) of Schedule 3 by omitting the reference to '1(b)' and substituting '1(aa), (b)'. This item is consequential to **item 143**.

Item 145 amends subclause 10(1) of Schedule 3 to the Social Security Administration Act.

This amendment removes the requirement for directions of the Principal Member relating to the constitution of the SSAT to be written. This makes the procedure in the SSAT more consistent with the procedure in the Administrative Appeals Tribunal. There is no requirement in the *Administrative Appeals Tribunal Act 1975* (Administrative Appeals Tribunal Act) for a direction by the President of the Administrative Appeals Tribunal about the constitution of the Administrative Appeals Tribunal to be given in writing.

Item 146 inserts new subclauses 10(2A) and (2B) after subclause 10(2) of Schedule 3 to the Social Security Administration Act.

New subclause 10(2A) is equivalent to subsection 20B(2) of the Administrative Appeals Tribunal Act. This makes it clear that the Principal Member can reconstitute the SSAT for the purpose of a particular review for any reason prior to the commencement of a hearing. This complements existing powers to reconstitute the SSAT under subclause 12(1) after the hearing has commenced.

New subclause 10(2B) has a similar effect to new subclause 10(2A). It applies to directions relating to the constitution of the SSAT for the purpose of reviews of a particular kind given under paragraph 10(1)(b) of Schedule 3 to the Social Security Administration Act. It makes clear that the Principal Member can revoke directions and give further directions as to the constitution of the SSAT for the purpose of reviews of a particular kind. There is no equivalent provision in the Administrative Appeals Tribunal Act as there is no equivalent in the Administrative Appeals Tribunal Act of paragraph 10(1)(b).

Item 147 amends the heading of clause 12 of Schedule 3 to the Social Security Administration Act to describe more accurately the effect of the clause. This heading is consistent with the heading of the equivalent provision in the Administrative Appeals Tribunal Act (section 23).

Item 148 amends the opening words of paragraph 12(1)(b) of Schedule 3 to the Social Security Administration Act by substituting the word, 'review', for 'proceeding', and simplifying the language. This change is intended to clarify the operation of the provision by aligning the wording of Schedule 3 with the other provisions about the SSAT in the Social Security Administration Act (and other Acts that confer jurisdiction on the SSAT) which use the term 'review'.

Item 149 amends paragraph 12(1)(b) of Schedule 3 to the Social Security Administration Act.

Clause 12 of Schedule 3 to the Social Security Administration Act currently enables the Principal Member to reconstitute the SSAT after the hearing of a review has commenced or is completed.

Paragraph 12(1)(b) sets out the circumstances when a member is 'unavailable'. It currently provides that a member is unavailable for the purposes of the review if they have ceased to be a member, or have ceased to be available for the purposes of the review.

The amendment to paragraph 12(1)(b) both clarifies and extends the circumstances in which a member is unavailable for the purposes of the review by expressly including unavailability for any reason and enabling the Principal Member to direct a member not to continue to take part in the review. This is consistent with the circumstances set out in subparagraphs 23(2)(b)(ii) and (iii) of the Administrative Appeals Tribunal Act.

Item 150 inserts new subclause 12(1AA) into Schedule 3 to the Social Security Administration Act.

The new subclause imposes a limitation on the power of the Principal Member under subparagraph 12(1)(b)(iii), inserted by item 5, to direct a member not to continue to take part in a review. Before making such a direction, the Principal Member must be satisfied that the direction is in the interests of justice and must consult with the member concerned. This limitation is consistent with subsection 23(9) of the Administrative Appeals Tribunal Act.

In determining whether a direction under subparagraph 12(1)(b)(iii) is in the interests of justice, the Principal Member is required to have regard to the objective of conducting reviews in a manner that is fair, just, economical, informal and quick. This is consistent with subsection 23(12) of the Administrative Appeals Tribunal Act.

Item 151 removes the words, 'under clause 10', from each of paragraphs 12(1A)(a), 12(1B)(a) and 12(1B)(b) as these words are considered superfluous. This amendment makes the wording more consistent with the equivalent provisions in the Administrative Appeals Tribunal Act.

Item 152 clarifies the operation of existing subclauses 12(2) and (3) in Schedule 3 to the Social Security Administration Act and inserts two new subclauses.

New subclause 12(2) replaces existing subclauses 12(2) and (3) to simplify the language used and clarify the operation of the existing subclauses.

New subclause 12(3) provides that, where the SSAT is reconstituted under clause 12, the SSAT as reconstituted must continue the review. This subclause is modelled on subsection 23(7) of the Administrative Appeals Tribunal Act.

Item 153 inserts new clauses 12A and 12B to Schedule 3 to the Social Security Administration Act.

Clause 12A allows the Principal Member to reconstitute the SSAT for the purpose of achieving expeditious and efficient conduct of a review. The clause is modelled on section 23A of the Administrative Appeals Tribunal Act.

Subclause 12A(1) limits the operation of the clause to the period after the review has commenced and before a decision has been made on the review.

Subclause 12A(2) enables the Principal Member to reconstitute the SSAT for the purpose of a review by adding, removing or substituting members to achieve expeditious and efficient conduct of the review.

Subclause 12A(3) provides that, if the SSAT is reconstituted under the clause, the SSAT as reconstituted must continue the review.

Subclause 12A(4) provides that the reconstituted SSAT can have regard to the record of any pre-hearing conference and any hearing before the SSAT as previously constituted. It also provides that the reconstituted SSAT may have regard to any evidence taken by the SSAT as previously constituted.

New clause 12B allows for a presiding member to be appointed after the SSAT is reconstituted if this is required.

Items 154 and 155 amend paragraph 19(1)(c) and subclause 19(7) of Schedule 3 to the Social Security Administration Act by omitting the word, 'interpreting'.

Clause 19 currently provides that current or past members of the SSAT and any person (other than a member of staff of the SSAT) providing interpreting services at the hearing of a review by the SSAT must not record, divulge or communicate information about another person obtained in the course of performing their duties under social security, family assistance or student assistance law unless the record or communication is for the purpose of the social security, family assistance or student assistance law.

The amendments broaden the reach of clause 19 to provide that any person (other than a member of staff of the SSAT) who provides any services at the hearing is bound by the confidentiality obligations. The new clause continues to apply to interpreters providing services at the hearing and also applies to any other people providing services at the hearing, such as security guards who might be present at the hearing.

Item 156 amends Schedule 3 to the Social Security Administration Act by adding a new clause 19A.

This amendment makes provision for an SSAT member to be able to make disclosure to a person (such as law enforcement officer or a State or Territory welfare authority) in circumstances where, during the course of a review, the member becomes aware of information that concerns a threat to the life, health or welfare of a person, for example, a child. Addressing this issue is consistent with actions under the National Framework for Protecting Australia's Children.

Accordingly, new subclause 19A(1) provides that a member of the SSAT may divulge or communicate information if the information concerns a threat to the life, health or welfare of a person and either of the following applies:

- (a) the member believes on reasonable grounds that the divulging or the communication is necessary to prevent or lessen the threat;
- (b) there is reason to suspect that the threat may afford evidence that an offence may be, or has been, committed against a person and the member divulges or communicates the information for the purpose of preventing, investigating or prosecuting such an offence.

New subclause 19A(2) provides that subclause 19A(1) applies despite subclause 19(3) and any other provision of the social security law or the family assistance law. The reasons for this amendment are similar to those for the amendments made by **items 36 and 90**.

