

**2016-2017**

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**FAMILY ASSISTANCE AND CHILD SUPPORT LEGISLATION AMENDMENT  
(PROTECTING CHILDREN) BILL 2017**

**EXPLANATORY MEMORANDUM**

**(Circulated by the authority of the  
Minister for Social Services, the Hon Christian Porter MP)**

# **FAMILY ASSISTANCE AND CHILD SUPPORT LEGISLATION AMENDMENT (PROTECTING CHILDREN) BILL 2017**

## **OUTLINE**

The Bill contains the following Schedules:

### ***Schedule 1 – Child support amendments***

#### **Part 1 – Interim periods**

This Part amends the *Child Support (Assessment) Act 1989* and the *A New Tax System (Family Assistance) Act 1999* to extend the interim period that applies for recently-established court-ordered care arrangements and provide incentives for the person with increased care to take reasonable action to participate in family dispute resolution where a care dispute relates to an older court order, a parenting plan or a written agreement.

#### **Part 2 – Amended tax assessments**

This Part amends the *Child Support (Assessment) Act 1989* to allow the Registrar to take into account an amended tax assessment in an administrative assessment of child support if it results in a higher taxable income or, where it results in a lower taxable income, if certain conditions are met based on the reason for the amended tax assessment and the timeliness of action taken to obtain an amended tax assessment.

#### **Part 3 – Child support agreements**

This Part amends the *Child Support (Assessment) Act 1989* to allow for courts to set aside child support agreements made before 1 July 2008, as well as allowing all child support agreements to be set aside without having to go to court if certain circumstances change.

#### **Part 4 – Overpayments**

This Part amends the *Child Support (Registration and Collection) Act 1988* and makes other consequential amendments, to align the Registrar's ability to recover a child support overpayment from a payee with the methods for recovering a child support debt from a payer; to ensure that backdated reductions to a child support assessment collected by the Registrar will be recoverable; and to include new provisions in relation to backdating of assessments, providing a fairer basis for retrospectively creating a child support overpayment or underpayment due to some changes of circumstances.

### ***Schedule 2 – Family tax benefit amendments***

This Schedule implements the *Supporting No Job No Pay - Healthy Start for School* — *new compliance arrangements* measure announced in the 2017-18 Budget.

This measure builds on the 2015-16 Budget measure titled *No Job No Pay* and the 2011-12 Budget measure titled *Healthy Start for School*.

This Schedule replaces the current compliance incentives that make the payment of the FTB Part A end of year supplement dependent on a four year old child of an individual or their partner receiving income support, undergoing a health check and on each FTB child in a family meeting immunisation requirements.

From 1 July 2018, families who do not meet the health check requirements or immunisation requirements for a child will, instead of losing their FTB Part A end of year supplement, have approximately \$28 per child withheld from their fortnightly rate of FTB Part A.

### **Financial impact statement**

<b>MEASURE</b>	<b>FINANCIAL IMPACT OVER THE FORWARD ESTIMATES</b>
<b><i>Schedule 1 – Child support amendments</i></b>	Cost of \$12 million
<b><i>Schedule 2 – Family tax benefit amendments</i></b>	Saving of \$22.8 million

### **STATEMENTS OF COMPATIBILITY WITH HUMAN RIGHTS**

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

**FAMILY ASSISTANCE AND CHILD SUPPORT LEGISLATION AMENDMENT  
(PROTECTING CHILDREN) BILL 2017**

**NOTES ON CLAUSES**

**Abbreviations and Acronyms used in this explanatory memorandum**

- **Child Support Assessment Act** means the *Child Support (Assessment) Act 1989*;
- **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*;
- **FTB** means family tax benefit;
- **Paid Parental Leave Act** means the *Paid Parental Leave Act 2010*;
- **Registrar** means the Child Support Registrar;
- **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 Child Support Legislation Amendment (Protecting Children) Act 2017*.

**Clause 2** provides a table setting out the commencement dates of the various sections and Parts 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, and any other item in a Schedule to the Bill has effect according to its terms.

## Schedule 1 – Child support amendments

### Summary

Part 1 of Schedule 1 amends the Child Support Assessment Act and the Family Assistance Act to extend the interim period that applies for recently-established court-ordered care arrangements and provide incentives for the person with increased care to take reasonable action to participate in family dispute resolution where a care dispute relates to an older court order, a parenting plan or a written agreement.

Part 2 of Schedule 1 also amends the Child Support Assessment Act to allow the Registrar to take into account an amended tax assessment in an administrative assessment of child support if it results in a higher taxable income or, where it results in a lower taxable income, if certain conditions are met based on the reason for the amended tax assessment and the timeliness of action taken to obtain an amended tax assessment.

Part 3 of Schedule 1 amends the Child Support Assessment Act to allow for courts to set aside child support agreements made before 1 July 2008, as well as allowing all child support agreements to be set aside without having to go to court if certain circumstances change.

Part 4 of Schedule 1 amends the Child Support Registration and Collection Act and makes other consequential amendments, to align the Registrar's ability to recover a child support overpayment from a payee with the methods for recovering a child support debt from a payer; to ensure that backdated reductions to a child support assessment collected by the Secretary will be recoverable; and to include new provisions in relation to backdating of assessments, providing a fairer basis for retrospectively creating a child support overpayment or underpayment due to some changes of circumstances.

### Background

In the context of child support and FTB, a care dispute can occur where care is not occurring in line with a current care arrangement and one of the parents disagrees with the care that is actually occurring. Currently, child support and FTB can continue to be calculated based on the care arrangement for an 'interim period' (generally 14 weeks) as long as the person with reduced care is taking reasonable action to have the care arrangement complied with. In special circumstances, the interim period can be extended up to 26 weeks. Once the interim period ends, child support and FTB are calculated based on the actual care that is occurring. This is subject to the Registrar deciding in special circumstances that no interim period will apply, and actual care will be immediately reflected in the assessment. The amendments in **Part 1 of Schedule 1** provide for a longer or shorter interim period in certain circumstances, distinguishing between court-ordered care and care arrangements set out in a non-enforceable agreement or parenting plan.

## Schedule 1 – Child support amendments

The amendments made by Part 1 of Schedule 1 commence on the later of the start of 1 January 2018 or the day after Royal Assent.

The Child Support Assessment Act and the *Child Support (Assessment) Regulations 1989 (Regulations)* provide limited scope to take an amended tax assessment into account to amend an administrative assessment of child support. Currently, the Registrar must not amend an administrative assessment to take into account an amended assessment except in quite limited circumstances, including fraud or tax evasion. **Part 2 of Schedule 1** amends the Child Support Assessment Act to enable the Registrar to take amended tax assessments into account in a broader range of circumstances, having regard to whether the amended assessment results in a lower or higher taxable income, the reasons for the amended tax assessment and the timeliness in seeking an amended tax assessment.

The amendments made by Part 2 of Schedule 1 commence on the later of the start of 1 January 2018 or the day after Royal Assent.

**Part 3 of Schedule 1** amends the provisions in the Child Support Assessment Act relating to binding and limited child support agreements. The Act will also be amended to terminate or suspend the effect of an agreement (whether binding or limited) where the payee under the agreement ceases to be an eligible carer of the child, as opposed to the current provisions which require the paying parent to seek to have the agreement set aside by a court. Additional amendments are made to allow for apportioning and reassessment of child support where an agreement is terminated or suspended in whole or in part.

Currently, there are limited circumstances in which binding and limited child support agreements may be terminated or set aside by a court or by operation of law. In relation to binding agreements that transitioned from 1 July 2008 under the reforms to child support at that time, the amendments will give courts greater ability to set aside the agreements under a less restrictive test.

Part 3 also includes some technical amendments to remove the current ability for a payee under an agreement to unilaterally elect to end the child support assessment based on a child support agreement and apply for a new assessment based on the child support formula.

The amendments made by Division 1 of Part 3 of Schedule 1 commence on the day after Royal Assent. The amendments made by Division 2 commence on the later of the start of 1 July 2018 or the day after Royal Assent.

The amendments in **Part 4 of Schedule 1** are concerned with the recovery of overpayments, and reducing the incidence of overpayments of child support to payees. The amendments align the recovery methods available for debts owed by both payee and payer, take into account other relevant factors in respect of both the payee and payer (such as where the payee or payer is party to two or more child support cases), allow for overpayments resulting from backdated reductions to an assessment or other registered maintenance liability to be recovered by the Registrar in most instances, and amend the date of effect provisions to improve the fairness of assessments.

The amendments made by Divisions 1 and 2 of Part 4 of Schedule 1 commence on the later of the start of 1 July 2018 and the day after Royal Assent. The amendments made by Division 3 commence on the later of the start of 1 July 2018, and immediately after the commencement of Parts 1 and 2 of Schedule 1.

### **Explanation of the changes**

#### ***Part 1 – Interim periods***

##### **Family Assistance Act**

**Item 1** substitutes a new paragraph (b) in the definition of ***change of care day*** at subsection 3(1), to clarify that if a determination of the individual's percentage of care for the child has been suspended under Subdivision C of Division 4 of Part 5, the change of care day is the first day that the actual care ceased to correspond with the percentage of care determined for the purposes of subsection 35C(4) under the determination. This change brings the definition into line with the new provisions at item 1U, below. New paragraph (c) of the definition clarifies that the change of care day may be the first day that a care arrangement begins to apply in relation to a child. This change will enable an interim period to apply for parents and carers who were prevented from exercising the extent of care under a care arrangement from the first day that care arrangement took effect.

