

**2010-2011-2012-2013**

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**FAMILY ASSISTANCE AND OTHER LEGISLATION AMENDMENT  
BILL 2013**

**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)**



# FAMILY ASSISTANCE AND OTHER LEGISLATION AMENDMENT BILL 2013

## OUTLINE

### ***Baby bonus***

This Bill implements the Government's changes to the baby bonus announced in the 2012-13 Mid-Year Economic and Fiscal Outlook. These changes will maintain support for new parents with the upfront costs of having a baby, while ensuring the family payments system is sustainable into the future.

The amount of baby bonus for second and subsequent children who come into a family from 1 July 2013 will be reduced to \$3,000. The change will generally apply regardless of whether the child is born into the family, adopted by the family, or entrusted to the family's care within 26 weeks of birth (for example, under a foster care arrangement). Baby bonus will continue to be paid at the rate of \$5,000 for a family's first child, and for each child who comes into the family in a multiple birth, adoption or entrustment to care.

This change recognises that families generally do not face the same upfront costs for a second or later child as they do for their first child, with the more expensive items usually already purchased.

The saving from this measure will support the future sustainability of the family payments system, which continues to deliver substantial assistance for low and middle-income families – including through paid parental leave, dad and partner pay, the schoolkids bonus and family tax benefit and child care payments.

### ***Family tax benefit and double orphan pension***

This Bill also makes amendments to ensure families can continue to receive family tax benefit until the end of the calendar year that the child finishes secondary study or its equivalent. Additionally, the qualification period for double orphan pension is being extended so that it aligns with eligibility for family tax benefit. This means, for example, that a carer can continue to receive double orphan pension for a young person in their care until the end of the calendar year in which the young person turns 19 if they are still in secondary study, or until their 18th birthday if they have already completed secondary study.

### ***Other amendments***

This Bill also makes some clarifying and technical amendments to portfolio legislation, consistent with intended policy.

**Financial impact statement**

The baby bonus changes are expected to provide savings of \$505.9 million over four years from 2012-13 to 2015-16. The remaining amendments have negligible financial impact.

**STATEMENTS OF COMPATIBILITY WITH HUMAN RIGHTS**

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

**FAMILY ASSISTANCE AND OTHER LEGISLATION AMENDMENT  
BILL 2013**

**NOTES ON CLAUSES**

**Abbreviations used in this explanatory memorandum**

- **Family Assistance Act** means the *A New Tax System (Family Assistance) Act 1999*
- **Family Assistance Administration Act** means the *A New Tax System (Family Assistance) (Administration) Act 1999*
- **Paid Parental Leave Act** means the *Paid Parental Leave Act 2010*
- **Social Security Act** means the *Social Security Act 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 *Family Assistance and Other Legislation Amendment Act 2013*.

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

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

## Schedule 1 – Baby bonus

### Summary

This Schedule implements the Government's changes to the baby bonus announced in the 2012-13 Mid-Year Economic and Fiscal Outlook. These changes will maintain support for new parents with the upfront costs of having a baby, while ensuring the family payments system is sustainable into the future.

The amount of baby bonus for second and subsequent children who come into a family from 1 July 2013 will be reduced to \$3,000. The change will generally apply regardless of whether the child is born into the family, adopted by the family, or entrusted to the family's care within 26 weeks of birth (for example, under a foster care arrangement). Baby bonus will continue to be paid at the rate of \$5,000 for a family's first child, and for each child who comes into the family in a multiple birth, adoption or entrustment to care.

This change recognises that families generally do not face the same upfront costs for a second or later child as they do for their first child, with the more expensive items usually already purchased.

### Background

Baby bonus is paid to eligible individuals following the birth or adoption of a child to assist with the upfront costs of having a child. Currently, baby bonus is a payment of \$5,000.

The amendments made by this Schedule commence on 1 July 2013, apart from items 4 to 6 and item 9, which commence the day after Royal Assent.

### Explanation of the changes

#### Amendments to the Family Assistance Act

**Item 1** repeals and inserts a new section 66, which outlines the amount of baby bonus that an individual is entitled to receive in respect of a child.

#### *General rule*

Subsection 66(1) provides for the general rule in relation to the amount of baby bonus an individual is entitled to receive in respect of a child. If the individual satisfies paragraph 66(1)(a), (b), (c) or (d), then the amount of baby bonus is \$5,000.

Otherwise, the amount of baby bonus is \$3,000.

## Schedule 1 – Baby bonus

New paragraph 66(1)(a) applies to an individual who is a parent of the child and is eligible for baby bonus under subsection 36(2). If the child is the first child born alive to the mother who gave birth to the child, the amount of baby bonus is \$5,000.

### **Example**

A mother claims baby bonus for both the first and second children that she gives birth to (the children were not born as part of a multiple birth). A payment of \$5,000 of baby bonus is made for the first child, and a payment of \$3,000 for the second child.

New paragraph 66(1)(b) applies to an individual who has a child entrusted to the care of the individual or the individual's partner and is eligible for baby bonus under subsection 36(3). If the child is the first child who becomes entrusted to the care of the individual, which occurred at any time within the period of 26 weeks starting on the day of the child's birth, the amount of baby bonus is \$5,000. Alternatively, if the individual is a member of a couple at any time within the period of 26 weeks starting on the day of the child's birth and the child becomes entrusted to the care of the individual's partner at that time, the amount of baby bonus is \$5,000.

### **Examples**

A carer is eligible for baby bonus for a child entrusted to her or his care under subsection 36(3) (for example, through a foster care arrangement). The birth mother had care of the child until the child was 10 weeks old, and then the carer took on care of the child, intending to be the primary carer of the child for at least 26 weeks. Both wish to claim baby bonus. In this situation, a pro-rated payment of \$5,000 of baby bonus is apportioned between the birth mother for her first born child and the carer as this is the first child entrusted to her or his care.

A child is born of a surrogacy arrangement between a surrogate mother and a commissioning couple. The commissioning couple have not taken on care of any other child of a surrogacy arrangement previously. The child enters their care four weeks after birth, and the individual who is the primary carer of the child receives an amount of \$5,000 for baby bonus.

New paragraph 66(1)(c) applies to an individual who has a stillborn child and is eligible for baby bonus under subsection 36(4). If the child is the mother's first stillborn child and the mother has not given birth to any other children (including stillborn children), the amount of baby bonus is \$5,000.

**Examples**

A birth mother has a stillborn child and she receives an amount of \$5,000 for baby bonus.

A birth mother has a first live-born birth, followed by a stillbirth. In this situation, the mother will be entitled to receive baby bonus amounts of \$5,000 and \$3,000 respectively.

A birth mother who firstly has a stillborn child, followed by a first live-born child, will receive \$5,000 for the stillborn child and then \$5,000 again to assist with the upfront costs of raising her child.

New paragraph 66(1)(d) applies to an individual who has an adopted child and is eligible for baby bonus under subsection 36(5). If the child is the first child who becomes entrusted to the care of the individual or the individual's partner as part of the process of adoption by an authorised party, and the child is aged under 16 at the time, the amount of baby bonus is \$5,000.