Item 157 amends clause 20 of Schedule 3 to the Social Security Administration Act by adding a reference to the Paid Parental Leave Act. This will ensure that the Principal Member may, in writing, delegate to a member of the SSAT, or a member of the staff of the SSAT, all or any of the powers and functions of the Principal Member under the Paid Parental Leave Act.

Item 158 amends Schedule 4, which sets out the forms of oath and affirmation made by members of the SSAT, to take account of the new SSAT member category, Deputy Principal Member.

Part 2 – Application and transitional provisions for amendments of the Family Assistance Administration Act

Item 159 clarifies the application of amendments relating to non-disclosure orders under the Family Assistance Administration Act.

Due to the consolidation of the SSAT Principal Member's powers to give non-disclosure orders into new sections 141C, 141D and 141E (which will allow such orders to be given at any stage of a review before the SSAT), **item 10** repeals subsections 120(2), (3) and (4), **item 20** repeals subsections 129A(3) and (4), and **item 24** repeals section 133 of the Family Assistance Administration Act. The repealed provisions enable the SSAT Principal Member to make non-disclosure orders when the reasons provided by the Secretary are given to a party, at the pre-hearing stage and at the hearing.

Subitem 159(1) clarifies that an order given to a person under subsection 120(2) before the day on which this item commences continues to have effect on and after that day:

- (a) as if subsections 120(2), (3) and (4) of that Act had not been repealed by this Act; and
- (b) as if, on and after that day, the defence in subitem (4) existed in relation to an offence under subsection 120(4) of that Act.

Subitem 159(2) is similar to subitem 159(1) but applies to an order given to a person under subsection 129A(4). **Subitem 159(3)** is similar to subitems 159(1) and (2) but applies to orders given to a person under subsection 133(1).

Subitem 159(4) provides that an order referred to in this item does not apply to information which the person to whom the order was given knew before the disclosure of the information was made to the person. The note to this subitem provides that a defendant bears an evidential burden in relation to the matter in subitem 159(4) – see subsection 13.3(3) of the *Criminal Code*.

It is considered appropriate to cast the evidential burden on the defendant in these circumstances. The recipient of the information that is subject to a non-disclosure order given by the SSAT Principal Member will be best placed to know whether he or she knew about the information before they were given the information at the SSAT review and produce appropriate evidence.

Item 160 clarifies the application of amendments to section 123 of the Family Assistance Administration Act which change the rules in relation to submissions from parties. The amendments to section 123 of the Family Assistance Administration Act apply in relation to applications for review made on or after the commencement of this item.

Item 161 clarifies the application of new paragraph 126A(4)(aa) of the Family Assistance Administration Act, which will enable the SSAT Principal Member to order an agency representative to provide written submissions.

Paragraph 126A(4)(aa) of the Family Assistance Administration Act, as inserted by this amending Act, applies in relation to:

- (a) hearings pending immediately before the commencement of this item;
and
- (b) hearings commencing on or after the commencement of this item.

It is considered appropriate for this amendment to be capable of applying to hearings that are pending immediately before the commencement of the item. This is because the receipt of a written submission by the Registrar is likely to assist and thereby contribute to the quality of merits review by the SSAT.

Item 162 clarifies the application of amendments relating to the dismissal of applications for SSAT review under the Family Assistance Administration Act.

Section 135 (as amended by this Act) applies in relation to applications dismissed on or after the commencement of this item (whether the application for review was made before or after that commencement).

Section 136 (as amended by this Act) applies in relation to notifications given on or after the commencement of this item (whether the application for review was made before or after that commencement).

Part 3 — Application and transitional provisions for amendments of the Child Support Registration and Collection Act

Due to the consolidation of the SSAT Principal Member's powers to give non-disclosure orders into new sections 103ZAA, 103ZAB and 103ZAC (which will allow such orders to be given at any stage of a review before the SSAT), **item 42** repeals subsections 96(2) and (3), and **item 65** repeals section 103Q, of the Child Support Registration and Collection Act. The repealed provisions enable the SSAT Principal to make non-disclosure orders in relation to the stages of the process when documents provided by the Child Support Registrar are given to the parties and at the hearing.

Item 163 clarifies the application of amendments relating to non-disclosure directions and orders under the Child Support Registration and Collection Act.

Subitem 163(1) provides that a direction given to a person under subsection 96(2) of the Child Support Registration and Collection Act before the day on which this item commences continues to have effect on and after that day:

- (a) as if subsections 96(2) and (3) had not been repealed by this amending Act; and
- (b) as if the defence in subitem 163(3) existed in relation to an offence under subsection 96(3) of that Act

Subitem 163(2) is similar to subitem 163(1) but applies to save orders made under subsection 103Q(1).

Subitem 163(3) clarifies that a direction or order referred to in this item does not apply to information which the person to whom the direction was given, or in relation to whom the order was made, knew before the disclosure of the information was made to the person. The note to this subitem clarifies that the defendant bears an evidential burden in relation to the matter in subitem 163(3) – see subsection 13.3(3) of the *Criminal Code*. It is considered appropriate to cast the evidential burden on the defendant in these circumstances. The recipient of the information that is subject to a non-disclosure order given by the SSAT Principal Member will be best placed to know whether he or she knew about the information before they were given the information at SSAT review and produce appropriate evidence.

Item 164 clarifies the application of new subsection 16(3A) (which is inserted by **item 36**).

Subsection 16(3A) applies in relation to the communication of protected information on or after the commencement of this item (whether the information was obtained before, on or after that commencement).

It is considered appropriate for this amendment to enable any disclosure of protected information made on or after the commencement of this item. This is because of the need to ensure that the safety and welfare of individuals is protected.

Item 165 provides that new subsections 100(3), (4) and (5) (which are inserted by **item 48**) apply in relation to applications dismissed on or after the commencement of this item (whether the application was made before, on or after that commencement).

It is considered appropriate for these new subsections to apply in relation to applications dismissed on or after the commencement of this item (whether the application was made before, on or after that commencement). This is because these measures expand the circumstances in which the SSAT Principal Member can reinstate an application for review.

Item 166 provides that new subsections 100A(3) and (4) (which are inserted by **item 50**) apply in relation to notifications given under subsection 100A(1) on or after the commencement of this item. The notifications referred to are notifications that applicants give to the SSAT of discontinued applications.

Item 167 provides that the amendment to subsection 103C (made by **item 58**) applies in relation to applications for review made on or after the commencement of this item.

Item 168 provides that new paragraph 103F(4)(aa) (inserted by **item 61**) applies to hearings pending immediately before the commencement of this item, and hearings commencing on or after the commencement of this item. New paragraph 103F(4)(aa) will enable the SSAT Principal Member to require the Child Support Registrar to provide written submissions.

It is considered appropriate for this amendment to be capable of applying to hearings that are pending immediately before the commencement of the item. This is because the receipt of a written submission by the Registrar is likely to assist and thereby contribute to the quality of merits review by the SSAT. This is in the interests of all parties to such a review.

Item 169 clarifies the application of new subsection 103X(6), inserted by **item 72**. New subsection 103X(6) will impose an obligation on the SSAT to provide a copy of its reasons to a party who has been removed from the review under subsection 101(5).

This item provides that subsection 103X(6) applies in relation to a decision made on or after the commencement of this item (whether the application to which the decision relates was made before, on or after that commencement). It is considered appropriate to apply this to a decision irrespective of whether the application for review was made before or after commencement because the new obligation to provide reasons is beneficial to parties who have been removed.