**Item 2** inserts new signpost definitions into subsection 3(1) for the phrases ***family dispute resolution*** and ***increased care of a child***.

**Item 3** is a consequential amendment.

**Item 4** inserts a new definition in subsection 3(1) for ***maximum interim period*** for the purposes of a determination under section 35A or 35B. For a determination of an individual's percentage of care for a child under section 35A or 35B, the maximum interim period that can apply begins on the change of care day (as defined in subsection 3(1)) and, for a determination relating to a court order, ends on the later of the period of 52 weeks starting on the day the court order first takes effect, or the end of the period of 26 weeks starting on the change of care day. For a determination relating to a written agreement or parenting plan, the maximum interim period ends at the end of the period of 14 weeks starting on the change of care day.

**Item 4** also moves the definition of ***percentage range*** from subsection 35P(2) to subsection 3(1).

**Item 4** also inserts a signpost definition for the phrase ***takes reasonable action to participate in family dispute resolution***.

**Item 5** is a consequential amendment.

**Item 6** is a consequential amendment that incorporates the new provisions for suspension under Subdivision E of Division 1 of Part 3 into paragraph 35A(2)(a).

**Item 7** is a consequential amendment.

**Item 8** is a consequential amendment that incorporates the new provisions for suspension under Subdivision E of Division 1 of Part 3 into paragraph 35A(2)(a).

**Item 9** is a consequential amendment.

**Item 10** replaces the words “has taken” with the words “is taking” in paragraph 35C(1)(c). In effect, this will require a person with reduced care of a child to be currently taking reasonable action to ensure the care arrangement is complied with, in order for section 35C to apply. Where action is taken to ensure a care arrangement is complied with, section 35C requires the Secretary to determine two percentages of care in certain circumstances, or a single percentage of care where the Secretary is satisfied that special circumstances exist.

**Item 11** repeals section 35D as it is not consistent with the amendments in this Part, which seek to ensure that care arrangements are complied with. Section 35D allows for an interim period to apply where a parent is seeking a new care arrangement that would require less care than that provided in the existing arrangement, but greater than their actual care. It is not appropriate for the care arrangement to be reflected in a situation where both parties are seeking a different level of care. In such situations, it is more appropriate for actual extent of care to be reflected.

**Items 12 and 13** are consequential amendments.

**Item 14** repeals and substitutes section 35F. New section 35F incorporates the concept of a “maximum interim period” in place of the 14-week interim period. Current subsection 35F(1) provides that section 35C does not apply if certain events in relation to the determination of an individual’s percentage of care for a child occur 14 weeks or more after the change of care day. New subsection 35F(1) provides similarly but in relation to those events occurring after the end of the maximum interim period. This recognises that the maximum interim period may be different depending on the time that has elapsed since the change of care day, and the nature of the care arrangement.

New subsection 35F(1) also takes the maximum interim period into account, so that section 35C does not apply in cases where the Secretary has revoked a determination of an individual’s percentage of care for the child, under section 35P or 35Q.

New subsection 35F(2) further provides that section 35C does not apply in relation to an individual in relation to whom a determination has been made under section 35A or 35B, if an earlier determination determined the individual’s percentage of care for the purposes of subsections 35C(3) and 35C(4), the later determination is made after the end of the maximum interim period for the determination, and the later determination relates to the same care arrangement as the earlier determination.

**Item 14** also inserts new section 35FA. New section 35FA provides the definition of *interim period*.



## Schedule 1 – Child support amendments

Subject to new subsection 35FA(4), for a determination under section 35A or 35B of an individual's person's percentage of care for a child, an interim period begins on the responsible person's change of care day (unless subsection 35FA(2) applies, in which case the interim period begins on the day specified in that subsection).

The interim period ends according to the table at subsection 35FA(1), unless subparagraph 35FA(1)(b)(ii), (iii) or (iv) applies (that is, the individual referred to in paragraph 35C(1)(c) with reduced care ceases taking reasonable action to ensure that the care arrangement is complied with, or an existing care arrangement ceases or a new care arrangement begins to apply), in which cases the interim period ends according to those subparagraphs.

The table at subsection 35FA(1) sets out six sets of circumstances providing for the interim period to end at different times (ranging from four to 52 weeks) depending on whether the care arrangement is a court order, written agreement or parenting plan, whether and when the person with increased care of the child began taking reasonable action to participate in family dispute resolution (and whether this action was continuous), and whether the Secretary is satisfied that special circumstances exist.

For court-ordered care arrangements, the interim period will be:

- up to 52 weeks, if a disputed care change occurs within the first year of the court order; or
- up to 26 weeks for older court orders, if the individual with increased care does not continuously take reasonable action to participate in family dispute resolution throughout the maximum 26 week interim period; or
- a minimum of 14 weeks for older court orders where the individual with increased care continuously takes reasonable action to participate in family dispute resolution.

For care arrangements in a non-enforceable agreement or parenting plan, the maximum interim period will be 14 weeks. This will be reduced to a minimum of four weeks if a disputed care change occurs after the first year of the agreement or plan and the individual with increased care continuously takes reasonable action to participate in family dispute resolution.

Where special circumstances exist in relation to the child, the Secretary is to determine the day the interim period ends, being a day before the day the period would otherwise end if the special circumstances did not exist. Special circumstances in relation to a child may also include circumstances that relate to another individual, to the extent that those circumstances also relate to the child; for example, where the other individual has care of the child.

Subsection 35FA(2) provides for a further interim period to apply in some instances. Where the interim period for the determination has ended under items 2, 4 or 5 in the table at subsection 35FA(1), the individual referred to in paragraph 35C(1)(c) with reduced care of the child is taking reasonable action to ensure that the care

arrangement is complied with, and the individual with increased care (the **second carer**) ceases to take reasonable action to participate in family dispute resolution before the end of the maximum interim period, then a further interim period for the determination begins on the day the second carer ceases taking such action. In practice, the ability for a further interim period to apply provides an incentive for the individual with increased care to take reasonable action to participate in family dispute resolution throughout the maximum interim period (that is, even after the interim period had ended and actual care is being used to calculate child support and FTB). This amendment is intended to encourage parents to resolve care disputes promptly.

Subsection 35FA(3) describes what is required for an individual to **take reasonable action to participate in family dispute resolution**, and when the individual must take such action for the purposes of determining whether an interim period begins on the change of care day for the person.

New subsection 35FA(4) provides that a determination under section 35A or 35B of an individual's percentage of care for a child does not have an interim period if the determination is made before the maximum interim period for another determination under that section of the individual's percentage of care for the child. This means that an interim period cannot apply to subsequent care determinations made within the maximum interim period, where those subsequent care determinations have not been revoked. This is addressed further at new sections 35PA and 35QA.

**Item 15** describes when an individual has **increased care of a child**.

**Items 16 and 17** are consequential amendments.

**Item 18** repeals subsection 35K(1) and substitutes new subsections 35K(1) and 35K(1A) for the purposes of the application day at current subsection 35K(2).

New subsection 35K(1) provides that section 35K applies if a determination of an individual's percentage of care for a child is made under section 35A or 35B, and section 35C did not apply in relation to the responsible person. It also provides that section 35K applies if a determination of an individual's percentage of care for a child is made under section 35A or 35B, and section 35C did apply but the determination was made while an earlier determination was suspended under subsection 35PA(2) or 35QA(2), and the earlier determination remains suspended or has been revoked under paragraph 35PA(4) or 35QA(4). It also provides that section 35K applies if a determination of an individual's percentage of care for a child is made under section 35A or 35B, and section 35C did apply but the determination made under section 35A or 35B determined a single percentage of care for the child for the purposes of subsection 35C(5). It also provides that section 35K applies if a determination of an individual's percentage of care for a child is made under section 35A or 35B, and section 35G applied in relation to the individual.

New subsection 35K(1A) provides that the percentage of care applies on and from the application day until the revocation of the determination takes effect, or the suspension of the earlier determination ceases to have effect (except because the suspension is revoked), under Subdivision E of Division 1 of Part 3.

**Item 19** repeals and replaces section 35L. New section 35L applies where a determination of an individual's percentage of care for a child is made under section 35A or 35B, two percentages of care were determined for the purposes of subsection 35C(2), and the determination is not suspended under subsection 35PA(2) or 35QA(2).

New subsection 35L(2) provides for the application of the percentage of care referred to in subsection 35C(3) to apply to each day in a child support period that occurs in the interim period for the determination, and the percentage of care referred to in subsection 35C(4) applies to each day in a child support period that does not occur in the interim period for the determination, until a revocation of the determination takes effect, or a suspension of the determination takes effect, under Subdivision E of Division 1 of Part 3.

**Item 20** amends the heading to Subdivision E of Division 1 of Part 3.

**Item 21** repeals and replaces sections 35P to 35R, and inserts new sections 35PA and 35QA.

New section 35P provides that a determination of an individual's percentage of care for a child made under section 35A or 35B must be revoked in certain circumstances, where the Secretary is satisfied that the individual's shared care percentage would change if the Secretary determined another percentage to be the individual's percentage of care for the child under section 35A or 35B and where subsection 35P(2) applies in relation to the individual. Subsection 35P(2) applies where:

- (a) disregarding paragraph 35F(1)(c), section 35C did not apply in relation to the responsible person, or
- (b) section 35C did apply but the maximum interim period for the determination has ended, or
- (c) section 35C did apply, and the maximum interim period for an earlier determination of the individual's percentage of care for the child has not ended, an interim period for the earlier determination does not currently apply, and the determination referred to in subsection 35P(1) was made while the earlier determination was suspended under Subdivision E of Division 1 of Part 3.