**Examples**

A couple adopts a child and has not adopted before. The adopting father claims baby bonus and receives \$5,000 for the child.

A couple adopts a second child. The adopting mother claims baby bonus, and receives \$3,000 as the couple had adopted a child previously.

*Multiple children cases*

New subsection 66(2) provides for an exception to the general rule for multiple children – for example, twins. Subsection 66(2) provides that the amount of baby bonus for an individual in respect of each child born during the same multiple birth is \$5,000. This amount also applies to any stillborn child born in a multiple birth.

New subsection 66(3) provides that, if an individual is eligible for baby bonus under subsection 36(3) of the Family Assistance Act in respect of two or more children who become entrusted to the care of the individual or the individual's partner within 26 weeks of birth, as part of the same entrustment to care process, the amount of baby bonus in respect of each child is \$5,000. For example, if twin babies become entrusted to the care of a foster mother, the foster mother would be entitled to receive an amount of \$5,000 in baby bonus for each of the twin children.



## Schedule 1 – Baby bonus

New subsection 66(4) provides that, if an individual is eligible for baby bonus under subsection 36(5) as part of the process for adoption by an authorised party, in respect of two or more children who become entrusted to the care of the individual as part of the same adoption process, the amount of baby bonus in respect of each child is \$5,000. For example, if a couple adopted two siblings as part of the same adoption process and the children are both under 16 years of age, either member of the couple would be entitled to receive an amount of \$5,000 in baby bonus for each of the children.

### *Shared baby bonus*

New subsection 66(5) provides clarification that, if the Secretary has determined (under paragraph 37(3)(b)) the percentage that is to be an individual's percentage of baby bonus in respect of a child, the amount of baby bonus for the individual in respect of that child is that percentage of the amount worked out under subsections 66(1) to (3).

**Item 2** omits 'subsection 66(1)' and substitutes 'paragraphs 66(1)(a), (b), (c), (d) and (e) and subsections 66(2), (3) and (4)' in table item 17AD of clause 2 of Schedule 4. This item is consequential to item 1, and makes reference to the provisions in the Family Assistance Act that state the monetary amount of baby bonus that is to be indexed and adjusted under Schedule 4.

**Item 3** repeals the note to subclause 3(9) of Schedule 4 and substitutes a new note. The new note provides clarification that the indexation of baby bonus resumes on 1 July 2015.

### Amendments to the Family Assistance Administration Act

#### *Claims for baby bonus – time limits*

**Item 4** omits 'if it is made later than 52 weeks after', and substitutes 'unless it is made before the end of the period of 52 weeks beginning on' in subsection 39(2). This amendment to wording clarifies the policy intent that a baby bonus claim must be made within the period of 52 weeks beginning on the day of the birth of the child or the day the child becomes entrusted to the care of the claimant as part of the process for adoption.

**Item 5** omits 'the birth', and substitutes 'the day of the birth' in paragraph 39(2)(a). This amendment clarifies that the claim period for baby bonus in relation to eligibility under any of subsections 36(2) to (4) of the Family Assistance Act begins on the day of the birth of the child.

**Item 6** omits 'the time', and substitutes 'the day' in paragraph 39(2)(b). This amendment clarifies that the claim period for baby bonus in relation to eligibility under subsection 36(5) of the Family Assistance Act begins on the day the child becomes entrusted to the care of the claimant as part of the process for adoption.

*‘Upfront part’ of baby bonus*

**Item 7** repeals paragraphs 47(2A)(b) and (c) and substitutes new paragraphs 47(2A)(b) to (f), which make amendments to the ‘upfront part’ of the baby bonus so that the baby bonus amount for second and subsequent children will remain at \$3,000 until 1 July 2015, at which time it will be indexed in line with Consumer Price Index increases.

New paragraph 47(2A)(b) provides that, if the claimant becomes eligible for baby bonus between 1 September 2012 and 30 June 2013, the upfront part of baby bonus is \$846.20.

New paragraph 47(2A)(c) provides that, if the claimant becomes eligible for baby bonus between 1 July 2013 and 30 June 2015 and the amount of baby bonus is the amount applicable under paragraph 66(1)(a), (b), (c) or (d), or subsection 66(2), (3) or (4), of the Family Assistance Act, the upfront part of baby bonus is \$846.20.

New paragraph 47(2A)(d) provides that, if the claimant becomes eligible for baby bonus between 1 July 2013 and 30 June 2015 and the amount of baby bonus is the amount applicable under paragraph 66(1)(e) of the Family Assistance Act, the upfront part of baby bonus is \$692.40.

New paragraph 47(2A)(e) provides that, if the claimant becomes eligible for baby bonus on or after 1 July 2015 and the amount of baby bonus is the amount applicable under paragraph 66(1)(a), (b), (c) or (d), or subsection 66(2), (3) or (4), of the Family Assistance Act, the amount of the upfront part of baby bonus is worked out using the formula in this paragraph – that is, 16.92 per cent multiplied by the amount of baby bonus the claimant is entitled to.

New paragraph 47(2A)(f) provides that, if the claimant becomes eligible for baby bonus on or after 1 July 2015 and the amount of baby bonus is the amount applicable under paragraph 66(1)(e) of the Family Assistance Act, the amount of the upfront part of baby bonus is worked out using the formula in this paragraph – that is, 23.08 per cent multiplied by the amount of baby bonus the claimant is entitled to.

**Item 8** is an application provision. It provides that the amendments made by item 1 apply in relation to individuals who become eligible for baby bonus on or after 1 July 2013.

**Item 9** is an application provision. It provides that the amendments made by items 4 to 6 apply in relation to claims for payment of baby bonus that are made on or after the commencement of those items – that is, the day this Act receives the Royal Assent.

**Item 10** is a transitional provision. It provides that, in working out the indexed amount for baby bonus on 1 July 2015 under Schedule 4 to the Family Assistance Act, the following applies:

## Schedule 1 – Baby bonus

- the current figure for baby bonus, in relation to the amount specified in paragraph 66(1)(a), (b), (c) or (d), or subsection 66(2), (3) or (4), of that Act, immediately before that day is taken to be \$5,000; and
- the current figure for baby bonus, in relation to the amount specified in paragraph 66(1)(e) of that Act immediately before that day is taken to be \$3,000.

### Amendments to the *Family Assistance and Other Legislation Amendment Act 2012*

**Item 11** repeals item 6 of Schedule 2 to the *Family Assistance and Other Legislation Amendment Act 2012*, which is a transitional provision applying to the indexed amount for baby bonus. New transitional provisions will apply to the amount of baby bonus, as provided for in item 10.