Part 4 — Application and transitional provisions for amendments of the Paid Parental Leave Act

Item 170 clarifies the application of amendments relating to non-disclosure directions under the Paid Parental Leave Act.

Due to the consolidation of the SSAT Principal Member's powers to give non-disclosure orders into new sections 273A, 273B and 273C (which will allow such orders to be given at any stage of a review before the SSAT), **item 97** repeals subsections 233(3) and (4), **item 107** repeals subsections 245(3), (4) and (5), and **item 111** repeals section 249 of the Paid Parental Leave Act. The repealed provisions enable the SSAT Principal Member to make non-disclosure orders when the reasons provided by the Secretary are given to a party, at the pre-hearing stage and at the hearing.

Subitem 170(1) provides that a direction given to a person under subsection 233(3) of the Paid Parental Leave Act before the day on which this item commences continues to have effect on and after that day:

- (a) as if subsections 233(3) and (4) of that Act had not been repealed by this amending Act; and
- (b) as if, on and after that day, the defence in subitem 170(4) existed in relation to an offence under subsection 233(4) of that Act.

Subitem 170(2) is similar to subitem 170(1) but applies to non-disclosure orders under subsection 245(4). **Subitem 170(3)** is similar to subitems 170(1) and (2) and applies to 'non-disclosure orders under section 249.

Subitem 170(4) provides that a direction referred to in this item does not apply to information which the person to whom the direction was given knew before the disclosure of the information was made to the person. The note to this subitem clarifies that a defendant bears an evidential burden in relation to the matter in subitem 170(4) – see subsection 13.3(3) of the *Criminal Code*. It is considered appropriate to cast the evidential burden on the defendant in these circumstances. The recipient of the information that is subject to a non-disclosure order given by the SSAT Principal Member will be best placed to know whether he or she knew about the information before being given the information at the SSAT review and produce appropriate evidence.

Item 171 clarifies the application of section 130A of the Paid Parental Leave Act, inserted by **item 90**, which gives express authority for an SSAT member to make disclosure to, say, a law enforcement officer in circumstances where there is information concerning the life, health and welfare of a person.

Section 130A of the Paid Parental Leave Act applies in relation to the disclosure of information on or after the commencement of this item (whether the information was obtained before, on or after that commencement). It is considered appropriate for this amendment to enable any disclosure of protected information made on or after the commencement of this item. This is because of the need to ensure that the safety and welfare of individuals is protected.

Item 172 provides that amendments to section 237 of the Paid Parental Leave Act, made by **item 98**, apply in relation to applications for review made on or after the commencement of this item.

Item 173 clarifies the application of paragraph 240(4)(aa) of the Paid Parental Leave Act, inserted by **item 100**, which will enable the SSAT Principal Member to order that an agency representative provide written submissions.

Paragraph 240(4)(aa) applies in relation to hearings pending immediately before the commencement of this item, and hearings commencing on or after the commencement of this item.

It is considered appropriate for this amendment to be capable of applying to hearings that are pending immediately before the commencement of the item. This is because the receipt of a written submission by the Child Support Registrar is likely to assist and thereby contribute to the quality of merits review by the SSAT. This is in the interests of all parties to such a review.

Item 174 clarifies the application of amendments relating to the dismissal of applications for SSAT review under the Paid Parental Leave Act.

Section 251 as amended by this amending Act applies in relation to applications dismissed on or after the commencement of this item (whether the application for review was made before or after that commencement).

Section 252 as amended by this amending Act applies in relation to notifications given on or after the commencement of this item (whether the application for review was made before or after that commencement).

Item 175 clarifies the application of section 257A of the Paid Parental Leave Act, inserted by **item 115**, which imposes a requirement upon the SSAT to provide reasons to a party removed as a party to the review under subsection 222(4).

Section 257A applies in relation to a decision made on or after the commencement of this item (whether the application to which the decision relates was made before, on or after that commencement).

It is considered appropriate to apply this to a decision irrespective of whether the application for review was made before or after commencement because the new obligation to provide reasons is beneficial to parties who have been removed.

Part 5 — Application and transitional provisions for amendments of the Social Security Administration Act

Due to the consolidation of the SSAT Principal Member's powers to give non-disclosure orders into new sections 177B, 177C and 177D (which will allow such orders to be given at any stage of a review before the SSAT), **item 122** repeals subsections 158(2), (3) and (4), **item 132** repeals subsections 166A(3), (4) and (5), and **item 136** repeals section 169 of the Social Security Administration Act. The repealed provisions enable the SSAT Principal Member to make non-disclosure orders when the reasons provided by the Secretary are given to a party, at the pre-hearing stage, and at the hearing stages of a review.

Item 176 clarifies the application of amendments relating to non-disclosure orders under the Social Security Administration Act.

Subitem 176(1) provides that an order given to a person under subsection 158(2) of the Social Security Administration Act before the day on which this item commences continues to have effect on and after that day as if:

- (a) subsections 158(2), (3) and (4) of that Act had not been repealed by this amending Act; and
- (b) as if, on and after that day, subitem 176(4) had effect in relation to subsection 158(4) of that Act.

Subitem 176(2) provides that an order given to a person under subsection 166A(4) of the Social Security Administration Act before the day on which this item commences continues to have effect on and after that day:

- (a) as if subsections 166A(4) and (5) of that Act had not been repealed by this amending Act; and
- (b) as if, on and after that day, the defence in subitem 176(4) existed in relation to an offence under subsection 166A(5) of that Act.

Subitem 176(3) is similar to subitem 176(2) but applies to non-disclosure orders under section 169.

Subitem 176(4) provides that an order referred to in this item does not apply to information which the person to whom the order was given knew before the disclosure of the information was made to the person. The note to this subitem clarifies that a defendant bears an evidential burden in relation to the matter in subitem 176(4) – see subsection 13.3(3) of the *Criminal Code*. It is considered appropriate to cast the evidential burden on the defendant in these circumstances. The recipient of the information that is subject to a non-disclosure order given by the SSAT Principal Member will be best placed to know whether he or she knew about the information before being given the information at the SSAT review and produce appropriate evidence.

Item 177 provides that the amendments of section 161 of the Social Security Administration Act, made by **item 123**, apply in relation to applications for review made on or after commencement of this item.

Item 178 clarifies the application of paragraph 163A(4)(aa) of the Social Security Administration Act, inserted by **item 125**, which enables the SSAT Principal Member to order the Secretary to provide a written submission to the SSAT.

Paragraph 163A(4)(aa) applies in relation to hearings pending immediately before the commencement of this item, and hearings commencing on or after the commencement of this item.

It is considered appropriate for this amendment to be capable of applying to hearings that are pending immediately before the commencement of the item. This is because the receipt of a written submission by the Registrar is likely to assist and thereby contribute to the quality of merits review by the SSAT. This is in the interests of all parties to such a review.

Item 179 provides for the application of the amendments made by **items 146 to 153** of this Schedule.

Subitem 179(1) provides that the amendment made by **item 146**, which relates to reconstitution of the SSAT before the commencement of a hearing, applies to any direction given by the Principal Member after the commencement of this Schedule.

Subitem 179(2) provides that the amendments made by **items 147 to 153**, which relate to reconstitution of the SSAT after the hearing of a review has commenced but before a decision is made on the review, applies to any hearings that are to be decided after the commencement of this Schedule. This includes any hearings that commence after the commencement of this Schedule and any hearings that have commenced before, but which are still in progress at, the commencement of this Schedule. It is considered appropriate to apply these amendments irrespective of whether the hearing has commenced before commencement of this item because the amendments are beneficial and provide greater flexibility for the operation of SSAT.