A note at subsection 35P(1) alerts the reader that the Secretary must make another determination under section 35A or 35B to replace the revoked determination. A note at subsection 35P(2) directs the reader to section 35F to explain when section 35C does not apply.

Subsection 35P(3) provides for the date of effect of the revocation.

New section 35PA provides for the suspension of an individual's percentage of care for a child that has been determined under section 35A or 35B for the purposes of

subsection 35C(4) (the **earlier determination**), where an interim period for the earlier determination does not currently apply, the maximum interim period for the earlier determination has not ended, where the Secretary is satisfied that the individual's shared care percentage would change if the Secretary determined another percentage to be the individual's percentage of care for the child under section 35A or 35B, where section 35P does not apply, and where other conditions are met. This section applies where there is a change to the actual care of the child (before the end of the maximum interim period) that is different from the percentage of care determined under subsection 35C(4). This will allow any changes to actual care to be reflected for child support and FTB purposes for any period during the maximum interim period where the interim period does not apply.

Subsection 35PA(2) requires the Secretary to suspend the earlier determination (that is, the two percentages of care determined by the Secretary according to subsection 35C(2)) and also provides for the date of effect of the suspension. The suspension of the earlier determination allows the Secretary to make a new determination of the actual care of the child so that the new care determination can be reflected during the maximum interim period when the interim period does not apply. A note alerts the reader to the fact that the Secretary must make a new determination under section 35A or 35B when the earlier determination is suspended.

Subsection 35PA(3) requires the revocation of the suspension of the earlier determination, and of any determination under section 35A or 35B of the individual's percentage of care that was made during the suspension, if a further interim period for the earlier determination begins before the end of the maximum interim period for that determination, because the individual with increased care ceases to take reasonable action to participate in family dispute resolution. It also provides for the date of effect of that revocation. If the individual with increased care ceases taking reasonable action to participate in family dispute resolution, a later interim period will apply, so revoking the suspension of the earlier determination will allow the appropriate care percentage (that is, the extent of care under the care arrangement that the responsible person should have) to apply to the later interim period.

Subsection 35PA(4) requires the Secretary to revoke the earlier determination (and any suspension of it), and any later determination that was made during the suspension of the earlier determination, where the Secretary is satisfied that the actual care of the child does not correspond with the later determination, when the maximum interim period for the earlier determination ends. A note alerts the reader that the Secretary must make another determination under section 35A or 35B after revoking a determination under this subsection.

New section 35Q provides that a determination of an individual's percentage of care for a child made under section 35A or 35B may be revoked in certain circumstances, where the Secretary is satisfied that the individual's percentage of care for the child would change if the Secretary determined another percentage to be the individual's percentage of care for the child under section 35A or 35B and where subsection 35Q(2) applies in relation to the individual. Subsection 35Q(2) applies where:

- (a) disregarding paragraph 35F(1)(b), section 35C did not apply in relation to the responsible person, or
- (b) section 35C did apply but the maximum interim period for the determination has ended, or
- (c) section 35C did apply, and the maximum interim period for an earlier determination of the individual's percentage of care for the child has not ended, an interim period for the earlier determination does not currently apply, and the determination referred to in subsection 35Q(1) was made while the earlier determination was suspended under Subdivision E of Division 1 of Part 3.

A note at subsection 35Q(1) alerts the reader that the Registrar must make another determination under section 35A or 35B to replace the revoked determination. A note at subsection 35Q(2) directs the reader to section 35F to explain when section 35C does not apply.

Subsection 35Q(3) provides for the date of effect of the revocation.

New section 35QA provides for the suspension of an individual's percentage of care for a child that has been determined under section 35A or 35B for the purposes of subsection 35C(4) (the **earlier determination**), where an interim period for the earlier determination does not currently apply, the maximum interim period for the earlier determination has not ended, where the Secretary is satisfied that the individual's percentage of care for the child would change if the Secretary determined another percentage to be the person's percentage of care for the child under section 35A or 35B, and where other conditions are met. This section applies where there is a change to the actual care of the child (before the end of the maximum interim period) that is different from the percentage of care determined under subsection 35C(4).

Subsection 35QA(2) allows the Secretary to suspend the earlier determination (that is, the two percentages of care determined by the Secretary according to subsection 35C(2)) and also provides for the date of effect of the suspension. The suspension of the earlier determination allows the Secretary to make a new determination of the actual care of the child so that the new care determination can be reflected during the maximum interim period when the interim period does not apply. A note alerts the reader to the fact that the Secretary must make a new determination under section 35A or 35B when the earlier determination is suspended.

Subsection 35QA(3) requires the revocation of the suspension of the earlier determination, and of any determination under section 35A or 35B that was made during the suspension, if a further interim period for the earlier determination begins before the end of the maximum interim period for that determination, because the individual with increased care ceases to take reasonable action to participate in family dispute resolution. It also provides for the date of effect of that revocation. If the individual with increased care ceases taking reasonable action to participate in family dispute resolution, a later interim period will apply, so revoking the suspension

of the earlier determination will allow the appropriate care percentage (that is, the extent of care under the care arrangement that the responsible person should have) to apply to the later interim period.

Subsection 35QA(4) requires the Secretary to revoke the earlier determination (and any suspension of it), and any later determination that was made during the suspension of the earlier determination, where the Registrar is satisfied that the actual care of the child does not correspond with the later determination, when the maximum interim period for the earlier determination ends. A note alerts the reader that the Secretary must make another determination under section 35A or 35B after revoking a determination under this subsection.

New section 35R provides that a determination of an individual's percentage of care for a child made under section 35A or 35B may be revoked in certain circumstances. Subsection 35R(1) provides that the Secretary may revoke such a determination if the determination relates to a claim for family tax benefit for a past period and the maximum interim period for the determination ended if section 35C applied in relation to the individual. A note alerts the reader that the Secretary must make another determination under section 49 or 50 after revoking a determination under this subsection.

Subsection 35R(2) provides for the date of effect of the revocation.

#### Child Support Assessment Act

**Item 22** substitutes a new paragraph (b) in the definition of ***change of care day*** at subsection 5(1), to clarify that if a determination of the responsible person's percentage of care for the child has been suspended under Subdivision C of Division 4 of Part 5, the change of care day is the first day that the actual care ceased to correspond with the percentage of care determined for the purposes of subsection 51(4) under the determination. This change brings the definition into line with the new provisions at items 14 to 19B, below. New paragraph (c) of the definition clarifies that the change of care day may be the first day that a care arrangement begins to apply in relation to a child. This change will enable an interim period to apply for parents and carers who were prevented from exercising the extent of care under a care arrangement from the first day that care arrangement took effect.

**Item 23** inserts new signpost definitions into subsection 5(1) for the phrases ***family dispute resolution*** and ***increased care of a child***.

**Item 24** is a consequential amendment.

**Item 25** inserts a new definition in subsection 5(1) for ***maximum interim period*** for the purposes of a determination under section 49 or 50. For a determination of a responsible person's percentage of care for a child under section 49 or 50, the maximum interim period that can apply begins on the change of care day (as defined in subsection 5(1)) and, for a determination relating to a court order, ends on the later of the period of 52 weeks starting on the day the court order first takes effect, or the end of the period of 26 weeks starting on the change of care day. For a

determination relating to a written agreement or parenting plan, the maximum interim period ends at the end of the period of 14 weeks starting on the change of care day. Item 2A also inserts a signpost definition for the phrase ***takes reasonable action to participate in family dispute resolution***.

**Item 26** repeals and replaces paragraph 49(1)(b), providing that section 49 applies if the determination of a responsible person's percentage of care made under section 49 or 50 is revoked or suspended under the provisions noted in new subparagraph 49(1)(b)(i) and the Registrar is satisfied that the responsible person has had, or is likely to have, no pattern of care for the child during the care period (that is, such period as the Registrar considers to be appropriate having regard to all of the circumstances). This adopts, for the purposes of section 49, the new provisions for revocation and suspension of a responsible person's percentage of care under Subdivision C of Division 4 of Part 5.

**Item 27** is a consequential amendment.

**Item 28** repeals and replaces paragraph 50(1)(b), providing that section 50 applies if the determination of a responsible person's percentage of care made under section 49 or 50 is revoked or suspended under the provisions noted in new subparagraph 50(1)(b)(i) and the Registrar is satisfied that the responsible person has had, or is likely to have, a pattern of care for the child during the care period (that is, such period as the Registrar considers to be appropriate having regard to all of the circumstances). This adopts, for the purposes of section 50, the new provisions for revocation and suspension of a responsible person's percentage of care under Subdivision C of Division 4 of Part 5.

**Item 29** is a consequential amendment.

**Item 30** replaces the words "has taken" with the words "is taking" in paragraph 51(1)(d). In effect, this will require a person with reduced care of a child to be currently taking reasonable action to ensure the care arrangement is complied with, in order for section 51 to apply. Where action is taken to ensure that the care arrangement is complied with, section 51 requires the Registrar to determine two percentages of care in certain circumstances, or a single percentage of care where the Registrar is satisfied that special circumstances exist.

**Item 31** repeals section 52 as it is not consistent with the amendments in this Part, which seek to ensure that care arrangements are complied with. Section 52 allows for an interim period to apply where a parent is seeking a new care arrangement that would require less care than that provided in the existing arrangement, but greater than the extent of their actual care. It is not appropriate for the care arrangement to be reflected in a situation where both parties are seeking a different level of care. In such situations, it is more appropriate for actual care to be reflected.