## Schedule 2 – Family tax benefit and double orphan pension

### Summary

This Schedule makes amendments to ensure families can continue to receive family tax benefit until the end of the calendar year that the child finishes secondary study or its equivalent. Additionally, the qualification period for double orphan pension is being extended so that it aligns with eligibility for family tax benefit. This means, for example, that a carer can continue to receive double orphan pension for a young person in their care until the end of the calendar year in which the young person turns 19 if they are still in secondary study, or until their 18th birthday if they have already completed secondary study.

### Background

Currently, under subsection 22B(3) of the Family Assistance Act, a child continues to be a **senior secondary school child** until 31 December, if the day the child completes the final year of secondary school or equivalent level of education is in December of that calendar year. If the day of completion is before December, the child continues to be a senior secondary school child for a period of 28 days after completion. This allows for continued eligibility for family tax benefit until the end of the calendar year for a child who completes secondary school in December, or for a period of 28 days if the child completes school before December.

This Schedule amends the Family Assistance Act so that eligibility for family tax benefit will continue until the end of the calendar year for a child who completes secondary school in either November or December of that year. The amendments confirm access to family tax benefit until the end of the calendar year for students who complete secondary study in the usual way – for example, by sitting final examinations. The amendments also ensure continued family tax benefit eligibility for a child for a period of 28 days after completion if the child completes secondary school before November.

This Schedule also amends the definition of **young person** in subsection 5(1) of the Social Security Act to extend the double orphan pension qualification period for students completing study by aligning it with the family tax benefit eligibility period.

The amendments in items 1 to 5 of this Schedule commence on 1 January 2012 and those in items 6 and 7 commence on 1 January 2013.

## **Explanation of the changes**

### ***Amendments to the Family Assistance Act***

**Item 1** inserts ‘November or’ after ‘is in’ in paragraph 22B(3)(a), so that extended eligibility for family tax benefit for a child until 31 December would apply for those completing the final year of secondary school or equivalent in November, as well as for those completing in December, of a calendar year.

**Item 2** omits ‘December’ and substitutes ‘November’ in paragraph 22B(3)(b). This amendment allows a child who completes the final year of secondary school or equivalent before November to continue to be a senior secondary school child for a period of 28 days after completion.

**Item 3** is an application provision for items 1 and 2. The amendments made by items 1 and 2 apply in relation to working out whether an individual is a senior secondary school child for days on or after 1 January 2012. The retrospective commencement of this item is beneficial, and aligns with the commencement of the policy under the *Supporting Families with Teenagers* 2010 election commitment, which was implemented on 1 January 2012.

### ***Amendments to the Social Security Act***

**Item 4** repeals the definition of **young person** in subsection 5(1) and substitutes a new definition. **Item 5** provides that this new definition applies for double orphan pension qualification for days on or after 1 January 2012, in line with the changes made by item 3.

Under the new definition, a young person (except in Part 2.20, relating to double orphan pension, of the Social Security Act) has the meaning given by subsection 5(1B) (that is, the person is under 16 years of age or is a student child) – so, for all purposes other than those of Part 2.20, the definition has not changed. However, in Part 2.20 (relating to double orphan pension), a young person means a person who:

- is under 16 years of age; or
- has reached 16, but is under 22, years of age and is studying full-time;  
or
- has reached 16 years of age and is a senior secondary school child under the Family Assistance Act.

The changes to the definition allow a young person to qualify for double orphan pension for a period after completing study (in line with the amendments made by items 1 and 2).

**Item 6** repeals paragraph (b) of the definition of ***young person*** in subsection 5(1) (inserted by item 4 above) and substitutes a new paragraph (b). **Item 7** provides that this new definition applies for double orphan pension qualification for days on or after 1 January 2013. New paragraph 5(1)(b) provides that, in Part 2.20 of the Social Security Act, a young person means a person who is under 20 years of age. This allows child age qualification for double orphan pension to be fully aligned with child age eligibility for family tax benefit.

## Schedule 3 – Other amendments

### Summary

This Schedule makes some clarifying and technical amendments to portfolio legislation, consistent with intended policy. For example, eligibility for schoolkids bonus is confirmed for students who are absent from school for a period due to special circumstances. It is also clarified that customers who decide to end payment on a quarterly basis of clean energy supplement, pension supplement or seniors supplement do not have to wait until the end of the quarter to be paid arrears.

### Background

#### ***Schoolkids bonus***

Amendments to the schoolkids bonus will ensure that students aged under 16 who have already commenced primary or secondary school, but who are unable to participate for a period due to special circumstances, are still able to receive schoolkids bonus. Minor amendments are also made to clarify the periods within which customers need to notify that they are engaging in eligible study.

These amendments commence on the day after Royal Assent.

#### ***Entrusted to care***

The family assistance legislation provides in general that baby bonus is payable within 52 weeks after a child is born or entrusted to an individual's care. The existing policy is that baby bonus is payable at around the time of the child's entry into a family, when the family is likely to incur set-up costs. A recent judgment of the Federal Court in *Secretary, Department of Families, Housing, Community Services and Indigenous Affairs v Abbott [2012] FCAFC 172* interpreted 'entrustment to care' differently to the existing policy, to the effect that baby bonus may be paid at some time after a child enters a person's care, when a formal process of adoption commences.

These amendments will clarify the meaning of entrustment to care to reflect the intended policy, so that baby bonus is only paid at around the time a child first enters a person's care.

These amendments commence on the day after Royal Assent. .

### ***Family assistance clean energy payments***

Minor changes to clean energy supplement under the family assistance law will ensure that, if individuals end their choice to receive clean energy supplement on a quarterly basis and start to be paid fortnightly instead, they can be paid their arrears straight away instead of having to wait until the end of the quarter. Another amendment removes an anomaly that prevents a member of a couple from being entitled to a clean energy advance top-up in certain situations.

These amendments commence on 1 July 2013, except for items 64 to 66, which commence on the day after Royal Assent.

### ***Social security and veterans' entitlements supplements***

Amendments to the social security law and the *Veterans' Entitlements Act 1986* (Veterans' Entitlements Act) clarify that customers who decide to end payment on a quarterly basis of clean energy supplement, pension supplement or seniors supplement do not have to wait until the end of the quarter to be paid arrears (similar to the family assistance clean energy supplement amendment above). In essence, these are minor and technical amendments, ensuring that people receive the correct amount of quarterly payments and receive them at the correct time.

These amendments commence on the later of the day after Royal Assent or immediately after the commencement of Part 3 of Schedule 1 to the *Clean Energy (Household Assistance Amendments) Act 2011*.

### ***Dad and partner pay***

Lastly, the Schedule mirrors for dad and partner pay an administrative provision that already exists for parental leave pay, to improve consistency in the claim process.

These amendments commence on the day after Royal Assent.

## **Explanation of the changes**

### ***Part 1 – Schoolkids bonus***

#### **Amendments to the Family Assistance Act**

**Items 1, 2, 3, 15, 19, 20, 21, 23, 24, 25, 26, 27 and 31** introduce a study notification period for an individual's eligibility for schoolkids bonus where that eligibility is based on the payment of certain social security income support payments (for example, youth allowance).