Item 180 clarifies the application of amendments relating to the dismissal of applications for SSAT review under the Social Security Administration Act.

The amendment to section 171 made by this Act applies in relation to applications dismissed on or after the commencement of this item (whether the application for review was made before or after that commencement).

The amendment to section 172 of the Social Security Administration Act made by this Act applies in relation to notifications given on or after the commencement of this item (whether the application for review was made before or after that commencement).

Item 181 provides for the application of changes made by this Act to clause 19 of Schedule 3 to Social Security Administration Act. These changes relate to the confidentiality obligations of people providing services at a hearing. **Item 182** provides for the application of clause 19A of Schedule 3 to the Social Security Administration Act, inserted by **item 156**. In both items, the amendments apply in relation to divulging or communication of information on or after the commencement of this item (whether the information was obtained before, on or after that commencement). It is considered appropriate for these amendments to enable any disclosure of protected information made on or after the commencement of these items. This is because of the need to ensure that the safety and welfare of individuals is protected.

Item 183 provides for the transitioning of existing SSAT members.

Subitem 183(1) applies to people who were appointed as Senior Members before the commencement of Part 1 of this Schedule in circumstances where the appointment was in force immediately before the commencement day. In these circumstances, the person is taken, at the start of the commencement day, to have been appointed as a Deputy Principal Member by the Governor-General under clause 3 of Schedule 3 to that Act for the balance of the person's term of appointment that remained immediately before the commencement day, and on the same terms and conditions as applied to the person immediately before the commencement day.

There is currently a misalignment in the role of the SSAT's Senior Members with Senior Members of other Commonwealth merits review tribunals. Currently, the role of the SSAT's Senior Members is more like the role of a Deputy Principal Member.

Subitem 183(2) is similar to subitem (1) but applies to people who were appointed as Assistant Senior Members of the SSAT in circumstances where the appointment was in force immediately before the commencement day. In these circumstances, the person is taken, at the start of the commencement day, to have been appointed as a Senior Member by the Governor-General under clause 3 of Schedule 3 to that Act, subject to similar conditions as with subitem 183(1).

The role performed by SSAT Assistant Senior Members is more closely aligned to the role performed by Senior Members in other Commonwealth merits review tribunals.

Subitem 183(3) clarifies that subitems 183(1) and (2) do not prevent the terms and conditions being varied on or after the commencement day.

Item 184 provides for the transitioning of acting SSAT appointments and is drafted in similar terms to **item 183**.

Subitem 184(1) applies to people who were appointed to act as Senior Members of the SSAT and whose appointment was still in force immediately before the commencement date. Under this subitem, such people are taken, at the start of the commencement day, to have been duly appointed to act as a Deputy Principal Member, subject to similar conditions as with other transitioning appointments.

Subitem 184(2) applies to people who were appointed to act as Assistant Senior Members of the SSAT and whose appointment was in force immediately before the commencement day. Under this subitem, such people are taken to have been appointed to act as a Senior Member, subject to similar conditions as with other transitioning appointments. Subitem 184(3) clarifies that subitems 184(1) and (2) do not prevent the terms and conditions being varied on or after the commencement day.

Item 185 clarifies the operation of laws in relation to the actions of a person who was appointed as a particular kind of SSAT member (for example, a Senior Member) who has then been transitioned to a new category of SSAT member (in the case of Senior Members, these people will be transitioned to Deputy Principal Members).

Subitem 185(1) provides that, if a thing was done by, or in relation to, a person in their capacity as a Senior Member before commencement of Part 1 of this Schedule, then, for the purposes of the operation of any law of the Commonwealth on and after the commencement day, the thing is taken to have been done by, or in relation to, the person in their capacity as a Deputy Principal Member. **Subitem 185(2)** is similar, but applies to things done by an Assistant Senior Member. In these circumstances, then, for the purposes of the operation of any law of the Commonwealth on and after the commencement day, the thing is taken to have been done by, or in relation to, the person in their capacity as a Senior Member.

Subitem 185(3) provides that the Minister power may, by writing, determine that subitem 185(1) or (2) does not apply in relation to a specified thing. To assist the reader, **subitem 185(5)** clarifies that determinations under subitem 185(3) are not legislative instruments within the meaning of section 5 of the *Legislative Instruments Act 2003*. This is because the determinations will be declaratory and not legislative in nature.

Subitem 185(4) clarifies that, for the purposes of this item, doing a thing includes making an instrument.

Item 186 clarifies what happens to references in instruments, given the transitioning of SSAT members.

Subitem 186(1) applies if an instrument is in force immediately before the day Part 1 of this Schedule commences and the instrument contains a reference to a Senior Member. In these circumstances, the instrument has effect from the commencement day as if the reference were a reference to a Deputy Principal Member. For example, subitem 186(1) would apply to any instrument of delegation given by the SSAT Principal Member under clause 20 of Schedule 3 to the Social Security Administration Act that contained references, for example, to a Senior Member.

Subitem 186(2) is similar to subitem 186(1), but applies to references in instruments to an Assistant Senior Member. In these circumstances, the instrument has effect from the commencement day as if the reference were a reference to a Senior Member.

Subitem 186(3) provides that the Minister may, by writing, determine that subitem 186(1) or (2) does not apply in relation to a specified reference. To assist the reader, **subitem 186(4)** clarifies that a determination under subitem 186(3) is not a legislative instrument. This is because the determinations will be declaratory and not legislative in nature.

Item 187 clarifies what happens if an SSAT member who is subject to the transitioning arrangements is a party to pending proceedings.

Subitem 187(1) applies if any proceedings to which a person, in their capacity as a Senior Member, was a party were pending in any court or tribunal immediately before the day Part 1 of this Schedule commences. In these circumstances, the person, in their capacity as a Deputy Principal Member, is substituted for the Senior Member, from the commencement day, as a party to the proceedings. **Subitem 187(2)** is similar and applies to circumstances where a person, in their capacity as an Assistant Senior Member, was a party to proceedings that were pending in any court or tribunal immediately before the commencement day. In these circumstances, the person, in their capacity as a Senior Member, is substituted for the Assistant Senior Member, from the commencement day, as a party to the proceedings.

Item 188 clarifies what happens if a transitioning SSAT member was one of the members who constituted the SSAT for the purposes of a review.

Subitem 188(1) applies if, before the day Part 1 of this Schedule commences, a person who was a Senior Member was one of the members who constituted the SSAT for the purposes of the review of a decision and the SSAT had not made its decision on the review before that day. In these circumstances, from the commencement day, that person is taken to be one of the members who constitute the SSAT for the purposes of the review in their capacity as a Deputy Principal Member. **Subitem 188(2)** is similar to subitem 188(1), but applies to a person who was an Assistant Senior Member and has the effect from the commencement day that the person is taken to be one of the members who constitute the SSAT for the purposes of the review in the capacity as a Senior Member.

Part 6 – Regulations

Item 189 provides that the Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Schedule to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.

The regulations may prescribe matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments made by this Schedule.

Schedule 4 – Amendments relating to certain child support declarations

Summary

In this Schedule, amendments are made to the child support legislation to confirm the longstanding policy and administration in cases where the amount of child support payable under a child support assessment is reduced because:

- a court decides that the payer is not a parent of one of the children in the assessment; but
- the payer remains liable for at least one other child in the assessment.