**Item 31** also replaces section 53. New section 53 incorporates the concept of a "maximum interim period" rather than the 14-week interim period that is currently in section 53. Current subsection 53(1) provides that section 51 does not apply if certain events in relation to the determination of a responsible person's percentage of care for a child occur 14 weeks or more after the change of care day. New

subsection 53(1) provides similarly but in relation to those events occurring after the end of the maximum interim period. This recognises that the maximum interim period may be different depending on the time that has elapsed since the change of care day, and the nature of the care arrangement.

New subsection 53(1) also takes the maximum interim period into account, so that section 51 does not apply in cases where the Registrar has revoked a determination of a responsible person's percentage of care for the child, under section 54F or 54H.

New subsection 53(2) further provides that section 51 does not apply in relation to a responsible person in relation to whom a determination has been made under section 49 or 50, if an earlier determination determined the responsible person's percentage of care for the purposes of subsections 51(3) and 51(4), the later determination is made after the end of the maximum interim period for the determination, and the later determination relates to the same care arrangement as the earlier determination.

**Item 31** also inserts new sections 53A and 53B. New section 53A provides the definition of *interim period*.

Subject to new subsection 53A(4), for a determination under section 49 or 50 of a responsible person's percentage of care for a child, an interim period begins on the responsible person's change of care day (unless subsection 53A(2) applies, in which case the interim period begins on the day specified in that subsection).

The interim period ends according to the table at subsection 53A(1), unless subparagraph 53A(1)(b)(ii), (iii) or (iv) applies (that is, the person referred to in paragraph 51(1)(d) with reduced care ceases taking reasonable action to ensure that the care arrangement is complied with, or an existing care arrangement ceases or a new care arrangement begins to apply), in which cases the interim period ends according to those subparagraphs.

The table at subsection 53A(1) sets out six sets of circumstances providing for the interim period to end at different times (ranging from four to 52 weeks) depending on whether the care arrangement is a court order, written agreement or parenting plan, whether and when the person with increased care of the child began taking reasonable action to participate in family dispute resolution (and whether this action was continuous), and whether the Registrar is satisfied that special circumstances exist.

For court-ordered care arrangements, the interim period will be:

- up to 52 weeks, if a disputed care change occurs within the first year of the court order; or
- up to 26 weeks for older court orders, if the person with increased care does not continuously take reasonable action to participate in family dispute resolution throughout the maximum 26 week interim period; or



## Schedule 1 – Child support amendments

- a minimum of 14 weeks for older court orders where the person with increased care continuously takes reasonable action to participate in family dispute resolution.

For care arrangements in a non-enforceable agreement or parenting plan, the maximum interim period will be 14 weeks. This will be reduced to a minimum of four weeks if a disputed care change occurs after the first year of the agreement or plan and the person with increased care continuously takes reasonable action to participate in family dispute resolution.

Where special circumstances exist in relation to the child, the Registrar is to determine the day the interim period ends, being a day before the day the period would otherwise end if the special circumstances did not exist. Special circumstances in relation to a child may also include circumstances that relate to another individual, to the extent that those circumstances also relate to the child; for example, where the other individual has care of the child.

Subsection 53A(2) provides for a further interim period to apply in some instances. Where the interim period for the determination has ended under items 2, 4 or 5 in the table at subsection 53A(1), the person referred to in paragraph 51(1)(d) with reduced care of the child is taking reasonable action to ensure that the care arrangement is complied with, and the person with increased care (the **second carer**) ceases to take reasonable action to participate in family dispute resolution before the end of the maximum interim period, then a further interim period for the determination begins on the day the second carer ceases taking such action. In practice, the ability for a further interim period to apply provides an incentive for the person with increased care to take reasonable action to participate in family dispute resolution throughout the maximum interim period (that is, even after the interim period had ended and actual care is being used to calculate child support and FTB). This amendment is intended to encourage parents to resolve care disputes promptly.

Subsection 53A(3) describes what is required for a person to **take reasonable action to participate in family dispute resolution**, and when the person must take such action for the purposes of determining whether an interim period begins on the change of care day for the person.

New subsection 53A(4) provides that a determination under section 49 or 50 of a responsible person's percentage of care for a child does not have an interim period if the determination is made before the maximum interim period for another determination under that section of the responsible person's percentage of care for the child. This means that an interim period cannot apply to subsequent care determinations made within the maximum interim period, where those subsequent care determinations have not been revoked. This is addressed further at new sections 54FA and 54HA.

New section 53B describes when a person has **increased care of a child**.

**Items 32 and 33** are consequential amendments.

**Item 34** repeals subsection 54B(1) and substitutes new subsections 54B(1) and 54B(1A) for the purposes of the application day at current subsection 54B(2).

New subsection 54B(1) provides that section 54B applies if a determination of a responsible person's percentage of care for a child is made under section 49 or 50, and section 51 did not apply in relation to the responsible person. It also provides that section 54B applies if a determination of a responsible person's percentage of care for a child is made under section 49 or 50, and section 51 did apply but the determination was made while an earlier determination was suspended under subsection 54FA(2) or 54HA(2), and the earlier determination remains suspended or has been revoked under paragraph 54FA(4) or 54HA(4). It also provides that section 54B applies if a determination of a responsible person's percentage of care for a child is made under section 49 or 50, and section 51 did apply but the determination made under section 49 or 50 determined a single percentage of care for the child for the purposes of subsection 51(5).

New subsection 54B(1A) provides that the percentage of care applies to each day in a child support period on and from the application day until the determination is revoked, or the earlier determination ceases to be suspended, under Subdivision C of Division 4 of Part 5.

**Item 35** repeals and replaces section 54C. New section 54C applies where a determination of a responsible person's percentage of care for a child is made under section 49 or 50, two percentages of care were determined for the purposes of subsection 51(2), and the determination is not suspended under subsection 54FA(2) or 54HA(2).

New subsection 54C(2) provides for the application of the percentage of care referred to in subsection 51(3) applies to each day in a child support period that occurs in the interim period for the determination, and the percentage of care referred to in subsection 51(4) applies to each day in a child support period that does not occur in the interim period for the determination, until the determination is revoked or suspended under Subdivision C of Division 4 of Part 5.

**Item 36** amends the heading to Subdivision C of Division 4 of Part 5.

**Item 37** repeals and replaces section 54F and adds new section 54FA.

New section 54F provides that a determination of a responsible person's percentage of care for a child made under section 49 or 50 must be revoked in certain circumstances, where the Registrar is satisfied that the responsible person's cost percentage would change if the Registrar determined another percentage to be the person's percentage of care for the child under section 49 or 50 and where subsection 54F(2) applies in relation to the individual. Subsection 54F(2) applies where:

- (a) disregarding paragraph 53(1)(c), section 51 did not apply in relation to the responsible person, or

- (b) section 51 did apply but the maximum interim period for the determination has ended, or
- (c) section 51 did apply, and the maximum interim period for an earlier determination of the responsible person's percentage of care for the child has not ended, an interim period does not currently apply in relation to the earlier determination, and the determination referred to in subsection 54F(1) was made while the earlier determination was suspended under Subdivision C of Division 4 of Part 5.

A note at subsection 54F(1) alerts the reader that the Registrar must make another determination under section 49 or 50 to replace the revoked determination. A note at subsection 54F(2) directs the reader to section 53 to explain when section 51 does not apply.

Subsection 54F(3) provides for the date of effect of the revocation.

New section 54FA provides for the suspension of a responsible person's percentage of care for a child that has been determined under section 49 or 50 for the purposes of subsection 51(4) (the **earlier determination**), where an interim period for the earlier determination does not currently apply, the maximum interim period for the earlier determination has not ended, where the Registrar is satisfied that the responsible person's cost percentage would change if the Registrar determined another percentage to be the person's percentage of care for the child under section 49 or 50, sections 54F and 54G do not apply, and where other conditions are met. This section applies where there is a change to the actual care of the child (before the end of the maximum interim period) that is different from the percentage of care determined under subsection 51(4). This will allow any changes to actual care to be reflected for child support and FTB purposes for any period during the maximum interim period where the interim period does not apply.

Subsection 54FA(2) requires the Registrar to suspend the earlier determination (that is, the two percentages of care determined by the Registrar according to subsection 51(2)) and also provides for the date of effect of the suspension. The suspension of the earlier determination allows the Registrar to make a new determination of the actual care of the child so that the new care determination can be reflected during the maximum interim period when the interim period does not apply. A note alerts the reader to the fact that the Registrar must make a new determination under section 49 or 50 when the earlier determination is suspended.

Subsection 54FA(3) requires the revocation of the suspension of the earlier determination, and of any determination under section 49 or 50 of the person's percentage of care for the child that was made during the suspension, if a further interim period for the earlier determination begins before the end of the maximum interim period for that determination, because the person with increased care ceases to take reasonable action to participate in family dispute resolution. It also provides for the date of effect of that revocation. If the person with increased care ceases taking reasonable action to participate in family dispute resolution, a later interim period will apply, so revoking the suspension of the earlier determination will allow the appropriate care percentage (that is, the extent of care under the care

arrangement that the responsible person should have) to apply to the later interim period.

Subsection 54FA(4) requires the Registrar to revoke the earlier determination (and any suspension of it), and any later determination that was made during the suspension of the earlier determination, where the Registrar is satisfied that the actual care of the child does not correspond with the later determination, when the maximum interim period for the earlier determination ends. A note alerts the reader that the Registrar must make another determination under section 49 or 50 after revoking a determination under this subsection.