To be eligible for schoolkids bonus for a particular bonus test day in relation to relevant study or an eligible activity, the Secretary must be notified, or otherwise become aware, of the study or activity before the end of the calendar year in which the bonus test day occurs. Therefore, to be eligible for the bonus test days of 1 January or 30 June in a particular calendar year, an individual will have until 31 December of that calendar year to notify the Secretary of the study or activity (if the Secretary is not already aware of the study or activity).

**Items 12, 13, 14, 16, 17, 18 and 22** are consequential to the above amendments to introduce a calendar year study notification period for income support payment recipients.

**Items 6 and 10** add another way in which an FTB child aged under 16 can be eligible for schoolkids bonus where there are special circumstances, such as a State or Territory education authority granting an exemption due to sickness or disability. .

**Items 4, 5 and 9** are consequential to items 6 and 10.

**Items 7, 8 and 11** amend subsection 35UD(1) by introducing a study notification period for an FTB child of an individual to be an eligible child for schoolkids bonus in relation to relevant study or an eligible activity. For an FTB child to be an eligible child for schoolkids bonus for a particular bonus test day, the Secretary must be notified, or otherwise become aware, of the study or activity before the end of the second income year after the income year in which the bonus test day occurs. This two-year period is in line with the claim period for family tax benefit.

**Item 30** inserts new paragraph 65B(4)(c), which would add another way in which an FTB child aged under 16 can attract the higher secondary school amount of schoolkids bonus. This would apply if the eligible child has at any time undertaken full-time study in respect of a secondary course and the Secretary is satisfied that there are special circumstances that justified the child not participating in that course during the previous education period for the bonus test day, including where a State or Territory education authority has granted an exemption due to sickness or disability.

**Items 28 and 29** are consequential to item 30.

**Item 33** repeals subsection 65E(3) and substitutes new subsections 65E(3) and (3A). New subsections 65E(3) and (3A) are applicable in determining the amount of schoolkids bonus an individual is entitled to for a child aged under 16. If the individual satisfies the requirements of subsection 65E(3) or (3A), the individual is entitled to the secondary school amount of schoolkids bonus of \$410 (paid twice a year).

New subsection 65E(3) relates to an individual who is eligible under subsection 35UE(1) or (3) for schoolkids bonus (due to being paid youth allowance, disability support pension, carer payment, parenting payment or special benefit). The amendment would increase the period for notifying the Secretary of the relevant study or eligible activity from '13 weeks' to 'the end of the calendar year in which the bonus test day occurs'.

New subsection 65E(3A) relates to an individual who is eligible under subsection 35UE(2) for schoolkids bonus (due to being paid ABSTUDY living allowance). The amendment would remove the current 13-week period for notifying the Secretary of the relevant study or eligible activity. A separate notification period would not be included as the general claim period for payment of ABSTUDY living allowance for a particular calendar year is already the end of that calendar year.

**Item 32** is consequential to item 33.

#### Amendments to the Family Assistance Administration Act

**Item 34** adds new section 35H, which will introduce an obligation to notify the Secretary of a change in circumstances that may affect eligibility for, or the amount of, schoolkids bonus.

New subsection 35H(1) provides that, if an individual is eligible for schoolkids bonus on a bonus test day and there is a change in circumstances that may affect the individual's eligibility for schoolkids bonus on a later bonus test day or the amount of schoolkids bonus for a later bonus test day, the individual must notify the Secretary of that change, in the manner set out in a written notice given to the individual under subsection 35H(3). The individual must notify the Secretary as soon as practicable after the change in circumstances. The relevant circumstance affecting schoolkids bonus is a child's study status. For example, an individual would be obliged under new section 35H to notify the Secretary if a child leaves study or moves onto another type of study which does not attract schoolkids bonus.

New subsection 35H(2) provides that the Secretary must approve a manner of notification that an individual is to use when notifying the Secretary of a thing under subsection 35H(1). Under new subsection 35H(3), the Secretary must, by written notice, notify the individual of the approved manner of notification.

**Item 35** is an application provision. **Subitem 35(1)** provides that the amendments made by items 1 to 33 apply in relation to working out eligibility for schoolkids bonus on bonus test days occurring on or after the day this Act receives the Royal Assent.

**Subitem 35(2)** provides that paragraph 35H(1)(a) of the Family Assistance Administration Act, as inserted by item 34, applies in relation to bonus test days occurring on or after the day this Act receives the Royal Assent.

## **Part 2 – Entrusted to care**

### Amendments to the Family Assistance Act

**Item 36** inserts a new definition of ***becomes entrusted*** to clarify that a child becomes entrusted to the care of an individual at a particular point in time. At that time, the child must be entrusted to the individual's care by a person, with the result that the child is in the care of that individual, and the child cannot have previously been in the care of that individual.

**Item 37** amends subparagraphs 36(3)(b)(i) and (ii) by substituting the words, 'becomes entrusted' in place of 'is entrusted'. Subsection 36(3) of the Family Assistance Act provides the conditions for eligibility for baby bonus in cases where a child is entrusted to the care of an individual or individual's partner. The amendments clarify the intention for these provisions to apply to the point in time that entrustment occurs.

**Item 38** repeals paragraphs 36(5)(a) and (b) and substitutes paragraphs (a), (aa), (ab) and (b). Subsection 36(5) provides the conditions for eligibility for baby bonus in adoption cases. New subparagraphs 36(5)(a), (aa), (ab) and (b) clarify that where a child becomes entrusted to the care of an individual on a day, that entrustment must be made by an authorised party as part of the adoption process of the child by the individual. The child must be aged under 16 on that day.

**Item 39** makes consequential amendments to subparagraphs 36(5)(bc)(i) and (ii) and (c)(i) to specifically refer to the day on which entrustment occurs.

### Amendments to the Family Assistance Administration Act

**Items 40 and 41** make similar amendments to the Family Assistance Administration Act by substituting the words, 'becomes entrusted' in place of 'is entrusted', to clarify that eligibility is determined by the particular point in time a child becomes entrusted to care.

### Amendments to the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2008 Budget and Other Measures) Act 2008*

**Items 42, 43, 44, 45 and 46** make consequential amendments to the *Families, Housing, Community Services and Other Legislation Amendment (2008 Budget and Other Measures) Act 2008*. The amendments alter application provisions so that those provisions have effect in line with the substantive amendments to the Family Assistance Act in items 36 to 39 above.

Amendments to the Paid Parental Leave Act

**Item 47** repeals the definition of **day of placement** in section 6. The definition is not required because of the amendments providing for the date that a child becomes entrusted to care made by this Part.

**Items 48** inserts the word ‘aged’ in section 274 to clarify the section.

**Items 49** is a consequential amendment to section 274.

**Items 50, 51 and 52** amend paragraphs 275(1)(b), (c) and (d) as a result of the amendment made in item 53.

**Item 53** replaces subsections 275(2) and (3) of the Paid Parental Leave Act with new subsection 275(2). The new paragraph 275(2)(a) provides that, where a child becomes, or is to become, entrusted to the care of a person, the term ‘becomes entrusted’ has the same meaning as in in the Family Assistance Act. Paragraphs (b) and (c) provide that the entrustment must be made by an authorised party as part of the adoption process of the child by the person. Paragraph (d) provides that the child must be aged under 16 on the day the child becomes entrusted to care of that person.