Background

The amendments made by this Schedule are designed to undo the effect of the majority's interpretation of the child support legislation in the judgment of the Full Court of the Family Court of Australia in *Child Support Registrar v Farley and Anor* [2011] FAMCAFC 207 (*Farley*), and to confirm the existing policy and administration in giving effect to section 107 declarations made under the Child Support Assessment Act.

Section 107 of the *Child Support (Assessment) Act 1989* (Child Support Assessment Act) allows the court to make a declaration that a person should not be assessed in respect of the costs of a child because the person is not a parent of the child. This is in cases where paternity is challenged and it is found that a father has paid child support for a child that was not in fact his. A consequence of a section 107 declaration being made is that any application for assessment of child support for the child is taken never to have been accepted by the Child Support Registrar.

The longstanding policy in such cases is that the total amount of child support previously paid (including amounts paid for the child that was found to be not theirs) would be applied to their child support liability for any remaining children in the case, and any child support debt for those children. Any excess child support they paid may be recovered from the payee by applying for a court order under the existing child support legislation.

These amendments are required because the Family Court's decision in a particular paternity case changed the way the policy has always operated. The Family Court's decision would require, in such cases, the payer to take court action to obtain repayment from the payee of the amount attributed as being the overpayment for the excluded child, as well as required the payer to make further payment to the payee of an equivalent amount attributed as being the underpayment for the other child or children for whom the payer is liable. This would be an unnecessarily complex process for 'balancing' the payer's liabilities.

The amendments are being applied retrospectively to support the longstanding policy and administration so that previously-decided cases are not revisited, which could significantly disadvantage parties who have relied on those decisions in their financial affairs.

The changes made by this Schedule are to commence on Royal Assent.

Explanation of the changes

Item 1 inserts new section 107A into the Child Support Assessment Act to provide guidance on the implementation of section 107 declarations in cases where a person is declared not to be a parent of a child and there is another child for whom child support continues to be payable.

New subsection 107A(1) sets out when the section applies. The section applies where a section 107 declaration is made in relation to a child and there is an administrative assessment of child support for that child and at least one other child in relation to whom the payer continues to be liable to pay child support. The reference to 'one or more days' in a child support period in paragraph 107A(1)(c) recognises that a child may only have been included in the assessment for part of the child support period. A day is an **affected day** if the child support assessment for that day included both the child who is the subject of the section 107 declaration and the other child(ren) for whom the payer continues to be liable to pay child support.

New subsection 107A(2) requires the Registrar to amend the administrative assessment for the affected days by removing the child who is the subject of the section 107 declaration so that the assessment only relates to the children for whom the payer continues to be liable to pay child support.

New subsection 107A(3) requires payments made for the affected days to be applied to the assessment as amended under subsection 107A(2). Any payment attributed to a day in the child support period that is not an affected day is not applied to the amended assessment and can be recovered by applying for a court order under section 143 of the Child Support Assessment Act.

Where the payments made for the affected days exceed the amount payable for those days, subsection 107A(4) requires that the excess be disregarded. To recover this excess, the payer can make an application under section 143 of the Child Support Assessment Act.

The examples below illustrate the operation of this section.

Example 1

A child support assessment is made for child A of \$1,800 per year (that is, \$150 per month) with effect from 1 July 2010. On 1 November 2010, child B is added to the assessment and the assessment is increased to \$2,700 per year (that is, \$225 per month). The payer does not make any payments until 1 January 2011 and then makes regular monthly payments of \$225. On 1 July 2011, a section 107 declaration is made that the payer is not the parent of child B.

To give effect to the section 107 declaration, the assessment is amended so that it relates only to child A, that is, \$1800 (\$150 per month) with effect from 1 July 2010. During the period January 2011 to July 2011, the payer has paid a total of \$1,350 (\$225 for a period of six months). This amount is credited towards the amended assessment, which now relates to child A only. Accordingly, as at 1 July 2011, the payer has arrears of \$450.

Example 2

The situation is the same as in *Example 1*, except that a section 107 declaration is made that the payer is not the parent of child A.

To give effect to the section 107 declaration, the assessment is amended so that it relates only to child B – \$1,800 (\$150 per month) with effect from 1 November 2010. The amount payable for the period 1 November 2010 to 1 July 2011 is \$1,200.

Under the previous assessment, a total of \$1,350 was paid during the period 1 January 2011 to 1 July 2011. Of this amount, \$600 is attributed to arrears for the period 1 July 2010 to 1 November 2010, when only child A was included in the assessment (applying the principle that payments are attributed to the earliest arrears first). As there are no affected days in the period 1 July 2010 to 1 November 2010, the \$600 attributed to this period does not come within new section 107A and is, therefore, not applied against the amended assessment that relates to child B. To recover the \$600 excess, the payer would need to make an application under section 143 of the Child Support Assessment Act. The remaining amount of \$750 that has been paid relates to the period from 1 November 2010 and is attributed to the amended assessment that relates to child B. Accordingly, as at 1 July 2011, the payer has arrears of \$450.

New subsection 107A(5) is inserted to avoid doubt and provides that new section 107A does not limit section 108 of the Child Support Assessment Act, which requires the Registrar immediately to take such action as is necessary to give effect to the decision.

Item 2 provides for the application of the amendment made by item 1. **Subitem 2(1)** provides that new section 107A applies to declarations under section 107 of the Child Support Assessment Act granted before or after the commencement of the amendment.

The amendment is being applied retrospectively to declarations made before the commencement of the new section, to support the policy and administration that has been applied before that commencement. If the amendment were not retrospective, it would allow previously-decided cases to be revisited. This could significantly disadvantage parties who have relied on those decisions in their financial affairs.

The purpose of **subitem 2(2)** is to disapply subitem 2(1) to the particular declaration considered in *Farley* to avoid altering the rights and liabilities of the parties determined by the court in that case.

Item 3 clarifies the operation of paragraph 26(1)(g) in the Child Support Registration and Collection Act.

Subsection 26(1) of the Child Support Registration and Collection Act sets out the particulars that the Registrar must record in respect of each registered maintenance liability. Paragraph 26(1)(g) requires that, where the entry relates to the maintenance of two or more people, periodic amounts attributable to each person must be recorded. The majority in *Farley* suggested that this requires separate amounts to be recorded for each individual child in a group of children, even though the assessment relates to the group, rather than to individual children. This is inconsistent with the intention of paragraph 26(1)(g), which was directed at cases where there is spousal maintenance and maintenance for children, as illustrated by the example given in the explanatory memorandum to the *Child Support Bill 1987*.

This amendment makes clear that, if an entry relates to two or more children only, the entry needs to record the periodic amount attributed to all the children collectively. If an entry relates to the maintenance of a spouse and two or more children, the entry would need to record the periodic amount attributed to the spouse and a further amount attributed to the children collectively.

Schedules 5 and 6 – Other amendments

Summary

These Schedules make clarifying and technical amendments to the schoolkids bonus legislation, consistent with the intended policy, and minor clarifications to other portfolio legislation, such as the family assistance clean energy legislation – including to the rules for rounding of payment rates.

Background

The schoolkids bonus and ETR payments were announced in the 2012-13 Budget and replaced the education tax refund that was previously claimed through the tax system.

From 1 July 2013, families receiving family tax benefit Part A and Part B will receive an ongoing clean energy supplement. The single income family supplement will also be paid from 1 July 2013 to assist families with one primary earner. Both of these measures are part of the Government's *Clean Energy Future Plan* and assist families with cost of living expenses following the introduction of a carbon price.