**Item 38** repeals and replaces section 54H and adds new section 54HA.

New section 54H provides that a determination of a responsible person's percentage of care for a child made under section 49 or 50 may be revoked in certain circumstances, where the Registrar is satisfied that the responsible person's percentage of care for the child would change if the Registrar determined another percentage to be the person's percentage of care for the child under section 49 or 50 and where subsection 54H(2) applies in relation to the individual. Subsection 54H(2) applies where:

- (a) disregarding paragraph 53(1)(c), section 51 did not apply in relation to the responsible person, or
- (b) section 51 did apply but the maximum interim period for the determination has ended, or
- (c) section 51 did apply, and the maximum interim period for an earlier determination of the responsible person's percentage of care for the child has not ended, an interim period for the earlier determination does not currently apply, and the determination referred to in subsection 54H(1) was made while the earlier determination was suspended under section 54HA.

A note at subsection 54H(1) alerts the reader that the Registrar must make another determination under section 49 or 50 to replace the revoked determination. A note at subsection 54H(2) directs the reader to section 53 to explain when section 51 does not apply.

Subsection 54H(3) provides for the date of effect of the revocation.

New section 54HA provides for the suspension of a responsible person's percentage of care for a child that has been determined under section 49 or 50 for the purposes of subsection 51(4) (the **earlier determination**), where an interim period for the earlier determination does not currently apply, the maximum interim period for the earlier determination has not ended, where the Registrar is satisfied that the responsible person's percentage of care for the child would change if the Registrar determined another percentage to be the person's percentage of care for the child under section 49 or 50, sections 54F, 54FA and 54G do not apply, and where other conditions are met. This section applies where there is a change to the actual care

of the child (before the end of the maximum interim period) that is different from the percentage of care determined under subsection 51(4).

Subsection 54HA(2) allows the Registrar to suspend the earlier determination (that is, the two percentages of care determined by the Registrar according to subsection 51(2)) and also provides for the date of effect of the suspension. The suspension of the earlier determination allows the Registrar to make a new determination of the actual care of the child so that the new care determination can be reflected during the maximum interim period when the interim period does not apply. A note alerts the reader to the fact that the Registrar must make a new determination under section 49 or 50 when the earlier determination is suspended.

Subsection 54HA(3) requires the revocation of the suspension of the earlier determination, and of any determination under section 49 or 50 of the person's percentage of care for the child that was made during the suspension, if a further interim period for the earlier determination begins before the end of the maximum interim period for that determination, because the person with increased care ceases to take reasonable action to participate in family dispute resolution. It also provides for the date of effect of that revocation. If the person with increased care ceases taking reasonable action to participate in family dispute resolution, a later interim period will apply, so revoking the suspension of the earlier determination will allow the appropriate care percentage (that is, the extent of care under the care arrangement that the responsible person should have) to apply to the later interim period.

Subsection 54HA(4) requires the Registrar to revoke the earlier determination (and any suspension of it), and any later determination that was made during the suspension of the earlier determination, where the Registrar is satisfied that the actual care of the child does not correspond with the later determination, when the maximum interim period for the earlier determination ends. A note alerts the reader that the Registrar must make another determination under section 49 or 50 after revoking a determination under this subsection.

**Item 39** is an application provision. It provides that the amendments made by Part 1 of Schedule 1 apply to changes of care days that occur after this item commences.

## ***Part 2 – Amended tax assessments***

### Child Support Assessment Act

**Item 40** repeals subsection 56(2) and inserts new subsections 56(2), (2A) and (2B). New subsection 56(2) provides that if, after an administrative assessment of child support is made, the assessment of a parent's taxable income is amended (whether or not the amended tax assessment has come about because of an objection, appeal or review) the Registrar may amend the administrative assessment to take account of the amended tax assessment.

New paragraph 56(2A)(a) provides that if the parent's adjusted taxable income (**ATI**) as worked out using the amended tax assessment results in a higher ATI than the parent's previous ATI, then the amendment to the administrative assessment of child

support must be on the basis that the ATI for that year of income is, and always has been, the amount worked out as a result of the amended tax assessment. This means all amended tax assessments that result in a higher ATI than the previous ATI will apply retrospectively to a child support assessment.

New paragraph 56(2A)(b) provides that if the parent applied for the amendment of the tax assessment on or before the day the parent was required to lodge an income tax return for that year of income, or on or before the end of 28 days after the parent was given the tax assessment (including an amended tax assessment), or on or before the end of 28 days after the parent becomes aware that the tax assessment is not correct (and the parent did not apply for an amendment within the previously-mentioned timeframes because of circumstances beyond the knowledge or control of the parent), then the amendment to the administrative assessment of child support must be on the basis that the ATI for that year of income is, and always has been, the amount worked out as a result of the amended tax assessment.

New paragraph 56(2A)(c) provides that if the parent did not apply for an amendment of the tax assessment on or before any of the days listed in paragraph 56(2A)(b), but the Registrar is satisfied that special circumstances exist, then the amendment to the administrative assessment of child support must be on the basis that the ATI for that year of income is, and always has been, the amount worked out as a result of the amended tax assessment.

New subsection 56(2B) provides that where subsection 56(2A) does not apply, then the amendment to the administrative assessment of child support for a child support period must be on the basis that for each later day in the period, the parent's ATI for that year of income is the amount worked out as a result of the amended tax assessment.

**Item 41** corrects an omission of an existing component of adjusted taxable income ('reportable superannuation contributions' as listed in paragraph 43(1)(f)), to ensure that where a person has an amount of reportable superannuation contributions they would not be regarded under section 57 as having nil taxable income for child support purposes.

**Item 42** repeals and replaces subsection 57(7). New subsection 57(7) provides that if, after an administrative assessment of child support is made, the assessment of a parent's taxable income is amended (whether or not the amended tax assessment has come about because of an objection, appeal or review) and the amended taxable income is higher than nil, the Registrar must amend the administrative assessment of child support on the basis that the ATI for that year of income is, and always has been, the amount worked out as a result of the amended tax assessment.

**Item 43** inserts new subsections 58A(3A), 58A(3B), 58A(3C), 58A(3D), 58A(3E) and 58A(3F), to allow the Registrar to further amend an administrative assessment of child support.

Subsection 58A(3A) provides that if, after an administrative assessment of child support is amended under subsection 58A(2) or 58A(3) or because of

subparagraph 58A(1)(b)(i), the assessment of a parent's taxable income is amended (whether or not the amended tax assessment has come about because of an objection, appeal or review) the Registrar may further amend the administrative assessment to take account of the amended tax assessment.

New paragraph 58A(3B)(a) provides that if the parent's ATI as worked out using the amended tax assessment results in a higher ATI than the amount determined under section 58, then the amendment to the administrative assessment of child support must be on the basis that the ATI for that year of income is, and always has been, the amount worked out as a result of the amended tax assessment.

New paragraph 58A(3B)(b) provides that if the parent lodged his or her tax return for that year of income on or before the day the parent was required to do so for that year (taking into account any deferral under section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*), and:

- (i) applied for the amendment of the tax assessment on or before the day the parent was required to lodge an income tax return for that year; or
- (ii) applied for the amendment of the tax assessment before the end of 28 days after the parent was given the tax assessment by the Commissioner of Taxation; or
- (iii) applied for the amendment of the tax assessment before the end of 28 days after the parent becomes aware that the tax assessment is not correct (provided the parent did not apply for the amendment on or before a day referred to in subparagraph (i) or (ii) due to circumstances beyond the knowledge or control of the parent); or
- (iv) the parent did not apply for the amendment on or before any of the days referred to in subparagraphs (i) to (iii) but the Registrar is satisfied that special circumstances exist;

then the amendment to the administrative assessment of child support must be on the basis that the ATI for that year of income is, and always has been, the amount worked out as a result of the amended tax assessment.

New subsection 58A(3C) provides that where subsection 58A(3B) does not apply, and the parent's ATI worked out as a result of the amended tax assessment is either:

- (a) higher than the parent's taxable income that was ascertained earlier; but
- (b) lower than the amount determined under section 58,

then the amendment to the administrative assessment of child support under subsection 58A(3A) must be in accordance with subsection 58A(3E).

New subsection 58A(3D) provides that an amendment of the administrative assessment under subsection 58A(3A) must be in accordance with subsection 58A(3E) if:

- (a) subsection 58A(3B) does not apply; and
- (b) the parent's ATI worked out as a result of the amended tax assessment is lower than both the earlier ascertainment of the parent's taxable income and the amount determined under section 58; and
- (c) any of the following applies:
  - (i) the parent applied for the amendment of the tax assessment before the end of 28 days after the parent was given the tax assessment (including an amended tax assessment) by the Commissioner of Taxation;
  - (ii) the parent applied for the amendment of the tax assessment before the end of 28 days after the parent becomes aware that the tax assessment is not correct if the parent did not apply for the amendment on or before a day referred to in subparagraph 58A(3D)(d)(i) because of circumstances beyond the knowledge or control of the parent;
  - (iii) the parent did not apply for the amendment of the tax assessment on or before either of the days referred to in subparagraph 58A(3D)(d)(i) or (ii), but the Registrar is satisfied that special circumstances exist.

New subsection 58A(3E) provides that if subsection 58A(3C) or (3D) applies, then the amendment of the administrative assessment under subsection 58A(3A) must be on the basis of the later income from the day the earlier ascertainment of the parent's ATI took effect.

New subsection 58A(3F) provides that if none of subsections 58A(3B), 58A(3C) nor 58A(3D) applies, then the amendment of the administrative assessment under subsection 58A(3A) for a child support period must be on the basis that for each later day in the period, the parent's ATI for that year of income is the amount worked out as a result of the amended tax assessment.