Amendments to the *Paid Parental Leave (Consequential Amendments) Act 2010*

**Item 54, 55 and 56** make consequential amendments to paragraphs 3(b), 3(c) and 3(d) of Schedule 2 to the *Paid Parental Leave (Consequential Amendments) Act 2010* to ensure that a consistent interpretation of the concept of ‘becomes entrusted’ is applied.

Application of amendments

**Item 57** provides that the amendments will apply to a child becoming entrusted to care before, on or after the commencement of these provisions.

The amendments are being applied retrospectively to decisions made before the commencement of the amendments, to support the policy and administration that has been applied before that commencement. If the amendment were not retrospective, it would allow some previously decided cases to be revisited.

However, the amendments do not apply to proceedings finally determined by a court before this item commenced to avoid altering the rights and liabilities of the parties determined by a court in that case.

**Part 3 – Family assistance clean energy payments**

Amendments to the Family Assistance Act

**Item 58** removes some words from note 2 to subsection 58A(1) as a consequence of the amendment made by item 67.

**Item 59** inserts new subsections 58A(3A) and (3B) after subsection 58A(3).

New subsection 58A(3A) provides that an election to receive clean energy supplements quarterly ceases to be in force if the individual is eligible under subsection 32(1) for a single amount of family tax benefit on the death of an FTB child or regular care child (that is, a lump sum child bereavement payment). The election ceases to be in force on the 'request day', which is the day the individual requests a lump sum child bereavement payment. This will enable the arrears of clean energy supplement to be paid as soon as practicable if the family tax benefit recipient is entitled to a lump sum child bereavement payment, and will avoid the complex interaction of lump sum child bereavement calculations and clean energy supplement calculations.

New subsection 58A(3B) provides that, if an election to receive clean energy supplements quarterly ceases to be in force under new subsection 58A(3A), the individual cannot make another election under subsection 58A(1) to receive clean energy supplements quarterly until after the end of the lump sum child bereavement period. In general, the lump sum child bereavement period ends at the end of the period of 14 weeks beginning on the day the child died.

**Item 60** makes a technical amendment to allow the addition of a new paragraph by item 61.

**Item 61** adds new paragraph 109(c) after paragraph 109(b) in the general rules for the clean energy advances provisions. The effect of adding new paragraph 109(c) is that, if a top-up payment of clean energy advance was worked out under subsection 108(1A) in accordance with a legislative instrument under subsection 108(1B), then section 109 will *not* apply. This amendment will avoid the current anomaly whereby section 109 prevents a member of a couple from being entitled to a clean energy advance top-up in certain situations where that outcome is unintended. For example, where a person who was previously paid a clean energy advance for a child later becomes a member of a couple and they have a child together, it is intended that a clean energy advance top-up can be paid if the top-up is worked out in accordance with a legislative instrument under subsection 108(1B).

**Item 62** is an application provision, which provides that the amendments made by items 60 and 61 apply in relation to working out whether individuals are entitled to payments of clean energy advance on or after the day those items commence (whether the entitlements referred to in paragraph 109(a) of the Family Assistance Act arose before, on or after that commencement). The amendments made by items 60 and 61 are beneficial because they will enable a clean energy advance top-up in certain situations where it would not otherwise be payable. The application of those amendments to an entitlement referred to in paragraph 109(a) that arose *before* the amendments commence (as well as on or after commencement) is beneficial, as it would also enable a top-up where the original clean energy advance was paid before the amendments commence.

**Items 63, 64 and 65** remove some words from the notes to three subclauses in Schedule 1 as a consequence of the amendment made by item 67.

#### Amendments to the Family Assistance Administration Act

**Item 66** makes a technical amendment to paragraph 105B(1)(b) to reflect the insertion of new subsection 105B(2A) by item 67.

**Item 67** repeals subsection 105B(2) and substitutes new subsections 105B(2) and (2A). Section 105B applies to a determination in force in a quarter under which an individual is entitled to be paid family tax benefit by instalment where an election has been made by the individual, under subsection 58A(1) of the Family Assistance Act, to receive clean energy supplements on a quarterly basis. A 'quarter' means the period of three months beginning on 1 July, 1 October, 1 January or 1 April.

The changes made by new subsections 105B(2) and (2A) will allow the immediate payment of arrears to an individual where a quarterly clean energy supplement choice is ended. New paragraph 105B(2)(a) allows a calculation to occur before the end of the quarter and arrears to be paid immediately, once one of the following applies in that quarter:

- the individual ceases to be entitled to be paid family tax benefit by instalment (under the determination under section 16 of the Family Assistance Administration Act); or
- the individual revokes the election to be paid quarterly clean energy supplements; or
- the individual is entitled to a lump sum child bereavement payment (under subsection 32(1) of the Family Assistance Act).

Under new paragraph 105B(2)(b), if none of the conditions in paragraph 105B(2)(a) applies, then calculation and payment of arrears will occur after the end of that quarter.

**Part 4 – Social security and veterans' entitlements supplements**

*Division 1 – Instalments of quarterly supplements*

Amendments to the Social Security Administration Act

**Item 68** amends subsection 48B(2) by omitting the words, 'on or after the first seniors supplement test day (the **current test day**) that follows a day on which the person is qualified for seniors supplement', and substituting the words, 'after the end of an instalment period'. The amendment provides that seniors supplement is to be paid to the person as soon as practicable after the end of the **instalment period** which is inserted by item 70 below.

**Item 69** amends paragraph 48B(3)(a) by omitting the words, 'during the test period on which the person was qualified for seniors supplement', and substituting the words, 'in the instalment period'. This is a consequential amendment as a result of the amendment made in item 70 below.

**Item 70** repeals subsection 48B(4) and substitutes a new subsection. The new subsection 48B(4) provides a definition of **instalment period**. An instalment period is the number of days for which seniors supplement is payable to a person starting on or after 20 March, 20 June, 20 September or 20 December and ending on or before the following 19 June, 19 September, 19 December or 19 March respectively.

This amendment allows immediate payment of any accrued seniors supplement where it ceases to be payable to a person. It ensures that people receive their accrued seniors supplement as soon as they cease to qualify for it, instead of having to wait until the end of the quarter. If a person remains qualified for seniors supplement, they will continue to receive the payment quarterly.

**Item 71** amends subsection 48C(2) by omitting the words, 'on or after the first supplement test day (the **current test day**) that follows a day on which an election by the person subsection 1061VA(1) is in force', and substituting the words, 'after the end of an instalment period'. The amendment provides that quarterly pension supplement is to be paid to the person as soon as practicable after the end of the **instalment period**, a definition of which is inserted by item 73 below.