Most of the amendments made by these Schedules will commence on Royal Assent. Two beneficial items will commence with retrospective effect, as indicated below.

Explanation of the changes

Schedule 5 – Schoolkids bonus drafting clarifications

Item 1 inserts a definition of ***current education period***, which mirrors the definition of ***previous education period***.

Item 2 removes the lower age limit in subparagraph 35UA(2)(c)(i) of the Family Assistance Act that applies to eligibility for schoolkids bonus based on receipt of youth allowance. This amendment allows the minimum age to be determined by qualification criteria under social security law. Similar changes are made to relevant sections of the Family Assistance Act at **items 10, 26, 28, 36 and 43**.

Items 3 and 4 amend subsections 35UA(2) and 35UA(3) of the Family Assistance Act to introduce alternative ways that students can meet the study requirements. Similar changes are made to relevant sections of the Family Assistance Act at **items 11, 19, 20, 23, 27, 30 and 37**.

Item 5 amends the heading to subsection 35UA(4) of the Family Assistance Act. **Item 6** amends paragraph 35UA(4)(a) of the Family Assistance Act to extend schoolkids bonus eligibility to payment nominees receiving carer payment or parenting payment on behalf of a student. **Item 7** repeals paragraph 35UA(4)(b) of the Family Assistance Act, removing the requirement to be in receipt of pensioner education supplement, and is related to the amendments made by **items 6 and 13** and **items 10 and 11**. **Items 8, 9 and 12** are consequential to **item 7**.

Item 13 inserts new subsection 35UA(4A) into the Family Assistance Act to provide for schoolkids bonus eligibility of individuals receiving special benefit on behalf of a student.

Item 14 amends the study requirement in paragraph 35UA(5)(d) of the Family Assistance Act, which applies to recipients of an education allowance administered by the Department of Veterans' Affairs, to avoid any conflict between the secondary study definition in the Social Security Act and requirements under the educational schemes administered by the Department of Veterans' Affairs. Similar amendments are made at **items 25, 41 and 44**.

Item 15 inserts a provision enabling the Minister to prescribe eligible activities by legislative instrument for the purposes of section 35UA of the Family Assistance Act. **Item 16** is consequential to **item 1**.

Item 17 amends paragraph 35UD(1)(b) of the Family Assistance Act to allow schoolkids bonus to be payable for children first commencing primary education or an eligible activity.

Item 18 and **22** clarifies that the reference to the individual in each of paragraph 35UD(2)(a) and paragraph 35UD(4)(a) of the Family Assistance Act is a reference to the eligible individual.

Item 21 amends the heading to subsection 35UD(4) of the Family Assistance Act.

Item 24 inserts new subsection 35UD(4A) into the Family Assistance Act, which provides that students attracting special benefit must meet the age and study requirements outlined in paragraphs 35UA(4A)(c) (d) and (e) and paragraphs 35UD(4A)(a) and (b).

Item 29 inserts a provision that requires ABSTUDY living allowance recipients under the age of 16 to have independent status under the ABSTUDY scheme to be eligible for schoolkids bonus.

Item 31 amends the heading to subsection 35UE(3) of the Family Assistance Act. Similar to **items 6 and 13**, **item 32** amends paragraph 35UE(3)(a) of the Family Assistance Act to extend schoolkids bonus eligibility to individuals receiving carer payment, parenting payment or special benefit.

Item 33 repeals paragraph 35UE(3)(b) of the Family Assistance Act for reasons similar to **item 7** and is related to the amendments made by **items 36 and 37**. **Items 34, 35 and 38** are consequential to **item 33**.

Item 39 removes reference to section 3.6 of the Veterans' Children Education Scheme and **item 40** removes reference to section 3.6 of the Military Rehabilitation and Compensation Act Education and Training Scheme from subsection 35UE(4) of the Family Assistance Act. This allows for all cases relating to receipt of an education allowance under section 3.6 of each of those educational schemes to be dealt with in subsection 35UE(5) of the Family Assistance Act, as inserted by **item 45**.

Item 42 repeals the heading to subsection 35UE(5) of the Family Assistance Act as it is no longer required.

Item 46 inserts a provision enabling the Minister to prescribe eligible activities by legislative instrument for the purposes of section 35UE of the Family Assistance Act.

Item 47 removes the age limitation currently in subsection 35UF(3) of the Family Assistance Act.

Item 48 corrects a typing error in existing subsection 35UH(2) of the Family Assistance Act.

Item 49 defines the secondary study test for individuals attracting disability support pension, carer payment, parenting payment or special benefit, to determine whether the individual has met the relevant study requirements.

Item 50 is consequential to **item 13**. **Item 51** removes the definition of ***current bonus test day***, which is no longer required as a result of the amendments made by **items 52 and 55**. **Items 52 and 55** omit the words, 'most recent', in paragraph 65B(2)(a) and paragraph 65B(2)(b) of the Family Assistance Act.

Item 53 amends subparagraph 65B(2)(a)(ii) of the Family Assistance Act to allow for additional circumstances when the secondary school amount is payable as provided in new subsections 65B(4A) and (4B), inserted by **item 56**. **Item 54** is consequential to **item 51**.

Item 56 specifies the circumstances in which the secondary school amount is payable for eligible children under 16 where another individual is to receive payment on behalf of the child.

Item 57 omits the words, 'most recent', in paragraph 65C(2)(a) of the Family Assistance Act. **Item 58** corrects a typographical error in subparagraph 65C(2)(a)(ii) of the Family Assistance Act.

Item 59 provides that, if the individual eligible for schoolkids bonus is aged 16 or over on the bonus test day, the secondary school amount is payable. If the individual is under 16, the primary school amount will be payable unless subsections 65E(2) or (3) apply.

Item 60 inserts new subsection 221(5) into the Family Assistance Act. This enables the Secretary to delegate powers relating to schoolkids bonus to APS employees in the Department of Veterans' Affairs.

Item 61 excludes ETR payments made under the administration scheme determined under Part 2 of Schedule 1 to the *Family Assistance and Other Legislation Amendment (Schoolkids Bonus Budget Measures) Act 2012* from the definition of income under the Social Security Act, correcting an oversight in the amending Act.

Schedule 6 – Other amendments

Item 1 provides that the daily rate for the single income family supplement is to be calculated by rounding up to the nearest cent in all cases. This beneficial amendment will commence with retrospective effect from 1 July 2012.

Items 2, 3 and 4 are concerned with an amendment to subsection 108(1A) of the Family Assistance Act. **Item 3** provides for the repeal of paragraph 108(1A)(c). This removes the current restriction on the instrument-making power in section 108(1B) in relation to clean energy advance top-ups for individuals who may not have been members of a couple on the decision day. **Item 2** makes a consequential amendment to the heading of the subsection. **Item 4** is an application provision, which provides that the amendment made by **item 3** applies to working out an individual's entitlement to further payments of clean energy advance on or after the day that **item 3** commences.

Item 5 adds subclause 4(3) at the end of clause 4 of Schedule 4 to the Family Assistance Act. The subclause excludes three amounts from the operation of the clause as the indexation of these amounts is provided for by the amendments made by **item 6**.

Item 6 adds clause 7 at the end of Part 2 of Schedule 4 to the Family Assistance Act. Subclause 7(1) provides for the indexation of three clean energy amounts. Those amounts are:

- (i) family tax benefit clean energy child amount;
- (ii) clean energy supplement (Part B); and
- (iii) approved care organisation clean energy supplement.