**Item 44** is an application provision. It provides that the amendments made by Part 2 of Schedule 1 apply in relation to any amended tax assessment given to a person after this item commences, irrespective of the income year to which the amended tax assessment relates.

### ***Part 3 – Child support agreements***

#### Division 1 – Amendments commencing on the day after Royal Assent

##### *Child Support Assessment Act*

**Item 45** adds new subsection 12(6), to provide that a reference in a child support agreement to a child support terminating event under the Child Support Assessment Act is taken not to include a reference to an event under subparagraph 12(4)(a)(i). This is to ensure that a child support agreement cannot enable a termination of the agreement via a unilateral election by a payee under section 151 to end the administrative assessment.



**Item 46** is consequential to the amendment made by **item 47**.

**Item 47** adds a reference to section 142 to subsection 95(2). In effect, this addition ensures that, in relation to a child support agreement that has been accepted by the Registrar, if the agreement includes provisions of a kind listed in subsection 95(2), then the provisions have effect for the purposes of section 142 (as well as Part 5, which is already referenced in subsection 95(2)), as if they were an order made by consent by a court under Division 4 of Part 7.

**Item 48** adds new subsection 131(5) enabling a court to vary or revoke an order made under section 131 if that order was made because another order ceased to be in force under section 142, and then subsequently revives because of new subsections 142(1B) and (1C).

**Item 49** inserts new subsections 142(1B) and (1C). Subsection 142(1B) provides that subsection 142(1) (which provides that an order made under the Child Support Assessment Act ceases to be in force in certain circumstances) ceases to apply if a child support terminating event happens under subparagraph 12(4)(a)(i) because a person makes an election under section 151, and the liability to pay child support is under a child support agreement whose provisions are covered by subsection 95(2) or 95(3), and the person who makes the election under section 151 applies for an administrative assessment of child support before the liability under the agreement ends. Subsection 142(1C) confirms that the order is taken to revive at the time the person applies for an administrative assessment of child support.

The item addresses the current situation where a payee under an agreement seeks to end a child support assessment that is based on a child support agreement and then apply for a new assessment based on the child support formula. As a result of these changes, any new assessment would still be based on the child support agreement until the liability under the agreement would have otherwise ended. A payee's ability to end a child support assessment based on a child support agreement, where they genuinely wish to end the assessment, is not affected (that is, where the payee does not seek to apply for an administrative assessment).

#### *Application*

**Item 50** is an application provision. It provides that the amendments of section 12 of the Child Support Assessment Act made by Division 1 of Part 3 of Schedule 1 apply in relation to child support agreements made after the commencement of this item.

**Item 51** is an application provision. It provides that the amendments of section 35C and 95 of the Child Support Assessment Act made by Division 1 of Part 3 of Schedule 1 apply in relation to days in a child support period that occur on or after item 27B commences, irrespective of when the relevant child support agreement is made.

**Item 52** is an application provision. It provides that the amendments of section 142 of the Child Support Assessment Act made by Division 1 of Part 3 of Schedule 1

apply in relation to elections made under section 151 of that Act after the commencement of item 27BA.

## Division 2 – Other amendments

### *Child Support Assessment Act*

**Item 53** is consequential to the amendment made by **item 70**.

**Item 54** adds new paragraph 80D(1)(d) enabling a binding child support agreement to be terminated under new subsection 80D(2A).

**Item 55** inserts a new heading to subsection 80D(2).

**Item 56** inserts new subsection 80D(2A), providing for termination of a binding child support agreement in relation to a child when the former eligible carer who was a party to the agreement ceases to be an eligible carer for the child. The agreement is terminated in relation to the child if the conditions listed at subsection 80D(2A) are met. A note alerts the reader that the agreement may continue in relation to other children to whom the agreement relates, if the person does not cease to be an eligible carer of those children.

The insertion of this item addresses the current situation where the payee under an agreement ceases to be an eligible carer of a child but may continue to be entitled to receive payments for the child under the agreement, for example, if the agreement does not make provision for this change. Under the existing legislation, unless the parties agree to terminate the agreement, the payer under the agreement (who may have become the eligible carer of the child) must continue making payments or apply to a court for the agreement to be set aside. It is contrary to the objects of child support legislation for a person who is not an eligible carer of a child to have an ongoing right to receive child support payments. It is also contrary to the objects for a person with care of a child to be required to commence court proceedings in order to obtain financial support for the child.

If a binding child support agreement is terminated under new subsection 80D(2A) and the agreement had resulted in an assessment under subsection 34B(1) of the Child Support Assessment Act, the effect of the termination is that the assessment under subsection 34B(1) no longer has effect, and the liability for the child would, in relation to future child support periods, be assessed under child support formula provisions.

**Item 57** adds new paragraph 80D(3)(d) providing the date of effect for the termination where paragraph 80D(1)(d) applies, which is the day the former carer ceases to be an eligible carer of the child.

**Item 58** adds new paragraph 80G(1)(f) enabling a limited child support agreement to be terminated under subsection 80G(1B).

**Item 59** inserts a new heading to subsection 80G(1A).

**Item 60** inserts new subsection 80G(1B), providing for termination of a limited child support agreement in relation to a child when the former eligible carer who was a party to the agreement ceases to be an eligible carer for the child. The agreement is terminated in relation to the child if the circumstances listed at subsection 80G(1B) are met. A note alerts the reader that the agreement may continue in relation to other children to whom the agreement relates, if the person does not cease to be an eligible carer of those children.

This item provides for the same outcome in relation to limited child support agreements as provided under new subsection 80D(2A) for binding child support agreements.

**Item 61** adds new paragraph 80G(2)(e) providing the date of effect for the termination where paragraph 80G(1)(f) applies, which is the day the former carer ceases to be an eligible carer of the child.

**Item 62** inserts a new heading to subsection 80G(3).

**Item 63** adds new paragraph 81(2)(d) providing that an agreement must also comply with new section 85 in order to be a binding child support agreement or a limited child support agreement.

**Item 64** inserts new section 85, providing that an agreement is not a child support agreement in relation to a child if, disregarding section 67A (which provides for offsetting of child support liabilities), the agreement provides for a party to pay or provide child support to another party for any period during which the party is not an eligible carer of the child.

This amendment seeks to ensure that provisions in child support agreements are consistent with the objects of the child support legislation, by not requiring child support payments to be made to a person during periods when that person is not an eligible carer for a child.

**Item 64** also inserts new Division 2A of Part 6, including new sections 86 and 86A. Current section 87 will follow new section 86A and be included in new Division 2A.

New section 86 provides for the suspension of a child support agreement in relation to a child on a day if the party entitled to be paid or provided child support is not an eligible carer of the child on that day, the period during which the person has not been an eligible carer of the child is 28 days or less (or 26 weeks or less in certain circumstances as per subsection 86(2)), and a child support terminating event does not occur under subsection 12(2AA), and the former carer would otherwise continue to be paid or provided child support for the child despite ceasing to be an eligible carer.

New section 86 allows for the suspension of agreements during temporary care changes. If a child support agreement is suspended under section 86 and the agreement had resulted in an assessment under subsection 34B(1) of the Child Support Assessment Act, the effect of the suspension is that the assessment under

subsection 34B(1) no longer has effect, and the liability for the child would, in relation to the period of the suspension, be assessed under child support formula provisions.

Section 86A applies where an agreement is made in the same document in relation to two or more children, and the agreement does not explicitly provide, and it is not possible to work out, the amount payable under the agreement in relation to each of the children to whom the agreement relates. The agreement is taken to provide that the total amount payable under the agreement in relation to each of the children to whom the agreement relates is worked out using the formula at subsection 86A(2). The formula provides that the total amount payable under the agreement is to be divided among the number of children to whom the agreement relates. Subsection 86A(3) provides that, to avoid doubt, the amount worked out under subsection 86A(2) continues to apply in relation to each of the remaining children to whom the agreement relates.

**Item 65** is consequential to the amendment made by **item 67**.

**Item 66** amends the timing of when child support would be payable under subparagraph 93(1)(h)(ii).

**Item 67** inserts new subsection 93(1A), providing that despite paragraphs 93(1)(g) and (h), child support is not payable for a child under the agreement for a day if the agreement is suspended in relation to the child under section 86 on that day.

If a child support agreement is suspended under section 86 and the agreement had resulted in an assessment under subsection 93(2) of the Child Support Assessment Act, the effect of the suspension on the child support assessment is that the liability for the child would be nil during the suspension period, as there was no prior assessment of child support before acceptance of the agreement. However, new subsection 151(1A) (inserted by **item 70**) seeks to provide an option to parties in such cases.

**Item 68** inserts new subsection 136(2A) which provides that, if a party has applied under subsection 136(1) for a court to set aside the agreement, the court may also set aside the agreement in accordance with the application if the court is satisfied in relation to the criteria set out in subsection 136(2A). These are that the agreement was made before 1 July 2008, the agreement was made without at least one of the parties to the agreement receiving independent legal advice (before entering the agreement) from a legal practitioner as to the matters referred to in paragraph 80C(2)(c), and it would be unjust and inequitable if the court does not set the agreement aside.

This item seeks to address the current limitations for a court to set aside a “transitional binding agreement” (that is, an agreement that meets the requirements in new paragraphs 136(2A)(a) and (b)). Agreements that became transitional binding agreements on 1 July 2008 have been subject to the same rules that apply to binding agreements (namely, that both parents must have sought independent legal advice prior to entering the agreement). This has resulted in courts having a limited ability to set aside those agreements.