**Item 72** amends subsection 48C(3) by omitting the words, 'during the test period for which an election by the person under subsection 1061VA(1) is in force', and substituting the words, 'in the instalment period'. This is a consequential amendment as a result of the amendment made by item 73 below.

**Item 73** repeals subsection 48C(4) and substitutes a new subsection. New subsection 48C(4) has the same practical effect as new subsection 48B(5) provided for by item 70 above. That is, it allows immediate payment of any accrued quarterly pension supplement where it ceases to be payable to a person. It ensures that people receive their accrued quarterly pension supplement as soon as they cease to qualify for it, instead of having to wait until the end of the quarter. If a person remains qualified for quarterly pension supplement, they will continue to receive the payment quarterly.

**Item 74** amends subsection 48D(2) by omitting the words, ‘on or after the first supplement test day (the current test day) that follows a day for which quarterly clean energy supplement is payable to the person’, and substitutes the words, ‘after the end of an instalment period’. The amendment provides that quarterly clean energy supplement is to be paid to the person as soon as practicable after the end of the *instalment period*, definition of which is inserted by item 76 below.

**Item 75** omits the words, ‘during the test period for which quarterly clean energy supplement is payable to the person’, from paragraph 48D(3)(a), and substitutes the words, ‘instalment period’. This is a consequential amendment as a result of the amendment made by item 76 below.

**Item 76** repeals subsection 48D(4) and substitutes a new subsection. New subsection 48D(4) has the same practical effect as new subsection 48B(5) provided for by item 70 above. That is, it allows immediate payment of any accrued quarterly clean energy supplement where it ceases to be payable to a person. It ensures that people receive their accrued quarterly clean energy supplement as soon as they cease to qualify for it, instead of having to wait until the end of the quarter. If a person remains qualified for quarterly clean energy supplement, they will continue to receive the payment quarterly.

#### Amendments to the Veterans’ Entitlements Act

**Item 77** amends subsection 60C(2) by omitting the words, ‘on or after the first supplement test day (the *current test day*) that follows a day on which an election by the person under subsection 60A(1) is in force’, and substituting the words, ‘after the end of an instalment period’. The amendment provides that quarterly pension supplement is to be paid to the person as soon as practicable after the end of the *instalment period*, a definition of which is inserted by item 79 below.

**Item 78** amends subsection 60C(3) by omitting the words, ‘during the test period for which an election by the person under subsection 60A(1) is in force’, and substituting the words, ‘in the instalment period’. This is a consequential amendment as a result of the amendment made by item 79 below.



**Item 79** repeals subsection 60C(5) and substitutes a new subsection. The new subsection 60C(5) provides a definition of *instalment period*. An instalment period is the number of days for which quarterly pension supplement is payable to a person starting on or after 20 March, 20 June, 20 September or 20 December and ending on or before the following 19 June, 19 September, 19 December or 19 March respectively.

This amendment allows immediate payment of any accrued quarterly pension supplement where it ceases to be payable to a person. It ensures that people receive their accrued quarterly pension supplement as soon as they cease to be eligible for it, instead of having to wait until the end of the quarter. If a person remains eligible for quarterly pension supplement, they will continue to receive the payment quarterly.

**Item 80** amends subsection 62D(3) by repealing the subsection and substituting a new subsection. The new subsection provides that an instalment of quarterly clean energy supplement is to be paid as soon as practicable after the end of an instalment period.

**Item 81** amends subsection 62D(4) by omitting the words, ‘that period on which the election was in force’, and substituting the words, ‘the instalment period’. This is a consequential amendment as a result of the amendment made by item 82 below.

**Item 82** repeals subsection 62D(5) and substitutes a new subsection. New subsection 62D(5) has the same practical effect as new subsection 60C(5) provided for by item 79 above. That is, it allows immediate payment of any accrued quarterly clean energy supplement where it ceases to be payable to a person. It ensures that people receive their accrued quarterly clean energy supplement as soon as they cease to be eligible for it, instead of having to wait until the end of the quarter. If a person remains eligible for quarterly clean energy supplement, they will continue to receive the payment quarterly.

**Item 83** amends subsection 62E(2) by repealing the subsection and substituting a new subsection. The new subsection provides that an instalment of quarterly clean energy supplement is to be paid as soon as practicable after the end of an instalment period.

**Item 84** amends subsection 62E(3) by omitting the words, ‘that period on which the election was in force’, and substituting the words, ‘the instalment period’. The amendment provides that quarterly clean energy supplement is to be paid to the person as soon as practicable after the end of the *instalment period*, a definition of which is inserted by item 85 below. This is a consequential amendment as a result of the amendment made by item 85 below.

**Item 85** inserts new subsection 62E(4A). New subsection 62E(4A) has the same practical effect as new subsection 60C(5) provided for by item 79 above. That is, it allows immediate payment of any accrued quarterly clean energy supplement where it ceases to be payable to a person. It ensures that people receive their accrued quarterly clean energy supplement as soon as they cease to be eligible for it, instead of having to wait until the end of the quarter. If a person remains eligible for quarterly clean energy supplement, they will continue to receive the payment quarterly.

**Item 86** makes amendments to subsection 118PC(2) by omitting the words, ‘on or after the first seniors supplement test day (the **current test day**) that follows a day on which the person is eligible for seniors supplement’, and substituting the words, ‘after the end of an instalment period’. The amendment provides that seniors supplement is to be paid to the person as soon as practicable after the end of the **instalment period**, a definition of which is inserted by item 88 below.

**Item 87** makes amendments to paragraph 118PC(3)(a) by omitting the words, ‘during the test period on which the person was qualified for seniors supplement’, and substituting the words, ‘in the instalment period’. This is a consequential amendment as a result of the amendment made by item 88 below.

**Item 88** repeals subsection 118PC(4) and substitutes a new subsection. The new subsection 118PC(4) provides a definition of **instalment period**. An instalment period is the number of days for which seniors supplement is payable to a person starting on or after 20 March, 20 June, 20 September or 20 December and ending on or before the following 19 June, 19 September, 19 December or 19 March respectively.

This amendment allows immediate payment of any accrued seniors supplement where it ceases to be payable to a person. It ensures that people receive their accrued seniors supplement as soon as they cease to be eligible for it, instead of having to wait until the end of the quarter. If a person remains eligible for seniors supplement, they will continue to receive the payment quarterly.

#### *Division 2 – Interactions with quarterly clean energy supplement*

##### Amendments to the Social Security Act

**Item 89** makes amendments to Note 1 at the end of subsection 1210(1) by adding the words, ‘See also subsection (2A)’. This is a consequential amendment as a result of the amendment in item 90 below.

**Item 90** inserts a new subsection 1210(2A) after subsection 1210(2). This is a technical amendment to ensure that people who elect to receive quarterly clean energy supplement receive the same amount of social security payment (other than social security pensions, unless the pension is parenting payment single or disability support pension for a person under 21 years of age without a dependent child) as they would receive if they had elected to receive their clean energy supplement as part of their fortnightly instalment.