Subclause 7(2) is an application provision in relation to an amount for which this clause applies. It provides that the Act has effect as if the indexed amount were substituted for the amount on an indexation day.

Subclause 7(3) provides the methodology for amounts under subclause 7(1) to be indexed.

Item 7 corrects a typographical error in paragraph 224(1)(f) of the Family Assistance Administration Act.

Items 8 to 9 provide for amendments to the Social Security Act.

Item 8 omits the word, 'and', in subparagraph 96(1)(b)(i) and substitutes the word, 'but', to ensure correct grammatical form as a result of the amendment proposed in **item 9** below.

Item 9 omits the words, 'not more', in subparagraph 96(1)(b)(ii) and substitutes the word, 'less', to clarify the policy intent that a person can work up to, but not including, 30 hours a week and remain qualified for disability support pension.

STATEMENTS OF COMPATIBILITY WITH HUMAN RIGHTS

*Prepared in accordance with Part 3 of the
Human Rights (Parliamentary Scrutiny) Act 2011*

Schedule 1 – Extending Cape York welfare reform trial

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative amendments

The Cape York Welfare Reform Trial extension component of the Bill introduces a minor amendment to the *Social Security (Administration) Act 1999* (the Social Security Administration Act). Paragraphs 123UF(1)(g) and 123UF(2)(h) of the Social Security Administration Act provide that a person can only be subject to income management under section 123UF after a decision by the Family Responsibilities Commission made before 1 January 2013.

The amendment extends to 1 January 2014 the timeframe for which a person, after a decision by the Family Responsibilities Commission, can be subject to income management under section 123UF.

The purpose of the amendment is to allow income management to continue in Cape York for a further 12 months until 1 January 2014.

Human rights implications

Eliminating racial discrimination

The amendment to the Social Security Administration Act engages Article 2(1) of the *Convention on the Elimination of All Forms of Racial Discrimination*, which:

‘...imposes an obligation on State parties to undertake to pursue a policy of eliminating racial discrimination in all its forms and promoting understanding among all races...’¹

Equality before the law

The amendment to the Social Security Administration Act also engages Article 26 of the *International Covenant on Civil and Political Rights*, which states:

¹ International Convention on the Elimination of All Forms of Racial Discrimination, Article 2(1)

‘...all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’²

There is no incompatibility with the rights engaged as the circumstances meet the test for legitimate differential treatment under international law.

Legitimate differential treatment

The objective of the Cape York Welfare Reform Trial is aimed at supporting the restoration of socially responsible standards of behaviour and assisting community members to resume and maintain primary responsibility for the wellbeing of their community and the individuals and families within their community. Restoring socially responsible standards of behaviour and assisting community members to resume and maintain primary responsibility for the wellbeing of their community is considered sufficiently important to justify differential treatment on the basis of a prohibited ground.

The reviews of the trial conducted to date indicate that the trial has had a positive impact on community behaviours such as positive changes in school attendance, increasing commitment to education by parents, growing Indigenous authority and decreasing levels of violence.

Moreover, results of consultations conducted to date have established support for the trial from the four Cape York communities.

The Family Responsibilities Commission (FRC) operates through a conferencing model. In practice, this means an individual will attend a number of conferences where alternative options are discussed, including attending support services, prior to any income management direction being made by the FRC. The FRC considers appropriate alternatives in conjunction with the individual, with income management only being used as a final measure.

The results of the reviews and consultations to date demonstrate that the differential treatment of members of the four Cape York communities is having a positive impact on the aims of the trial.

Conclusion

The amendments are compatible with human rights because to the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate.

² International Covenant on Civil and Political Rights, Article 26.

Schedule 2 – Indigenous education payments

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative amendments

The Schedule amends the *Indigenous Education (Targeted Assistance) Act 2000* (Indigenous Education Act) to increase the Indigenous Education Act's legislative appropriation for the 2012 calendar year to \$132,607,000 (an increase of \$11,906,000) and, for the 2013 calendar year, to \$137,699,000 (an increase of \$4,172,000). The increase in the 2012 and 2013 appropriations is to provide additional funding for measures announced as part of the 2012-13 Federal Budget, in particular, the Stronger Futures in the Northern Territory package and the Single Indigenous Budget Statement. The increase in appropriation in 2012 and 2013 will provide funding for existing Indigenous Education Act activities, as well as additional initiatives. The range of programs funded by the appropriation under the Indigenous Education Act will make a positive contribution to promoting a range of human rights.

Human rights implications

The Bill engages the following human rights:

- the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights*; and
- the elimination of racial discrimination – Articles 2 and 1(4) of the *Convention on the Elimination of all forms of Radical Discrimination*.

Right to Education

Items 1 and 2 of Schedule 2 to the Bill engage the right to education contained in article 13 of the *International Covenant on Economic, Social and Cultural Rights*. One of the main objectives of the Indigenous Education Act is to ensure equitable and appropriate educational outcomes for Indigenous people. The increased appropriation for 2012 and 2013 will positively contribute to achieving this aim.

Specifically, this will be achieved through the funding of a range of educational programs provided under the Indigenous Education Act, including funding for additional teachers and engagement workers in remote Northern Territory schools, programs that use sport as a means to increase Indigenous students' engagement in schooling, support for remote Indigenous communities in establishing and maintaining a quality teacher workforce, and providing a financial management service for parents and care-givers from the remote Indigenous communities in the Cape York region to save for their children's education costs.

The additional appropriations under the Indigenous Education Act will also be used to fund the continuation of the School Nutrition program, which enables a nutritious breakfast, lunch and snacks to be provided to 5,000 students in 67 target schools across remote Northern Territory communities to assist in improving students' ability to participate in school and learning.

The range of programs funded under the Indigenous Education Act will make a positive contribution to promoting the right to education for the Indigenous children concerned.

Elimination of racial discrimination

Items 1 and 2 of Schedule 2 to the Bill will fund programs that will differentiate between individuals or groups on the basis of race, albeit to promote the right to education of indigenous people. Australia has obligations to eliminate all forms of racial discrimination under article 2 of the *Convention on the Elimination of All Forms of Racial Discrimination* (CERD). However, article 1(4) of the CERD provides that, where special measures are taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals in the equal enjoyment of their human rights, those measures will not amount to racial discrimination.

The additional appropriations under the Indigenous Education Act will provide funding for programs that are intended to achieve equality in educational outcomes for Indigenous people. It is widely acknowledged that Aboriginal and Torres Strait Islander students have a lower level of educational engagement, attendance and attainment than non-Indigenous students. For example:

- The proportion of Indigenous 20 to 24 year-olds who had completed year 12 or the equivalent was around half that of non-Indigenous 20 to 24 year-olds in 2008.
- The participation rates in NAPLAN tests were lower for Aboriginal and Torres Strait Islander students than for non-Indigenous students in 2010. For Indigenous students, the rate was lower in remote areas, while, for non-Indigenous students, the rate was similar across remote areas.
- Of Indigenous people aged 15 and older, 34.1 per cent reported year 9 or below as their highest level of schooling in 2008, compared to 16.0 per cent of non-Indigenous people aged 15 and older.
- Around one-third of Indigenous students achieved the minimum proficiency level in international tests for science, mathematics and reading literacy in 2009, compared to around two-thirds of non-Indigenous students.

There are a number of Council of Australian Governments targets aimed at reducing the gap in education attendance and attainment between Aboriginal and Torres Strait Islander students and non-Indigenous students. The programs to be funded under the Indigenous Education Act, as a result of the amendments in the Bill to increase the appropriation amounts are special measures which are appropriate, necessary and proportionate measures aimed at improving and promoting the equal enjoyment of the right to education of Indigenous people and, therefore, do not amount to racial discrimination.