**Item 69** is consequential to the amendment made by **item 70**.

**Item 70** inserts new subsection 151(1A), providing that if child support is not payable to a person for a child under a child support agreement for a day under subsection 93(1A), any party to the agreement may, by notice given to the Registrar on that day, elect that the liability of a liable parent who is a party to the agreement to pay or provide child support for the child to the person is to end from a specified day.

This amendment provides that, where:

- a person is a party to a child support agreement that has resulted in an assessment under subsection 93(2) of the Child Support Assessment Act; and
- that agreement has been suspended under new section 86,

the person may elect, under new subsection 151(1A), to end the assessment that has been made under subsection 93(2). This would provide an option for a person (who could be the payer under the agreement, but is now an eligible carer for the child) to end the subsection 93(2) assessment and request a new assessment under subsection 34B(1). The new eligible carer could therefore be assessed and potentially receive child support payments under child support formula provisions during an agreement suspension period.

**Item 71** is consequential to the amendment made by **item 70**.

**Item 72** repeals subsections 151(4) and (5). This removes the unnecessary requirement for the Secretary (if the carer entitled to child support is receiving more than the base rate of FTB Part A) or overseas authority, respectively, to approve an election to end a liability where that election is initiated by the carer entitled to child support.

**Item 73** repeals section 151A, and is consequential to the amendment made by **item 72**.

**Item 74** is an application provision for the purposes of the termination and suspension of child support agreements. Subitem 74(1) provides that this item applies in relation to the amendments of sections 12, 80D, 80G, 93, 151 and 151A of the Child Support Assessment Act that are made by this Division and section 86 of that Act, as inserted by this Division.

Subitem 74(2) provides that sections 80D and 80G apply in relation to any period of 28 days that ends on or after the day this item commences (whether or not the child support agreement that is terminated under those provisions was made, and whether or not the period begins, before, on or after that day).

Subitem 74(3) provides that for the purposes of the Child Support Assessment Act, a child support agreement is taken to be terminated under section 80D or 80G at the time this item commences in the following circumstances. These are if a person ceases to be an eligible carer of a child before that time; and immediately before that

time, the person continues not to be an eligible carer of the child; and the agreement would have been terminated under that section before that time if that section had been in force. This subitem ensures that where care changes occurred before commencement of this item, the agreement is only terminated after commencement of this item, and does not alter the effect of the agreement on the administrative assessment of child support for any period before commencement. Subitem 74(4) confirms that this item does not affect the operation of a child support agreement for any other purpose.

Subitem 74(5) provides that section 86, and the amendments of sections 12 and 93 (except subparagraph 93(1)(h)(ii)) and subsections 151(1A) and (2), apply in relation to days in a child support period that occur on or after the day this item commences (whether or not the child support agreement that is suspended was made before, on or after that day).

Subitem 74(6) provides that in determining the length of time that a person has ceased to be an eligible carer, any days that occur before this item commences must be taken into account.

Subitems 74(5) and 74(6) ensure that, for temporary care changes that occur before commencement, the effect of the agreement on the administrative assessment of child support is not suspended for any period before commencement.

Subitem 74(7) provides that the amendments of subparagraph 93(1)(h)(ii) of the Child Support Assessment Act apply in relation to terminations under section 80D or 80G of the Child Support Assessment Act that occur on or after the commencement of this item.

Subitem 74(8) provides that the repeal of subsections 151(4) and (5) and section 151A of the Child Support Assessment Act apply in relation to an election referred to in subsection 151(1) that is made after the commencement of this item.

**Item 75** is an application provision for the purposes of child support agreements that provide for child support for non-eligible carers. Item 75 provides that the amendments of section 81 of the Child Support Assessment Act made by this Division and section 85, as inserted by this Division, apply in relation to child support agreements made after the commencement of this item.

**Item 76** is an application provision for the purposes of apportioning amounts payable under child support agreements. Subitem 76(1) provides that section 86A of the Child Support Assessment Act, as inserted by this Division, applies in relation to any event that causes an agreement to cease to relate to a child that occurs after the commencement of this item.

Subitem 76(2) provides that in applying subitem 76(1) to an agreement made before that commencement:

- (a) the total amount payment under the agreement is the total amount that is payable under the agreement immediately before that commencement; and

- (b) the total number of children to whom the agreement relates is the total number of children to whom the agreement relates immediately before that commencement.

This would mean that the apportioning of amounts for current agreements immediately before commencement is preserved.

#### ***Part 4 – Overpayments***

##### Division 1 – Amendments

###### *Family Assistance Administration Act*

**Item 77** makes a necessary consequential amendment to subsection 227(3) of that Act as a result of the amendments made under item 126.

###### *Child Support (Assessment) Act*

**Item 78** repeals and replaces subsection 143(1). New subsection 143(1) provides that an amount may be recovered from a person (the payee) in a court having jurisdiction under this Act if:

(a) both of the following apply in relation to the amount:

- (i) the amount was an amount of child support paid by another person (the payer) to the payee;
- (ii) the payer is not liable, or subsequently becomes not liable, to pay the amount to the payee, except because the payer ceases to be a resident of Australia or a reciprocated jurisdiction; or

(b) both of the following apply in relation to the amount:

- (i) the amount was paid by another person (the payer) under a registered maintenance liability to the payee;
- (ii) the payee was not entitled to be paid the amount because of a decision that the registered maintenance liability should never have existed.

The amendments in subparagraph 143(1)(a)(ii) alters the amounts which can be recovered under section 143, by excluding the recovery of amounts that were overpaid due to a payer ceasing to be a resident. This would ensure that in situations where the payer continued to make payments following a change in their residency status and also delayed notifying of the change, the payer could not then pursue recovery of the overpaid amount from the payee due to the backdating of the residency change to the assessment. Allowing recovery of these overpaid amounts is inequitable, given the payee is not responsible for notification of a change in the payer's residency and may not have known about the residency change.

The amendments in paragraph 143(1)(b) are intended to extend the ability to apply for a court recovery order for overpayments of child support for registered

maintenance liabilities (which can include other types of child maintenance liabilities that have originated outside the Child Support Assessment Act but collected under the Child Support Registration and Collection Act), where a decision is made that that liability should have never existed in the first instance.

**Item 79** repeals and replaces paragraph 143(3A)(b). New paragraph 143(3A)(b) provides that, in addition to the other requirements under subsection 143(3A), if the court makes a finding that the payer is not a parent of the child (including by overturning on appeal a declaration made under section 106A or making a declaration under section 107) then the court must have regard to the matters set out in subsection 143(3B). This amended provision reflects the changes under new subsection 143(1), with the result that the courts will consider the same matters when determining whether an amount should be repaid, where a payer is found not to be a parent of a child.

**Item 80** inserts new paragraph 143(3B)(ba) into subsection 143(3B). Under new paragraph 143(3B)(ba) the court must have regard to whether there was any delay by the payer in applying for a finding by a court that the payer is not a parent of the child. This is consequential to **item 79**.

**Item 81** is a necessary consequential amendment, which inserts the concept of carer liability to paragraph 150(4G)(a).

*Child Support (Registration and Collection) Act*

**Item 82** expands the definition of **appealable collection refusal decision** to include a carer liability (as inserted under **item 83**).

**Item 83** inserts new definitions into subsection 4(1).

**Carer debt** means an amount that is a debt due to the Commonwealth under section 69B.

**Carer liability** means a liability to pay a debt that is due to the Commonwealth under section 69B.

**Child support related debt** means the amount of penalty (if any) imposed under section 67 in respect of a child support debt or under section 64AF of the Child Support Assessment Act; or any costs ordered by a court to be paid to the Commonwealth in respect of an offence committed by a person against this Act or the Child Support Assessment Act; or any amount ordered by a court, upon the conviction of a person for an offence against this Act or the Child Support Assessment Act, to be paid by the person to the Registrar.

**Deductible liability** has the meaning given by section 43 (see new section 43 inserted by **item 92**).

**Item 84** extends the definition of **payee** in subsection 4(1) by inserting new subparagraph (iii) at the end of paragraph (a) so that in relation to a carer liability, payee means the person who is entitled to receive payment under the carer liability



(see subsection 69B(3)). That is, if a payer of a registered maintenance liability has paid too much child support, they then become a payee of a carer liability and are entitled to receive repayment of the overpaid amounts.

**Item 85** repeals and substitutes a new definition in subsection 4(1) for **payer**. In relation to a registrable maintenance liability, the payer is the person who is liable to make payments under the liability. In relation to a deductible liability, the payer is the person who is liable to pay the liability.

**Item 86** inserts new definitions for **relevant debt** and **relevant debtor** in subsection 4(1). A relevant debt means a child support debt or a child support related debt or a carer debt. Relevant debtor means a person who is liable to pay a relevant debt.

**Item 87** repeals and replaces the definition of **weekly deduction rate** in subsection 4(1). *Weekly deduction rate* means:

- (a) for an enforceable maintenance liability – the weekly rate of payment specified in the particulars of the entry in the Child Support Register in relation to the liability; or
- (b) for any other deductible liability – the weekly rate of payment specified in the notice given in relation to the liability under section 45.

**Item 88** makes a technical amendment to subsection 4(4).

**Item 89** is a necessary consequential amendment to include a reference to carer liability.

**Item 90** amends circumstances when a liability will be a registrable maintenance liability. There will also be a registrable maintenance liability where the court has made an order under paragraph 143(1)(a) of the Act (which overturns on appeal a declaration under section 106A of that Act), or in response to a declaration of section 107 of that Act that the payee should not be assessed in respect of the costs of the child because the payee is not a parent of the child. New paragraph 17A(1)(c) provides that there will be a registrable maintenance liability where the court has made an order under paragraph 143(1)(b).