**Item 91** makes an amendment to the note at the end of subsection 1210(3A) by omitting the words, ‘person’s quarterly clean energy supplement is’, and substituting the words, ‘main rate would be’.

#### Amendments to the Social Security (Administration) Act

**Item 92** omits the words, ‘(other than a social security pension)’, from paragraph 43(4)(a). This is a consequential amendment to give full effect to the further amendments below.

**Item 93** inserts a new paragraph 43(4)(aa) into subsection 43(4) to provide that the subsection applies to social security payments that are not social security pensions other than pension PP(single) for people who have not reached pension age and disability support pension for people who are under 21 years of age and who do not have dependent children.

**Item 94** inserts a new paragraph 43(5AA)(aa) into subsection 43(5AA) to provide that the subsection applies only to social security pensions other than pension PP(single) for people who have not reached pension age and disability support pension for people who are under 21 years of age and who do not have dependent children.

**Item 95** repeals paragraph 43(5B)(c) and substitutes new paragraph 43(5B)(c). This is a technical amendment to ensure that people receive the same amount of quarterly clean energy supplement as they would receive if they had elected to receive their clean energy supplement as part of their fortnightly instalment.

#### Amendments to the Veterans’ Entitlements Act

**Item 96** repeals paragraph 62E(6)(b) and substitutes new paragraphs 62E(6)(b) and (c). This is a technical amendment to ensure that people receive the same amount of quarterly clean energy supplement as they would receive if they had elected to receive their clean energy supplement as part of their fortnightly instalment.

**Item 97** amends the note at the end of subclause 4(5) of Schedule 6 by omitting the words, ‘person’s quarterly clean energy supplement is’, and substituting the words, ‘main rate would be’.

*Division 3 – Other minimum daily rate amendments*

Amendments to Social Security Administration Act

**Item 98** amends paragraph 43(4)(a) to omit the words, ‘of the following amounts (an **added amount**) is’, and substituting the words, ‘or both of the following amounts (the **added amounts**) are’. This is a typographical amendment to ensure that people on the relevant payment types receive the full benefit of this provision and the amendments in items 99 and 100 below.

**Item 99** repeals paragraph 43(4)(b) and substitutes a new paragraph 43(4)(b). The new paragraph ensures that people in receipt of parenting payment single and disability support pension (where they are under 21 years of age and do not have a dependent child) receive the correct minimum daily rate.

**Item 100** repeals the definition of **minimum daily rate** in subsection 43(5) and substitutes a new definition. The new definition clarifies that the minimum daily rate for people in receipt of parenting payment single and disability support pension (where they are under 21 years of age and do not have a dependent child) is comprised of pharmaceutical allowance. For people on other social security payments covered by subsection 43(4), the minimum daily rate is determined by reference to the pension supplement minimum amount.

***Part 5 – Dad and partner pay***

Amendments to the Paid Parental Leave Act

**Item 101** adds a new Division 3A after Division 3 of Part 6-1 of Chapter 6. This relates to how the Paid Parental Leave Act applies to claims for dad and partner pay made in prescribed circumstances.

New subsection 277A(1) provides that this section applies to a claim for dad and partner pay that is made in circumstances prescribed by the Paid Parental Leave Rules as being circumstances in which this section applies.

New subsection 277A(2) outlines how the Paid Parental Leave Act applies to dad and partner pay claims made in prescribed circumstances. A claim is made in prescribed circumstances if it is made under the Paid Parental Leave Rules. Prescribed circumstances will generally include surrogacy arrangements and circumstances in which there is an unexpected change of carer for the child – for example, as a result of the death or serious illness of a parent of the child – allowing for another claimant to make a claim for dad and partner pay as provided for in the Paid Parental Leave Rules. In certain prescribed circumstances, under subsection 277A(2), the Paid Parental Leave Act applies in relation to a claim for dad and partner pay as if:

- a reference to the birth of a child were a reference to the earlier of the claimant beginning to care for the child and the claimant’s partner (if any) beginning to care for the child; and

### Schedule 3 – Other amendments

- a reference to the day the child was born were a reference to the earlier of the day the claimant began to care for the child and the day the claimant's partner (if any) began to care for the child; and
- a reference to the expected date of birth of the child were a reference to the earlier of the day the claimant expects to begin to care for the child and the day the claimant's partner (if any) expects to begin to care for the child; and
- a reference to the child's first birthday were a reference to the first anniversary of the earlier of the day the claimant began to care for the child and the day the claimant's partner (if any) began to care for the child; and
- a reference to a completed birth verification form for a child were a reference to information required by the Secretary about the earlier of the claimant beginning to care for the child and the claimant's partner (if any) beginning to care for the child; and
- a reference to a child being born during the same multiple birth were a reference to:
  - the claimant beginning to care for the child at the same time as beginning to care for another child; or
  - if the claimant's partner (if any) begins to care for the child before the claimant – the claimant's partner beginning to care for the child at the same time as beginning to care for another child.

Subsection 18(3), which deals with birth registration, is excluded from the effect of new subsection 277A(2) so that a DAPP claimant in prescribed circumstances may still be required to comply with the requirements of that subsection.

New subsection 277A(3) is included to deal with adoption. The new subsection provides that section 277A does not limit Division 2 of Part 6-1 of the Paid Parental Leave Act, which deals with how this Act applies to an adopted child. The note to subsection 277A(3) provides guidance that not all circumstances to which paragraph 115DD(d) applies must be prescribed as being circumstances in which section 277A applies. An example of this is the adoption of a child, which could be prescribed for the purposes of paragraph 115DD(d), but not for the purposes of section 277A. In this case, section 275, which deals with how the Act applies to an adopted child, would apply.

**Item 102** is an application provision for new Division 3A, which provides that the amendment made by this Part applies to claims for dad and partner pay made on or after the commencement of this item (the day after this Act receives the Royal Assent).

## STATEMENTS OF COMPATIBILITY WITH HUMAN RIGHTS

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

### **Family Assistance Legislation Amendment Bill 2013 Baby bonus and paid parental leave amendments (Schedule 1 and Part 5 of Schedule 3)**

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

#### **Overview of the amendments**

Schedule 1 to the Bill makes amendments to the amount of baby bonus provided for in section 66 of the *A New Tax System (Family Assistance) Act 1999*. The amount of baby bonus for second and subsequent children who come into a family from 1 July 2013 will be reduced to \$3,000. The change will apply regardless of whether the child is born into the family, adopted by the family, or entrusted to the family's care within 26 weeks of birth (for example, under a foster care arrangement). Baby bonus will continue to be paid at the rate of \$5,000 for a family's first child, and for each child who comes into the family in a multiple birth, adoption or entrustment to care.

The purpose of the amendments to baby bonus is to maintain support for new parents with the upfront costs of having a baby, while ensuring the family payments system is sustainable into the future. The amendments recognise that families do not face the same upfront costs for a second or later child as they do for their first child, with the more expensive items usually already purchased.