Conclusion

Schedule 2 is compatible with human rights as it promotes the right to education and the obligation to eliminate racial discrimination.

Schedule 3 – Social Security Appeals Tribunal

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative amendments

This Schedule amends child support, social security, family assistance and paid parental leave legislation to improve the operation of the Social Security Appeals Tribunal (SSAT), which conducts reviews of decisions made under that legislation.

Human rights implications

One important amendment will enable SSAT members to release protected information that has been disclosed, during a review, to the relevant authorities in order to prevent or lessen a threat to the life, health or wellbeing of an individual. With regard to Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR), this measure is considered reasonable and proportionate because it strengthens a person's right to protection from exploitation, violence and abuse, and ensures there is no legal impediment to attempts to safeguard the welfare and safety of individuals. The right to protection from exploitation, violence and abuse is contained in articles of the ICCPR, the *Convention on the Rights of the Child* and the *Convention on the Rights of Persons with Disabilities*.

This Schedule contains amendments which broaden the current non-disclosure of information provisions in SSAT reviews. This will ensure non-disclosure orders can be made that cover all aspects of an SSAT review, which will strengthen a person's right to privacy under Article 17 of the ICCPR.

The new non-disclosure provisions allow for the disclosure of specified information in certain circumstances or to certain people. The specified information may be personal information about a person who has not consented to the disclosure. With regard to Article 17 of the ICCPR, the measure is considered reasonable and proportionate for the following reasons. A secondary person, such as the party's current partner, child support authorised representative or business partner, may be involved in the SSAT review to the extent of assisting the party to complete the Statement of Financial Circumstances (particularly where household finances and expenses are shared), making written statements to account for financial dealings, or providing documents such as joint bank accounts or business accounts.

Disclosure of specified information to the secondary person could be considered reasonable and necessary to the extent that the secondary person's own information is associated with the party's information that is being considered as part of the SSAT review. In addition, one of the amendments allows the SSAT Principal Member to issue another non-disclosure order to the secondary person, which prevents further disclosure of the specified information. Therefore, this amendment also ensures a person's right to privacy and reputation is protected.

There is a maximum penalty of imprisonment for two years if a non-disclosure order is made by the SSAT Principal Member and the person contravenes the order. However, the non-disclosure order does not apply to information that the person knew before the disclosure of information was made to them. The defendant bears an evidential burden in these circumstances. It is considered appropriate to cast the evidential burden on the defendant, with regard to a person's right to the presumption of innocence, because the recipient of the information that is subject to a non-disclosure order is best placed to know whether they knew about the information before the information was disclosed to them.

In addition, the recipient of the information subject to a non-disclosure order would be best placed to provide appropriate evidence to demonstrate that they were already aware of the information, whereas it would be difficult for the prosecution to prove that the person did not know the information before the information was disclosed to them.

These offence provisions reflect current offence provisions in the legislation relating to non-disclosure orders. In accordance with the prohibition on retrospective criminal laws under the ICCPR, the offence provisions attached to these amendments will have a prospective start date.

This Schedule also contains amendments which give the SSAT Principal Member discretion when deciding whether to grant permission to a party to have another person make submissions on their behalf. The SSAT Principal Member must give consideration to the wishes of the other party and the need to protect their privacy, which enhances an individual's right to privacy and reputation.

Amendments also extend confidentiality obligations to all people providing services at the hearing of a review. These amendments will strengthen the right to privacy and reputation, as contained in Article 17 of the ICCPR. In accordance with the prohibition on retrospective criminal laws under the ICCPR, the offence provisions attached to these amendments will have a prospective start date.

The SSAT will be required to send a copy of a decision to a person who has been removed as a party to the review. The removed party may be affected by the decision, particularly in child support reviews. Therefore, enshrining this requirement in legislation advances human rights.

Conclusion

This Schedule is compatible with human rights because the amendments that potentially limit human rights are considered reasonable and proportionate, and many amendments strengthen or protect human rights.

Schedule 4 – Amendments relating to certain child support declarations

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative amendments

Schedule 4 amends the child support legislation to address the effects of a decision of the Full Family Court which is contrary to existing policy that amounts paid under a child support assessment should apply to all children in a family, rather than a separate amount applying for each child.

The purpose of the amendments is to provide legislative clarity in the situation where the Child Support Registrar must give effect to a declaration that a person should not be assessed in respect of the costs of a child because the person is not a parent of the child, but where there is at least one other child for whom child support continues to be payable.

In this situation, the Registrar must amend the assessment, taking into account all amounts of child support paid before a declaration was made that the payer is not a parent of a child and, therefore, should not be assessed in respect of that child, and apply those amounts to the assessment made in respect of other children, if any. Where the amount of child support paid exceeds the amount payable under the amended assessment, then the excess can be recovered by the payer.

Human rights implications

These legislative amendments engage the right of a child to a standard of living adequate for the child's development.

Article 27 of the United Nations *Convention on the Rights of the Child* recognises the right of a child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development. Countries are required to take appropriate measures to assist parents and others responsible for the child to implement this right. Countries are also required to take all appropriate measures to secure the recovery of maintenance for the child from the parents or other people having financial responsibility for the child.

The changes in Schedule 4 are consistent with the right of the child to a standard of living adequate for the child's development as they ensure that amounts of child support already paid under an assessment are appropriately applied to an assessment that is revised because a parent is declared not to be a parent of a child in the assessment, but where there continues to be a liability for at least one other child of the assessment.

Conclusion

The Schedule is compatible with human rights because the amendments ensure that children will receive appropriate financial support from parents who are separated and so advance the protection of the rights of the child to a standard of living adequate for the child's development.

Schedules 5 and 6 – Other amendments

These Schedules are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative amendments

Schedule 5 amends the family assistance legislation to make certain drafting clarifications to existing schoolkids bonus provisions, consistent with existing policy.

Schedule 6 makes minor amendments to the family assistance and social security legislation.

Human rights implications

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), as well as Article 26 of the *Convention on the Rights of the Child* (CRC), recognise the right of a child to benefit from social security.

The right to social security in article 9 of the ICESCR requires that a social security system be established and that a country must, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education. Article 26 of the CRC imposes similar requirements on a country in relation to a child.

The right to education is contained in article 13 of ICESCR and makes specific reference to primary and secondary education, as well as technical and vocational education. Under the article, countries have obligations to respect, protect and fulfil each of the essential features of the right to education, including economic accessibility. Article 28 of CRC imposes similar obligations on a country in relation to a child.

Amendments clarify eligibility for the schoolkids bonus. Eligibility criteria for the payment draw on eligibility for existing social security payments, to ensure assistance is targeted to individuals who may not have the resources to provide for education expenses. Payments would be delivered automatically to families and students at key points in the calendar year when education expenses are most likely to arise.

Schedule 6 makes minor and technical amendments to the family assistance and social security laws to clarify a number of provisions. The amendments do not involve any changes to policy.

Conclusion

These amendments are minor and technical in nature and in line with existing policy. As such, there are no changes to the human rights implications. Schedule 5 is compatible with human rights as it promotes the right to social security and the right to education. Schedule 6 is compatible with human rights as it does not raise any human rights issues.

**Minster for Families, Community Services and Indigenous Affairs,
Minister for Disability Reform, the Hon Jenny Macklin MP**