Part 5 of Schedule 3 makes technical amendments to the *Paid Parental Leave Act 2010*, relating to how the legislation applies to dad and partner pay claims made in 'prescribed circumstances'.

#### **Human rights implications**

These amendments are likely to engage the following human rights:

Right to social security

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) recognises ‘the right of everyone to social security’. That right requires a social security system to be established, and states that a country must, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education. Article 26 of the *Convention on the Rights of the Child* (CRC) ensures that right to ‘every child’ and requires that ‘the benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child’.

The amendments to the amount of baby bonus will continue to support new parents with the payment of \$5,000 for the upfront costs of having their first child, regardless of whether the child is born into the family, adopted by the family, or entrusted to the family’s care within 26 weeks of birth. This higher rate takes into account the circumstances of parents having their first child, as they face higher upfront costs. The baby bonus rate of \$3,000 provides benefits to individuals and families for second and subsequent children, taking into account the reduced upfront costs involved.

The amendments also recognise the financial pressures that families face with multiple births, and where two or more children are adopted as part of the same process or entrusted to the family’s care within 26 weeks of birth as part of the same process. The baby bonus rate of \$5,000 is maintained for each child in those circumstances.

Rights of children deprived of their family environment

Article 20 (1) of the CRC provides that ‘a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State’.

The amendments to the amount of baby bonus ensure that children adopted by a family, or entrusted into care of a family within 26 weeks of birth, receive special protection and assistance, by maintaining the same higher rate of \$5,000 of baby bonus for the first child that is adopted or entrusted into care, as for the first birth child.

The amendments made to the *Paid Parental Leave Act 2010* clarify how the legislation applies to dad and partner pay claims made in 'prescribed circumstances'. These amendments promote the rights of parents and children by extending the time in which dad and partner pay claims made in 'prescribed circumstances' can be made to a year from the day the claimant began to care for the child, rather than a year from the day the child was born. This means that, for surrogacy claims and circumstances involving a change in care arrangements due to the long-term inability of the birth mother to care for the child, there is a longer time in which a claim can be made, protecting the interests of children in these circumstances.

### Right to health

Article 10 (2) of the ICESCR states that 'special protection should be accorded to mothers during a reasonable period before and after childbirth'.

The change to the amount of baby bonus recognises that mothers who have had their first stillborn child have had a traumatic experience. The baby bonus rate of \$5,000 is given to mothers following a stillbirth to protect their physical and mental health and meet any expenses associated with the stillbirth. The baby bonus amount of \$3,000 is also given to mothers who have a second or a subsequent stillbirth.

### **Conclusion**

These amendments are compatible with human rights because they advance the protection of human rights.



**Family Assistance Legislation Amendment Bill 2013**  
**Family tax benefit and double orphan pension**  
**(Schedule 2)**

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 Schedule 2**

This Schedule makes amendments to ensure eligibility for family tax benefit until the end of a calendar year for young people who complete secondary study or its equivalent in either November or December of that year. Additionally, the qualification period for double orphan pension is being extended so that it aligns with eligibility for family tax benefit.

**Human rights implications**

This Schedule is likely to engage the following human rights:

Right to social security

The amendments in Schedule 2 will ensure the continuation of payments such as family tax benefit and double orphan pension to parents and guardians for a period after the child has completed secondary study, so that assistance for a child does not cease immediately on the child completing study. As such, these amendments promote the right to social security outlined in Article 9 of the *International Covenant on Economic, Social and Cultural Rights* and Article 26 of the *Convention on the Rights of the Child* (CRC).

Rights of children deprived of their family environment

Double orphan pension qualification currently ceases as soon as the child ceases study. The amendments to double orphan pension extend qualification so that child age qualification aligns with family tax benefit child age eligibility. Under the amendments in Schedule 2, a carer can continue to receive double orphan pension for a young person in their care until their 18th birthday if they have already completed secondary study, or up to the end of the calendar year if the child is aged less than 20 and completes secondary study in November or December. This continuation of government assistance for children who are double orphans promotes the rights of children deprived of their family environment as outlined under Article 20 of the CRC.

**Conclusion**

This Schedule is compatible with human rights because it advances the protection of human rights.

**Family Assistance Legislation Amendment Bill 2013 –  
Other amendments  
(Schedule 3)**

**Overview of Schedule 3**

This Schedule makes some clarifying and technical amendments to portfolio legislation, consistent with intended policy.

For example, amendments to schoolkids bonus provisions ensure FTB children aged under 16 who have already commenced primary or secondary school, but are unable to participate for a period due to special circumstances, are still able to receive schoolkids bonus. Minor amendments are also made to clarify the periods within which customers need to notify that they are engaging in eligible study.

Amendments to payment arrangements for the clean energy supplement under the family assistance law ensure that, in some cases, an individual can be paid their clean energy supplement arrears straightaway, instead of having to wait until the end of the quarter. Another amendment removes an anomaly that prevents a member of a couple from being entitled to a clean energy advance top-up in certain situations.

It is also clarified that social security and veterans' entitlements customers who decide to end payment on a quarterly basis of clean energy supplement, pension supplement or seniors supplement do not have to wait until the end of the quarter to be paid arrears. Other minor amendments give effect to the policy intention of ensuring that customers receiving the clean energy supplement receive their full entitlement.

**Human rights implications**

This Schedule is likely to engage the following human right:

Right to social security

The schoolkids bonus amendments promote the right to social security under Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and Article 26 of the *Convention on the Rights of the Child* (CRC) as they extend access to schoolkids bonus for a small group of children who are already in study but prevented from participating for a period due to special circumstances.

Current arrangements for schoolkids bonus allow for indefinite backdating of payments for some income support recipients who are in study but do not provide study details until a later time. The amendments allow a reasonable period of backdating for these students:

- Where the student is entitled to an income support payment, they are able to provide these details until the end of the calendar year to receive backdated schoolkids bonus amounts for that calendar year.

## Statements of compatibility with human rights

- Where the student attracts family tax benefit, study details must be provided before the end of the second financial year after the financial year in which the child was studying. This two-year period is in line with the claim period for family tax benefit.

To the extent that these changes limit access to schoolkids bonus payments, these limitations are reasonable and proportionate and still allow a generous amount of time for payment recipients to provide study details and access backdated payments.

The social security and veterans' entitlements quarterly supplement amendments are consistent with the right to social security, as they will make sure these customers receive their full and correct entitlements, and remove a current obstacle to those entitlements being received as early as possible, thereby potentially alleviating financial pressures for those customers.

### No applicable rights or freedoms engaged

The amendments relating to when a child is entrusted to the care of an individual make changes to payment arrangements to ensure earlier access and does not change eligibility for or rates of payments. As such, those amendments do not engage any of the applicable rights or freedoms.

### **Conclusion**

This Schedule is compatible with human rights because, where applicable rights or freedoms are engaged, it advances the protection of human rights and, to the extent that these changes limit access to schoolkids bonus payments, these limitations are reasonable and proportionate.

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