Proceedings under section 143 of the CSA Act may be commenced by a child support payer (for example, a payer of a liability to pay child support under section 17). Where the court has made an order under section 143 that amounts paid by the payer under the first liability should be recovered from the payee under the first liability (for example, due to parentage findings), the court order to repay the overpaid amount could be registered under this section and collected by the Registrar. The payer under the first liability therefore becomes the payee under the second liability.

**Item 91** is consequential to the amendment made by **item 87**.

**Item 92** repeals and replaces section 43. New section 43 provides a general rule for the collection by automatic withholdings in the case of employees. Subsection 43(1) provides that section 43 applies (subject to subsection 43(3)) if the payer of an enforceable maintenance liability is an employee and any of the deductible liabilities set out in subsection 43(1) are due by the payer to the Commonwealth. These deductible liabilities are the payer's enforceable maintenance liability, a liability to pay a child support related debt or a carer liability. Therefore, employer withholdings would not apply to an employee who only has a carer liability or liability to pay back a child support related debt (and no ongoing child support liability).

Subsection 43(2) provides that the Registrar must, as far as practicable, collect amounts due to the Commonwealth under or in relation to the deductible liability by deducting the amount from the salary or wages of the payer under this Part.

Subsection 43(3) provides that subsection 43(1) does not apply in relation to a payer's enforceable maintenance liability, or any other deductible liability if, under section 44, the particulars of the entry in the Child Support Register in relation to the payer's enforceable maintenance liability contain a statement that the employer withholding does not apply in relation to the enforceable maintenance liability. If the Register is silent and does not contain a statement that employer withholding does not apply in relation to the enforceable maintenance liability, employer withholding is to apply.

**Item 93** repeals and replaces subsection 44(5). New subsection 44(5) provides that the Registrar must vary the particulars of the entry in the Child Support Register in relation to the payer's enforceable maintenance liability so that they contain a statement that employer withholding applies in relation to the enforceable maintenance liability if:

- (a) because of subsection 44(1) or (2), the particulars of the entry in the Child Support Register in relation to the payer's enforceable maintenance liability contain a statement that employer withholding does not apply in relation to that liability; and
- (b) the payer does not make timely payments to the Registrar under that liability or any of the payer's other deductible liabilities.

Therefore, if a payer elects not to have automatic withholdings apply but then fails to make timely payments in relation to either the child support liability or one of their other liability types, automatic withholdings may be applied at that point.

**Item 94** makes consequential amendments to paragraphs 44(5A)(a) and (b) as a result of the amendment made by **item 93**.

**Item 95** repeals and replaces subsection 44(7). New subsection 44(7) provides that the Registrar must vary the particulars of the entry in the Child Support Register in relation to the payer's enforceable maintenance liability so that they contain a statement that employer withholding applies in relation to the enforceable maintenance liability if:

## Schedule 1 – Child support amendments

- (a) because of subsection 44(6), the particulars of the entry in the Child Support Register in relation to the payer’s enforceable maintenance liability contain a statement that employer withholding does not apply in relation to that liability; and
- (b) the payer does not make timely payments to the Registrar under that liability or any of the payer’s other deductible liabilities.

**Item 96** makes consequential amendments to paragraphs 44(7A)(a) and (b) as a result of the amendment made by **item 95**.

**Items 97, 98 and 99** make consequential amendments as a result of the inclusion of deductible liabilities under subsection 43(1).

**Item 100** repeals and replaces the heading to Part V and inserts a new heading for Division 1.

**Item 101** inserts a new heading for Division 2 that relates to child support debts and carer debts, and new section 69B.

New section 69B provides for the repayment of overpayments made to the payee. New section 69B replaces the previous section 79 (repealed by **item 160**) and provides that backdated reductions to a child support assessment or other registered maintenance liability:

- that result in an overpayment; and
- for periods where the liability was collected by the Registrar,

are repayable by the payee to the Registrar and are a debt due by the payee to the Commonwealth (subject to certain exceptions under subsection 69B(2)).

Subsection 69B(1) provides that if the payee of a registered maintenance liability is paid an amount under section 76 or taken to have been paid an amount under section 76 because of section 71AA or 71AB and the payee was not entitled to be paid the amount, the amount is (subject to subsection 69B(2)) a debt due to the Commonwealth and repayable by the payee to the Registrar. The amount that the payee is not entitled to may have occurred due to a subsequent variation to the particulars of the entry in the Child Support Register in relation to the registered maintenance liability.

Subsection 69B(2) provides that an amount is not repayable by the payee, or a debt due, under subsection 69B(1) if:

- (a) the payee was not entitled to be paid the amount because of a subsequent variation to particulars of the entry in the Child Support Register in relation to the registered maintenance liability; and
- (b) the variation was the result of a decision that the registered maintenance liability should never have existed (subparagraph 69B(2)(i)) or the payer of

that liability ceasing to be a resident of Australia or a reciprocating jurisdiction (subparagraph 69B(2)(ii)).

While these amounts are not a debt to the Commonwealth and would therefore not be recovered by the Registrar, the note at the end of subsection 69B(2) clarifies that an amount covered by subparagraph 69B(2)(i) may be recovered if a court makes an order under section 143 of the Child Support Assessment Act.

Subsection 69B(3) provides that the Registrar must pay any amount that is paid to the Registrar under subsection 69B(1) to the payer of the registered maintenance liability.

The note at the end of subsection 69B(3) clarifies that the payee referred to in this section becomes a payer of a carer debt (see the definitions of *carer debt* and *payer* in subsection 4(1)).

Subsection 69B(4) provides that a payee of a liability under subsection 69B(1) is limited to recovering a debt due in relation to the liability through court proceedings under section 113A (see **item 168**).

The note at the end of subsection 69B(4) clarifies that the liability under subsection 69B(1) is a carer liability (as defined in subsection 4(1)).

**Item 102** repeals and replaces paragraphs 70(1)(a) and (b) for the purposes of apportioning the amount of a debt repayment between different payees in proportion to the amount of the debt owing in relation to each payee. New paragraphs 70(1)(a) and (b) provides for a person who owes two or more child support debts that relate to two or more enforceable maintenance liabilities with different payees; or two or more carer debts that relates to two or more carer liabilities with different payees.

**Item 103** is consequential to the amendment made by **item 168**.

**Item 104** repeals and replaces subsection 71(1). This provision relates to where a payee of an enforceable maintenance liability or carer liability directly receives a debt repayment amount from the payer (rather than the Registrar collecting a debt repayment amount and passing this onto the payee). New subsection 71(1) provides that subject to section 71D, if:

(a) either:

- (iv) the payee of an enforceable maintenance liability received from the payer an amount intended by both the payer and the payee to be paid in complete or partial satisfaction of an amount payable under the liability in relation to the child support enforcement period; or
- (v) the payee of a carer liability receives from the payer an amount intended by both the payer and the payee to be paid in complete or partial satisfaction of an amount payable under the liability; and

(b) the payer or the payee applies to the Registrar to have the amount received by the payee treated as having been paid to the Registrar;

the Registrar must, despite section 30 and section 69B, credit the amount received by the payee against the amount payable under the liability.

**Item 105** repeals and replaces the heading to section 71AA.

**Item 106** repeals and replaces paragraphs 71AA(1)(a) to (c). This provision relates to the offsetting of debts where two people in a child support case each have a debt owing to the other person. Subsection 71AA(1) provides for the Registrar to offset debts if:

- (a) two persons each have a child support debt arising from a liability referred to in section 17 or 17A or a carer debt; and
- (b) the Commonwealth would (apart from this section) be required for each debt, under subsection 69B(3) or section 76 to pay the amount paid by one of the persons to the other person; and
- (c) for a debt that arose from a liability referred to in section 17 or for a carer debt, the liability provided for, or related to, child support for a child of the two persons.

For clarity, paragraph 71AA(1)(a) covers any combination of child support debts and carer debts. For example, where a person would be entitled to receive child support payments under section 76 due to a child support debt but that person also owes a carer debt, those child support payments can be reduced for carer debt repayment purposes.

**Item 107** is consequential to the amendment made by **item 106**.

**Item 108** inserts new section 71AB after section 71AA. New section 71AB provides for the reduction of child support or carer debts owed by one person in a child support case where that person would otherwise be entitled to be paid debt repayment amounts that were owed to them under a separate case. Subsection 71AB(1) provides that the section applies if:

- (a) a person (the **first person**) owes either a child support debt or a carer debt (the **first debt**); and
- (b) the Registrar receives an amount (the **repayment amount**) from another person that is owed by the other person and is intended by that person to be in partial or complete satisfaction of a child support debt or carer debt; and
- (c) the Registrar would, apart from this section, be required under subsection 69B(3) or section 76 to pay the repayment amount to the first person.

Subsection 71AB(2) provides that the Registrar may, despite those provisions:

- (a) credit the repayment amount against the amount payable under the first debt; and
- (b) if, after the amount has been credited, the first debt has been paid in full, pay any excess to the first person.

**Item 109** repeals and replaces subsection 71A(1). New subsection 71A(1) provides for when a payer of an enforceable maintenance liability or carer liability pays a third party an amount intended as a debt repayment amount for the payee (rather than the Registrar collecting a debt repayment amount and passing this onto the payee). New subsection 71A(1) provides that subject to section 71D, if:

- (a) the payer of an enforceable maintenance liability or carer liability pays a third party an amount that partially or completely satisfies a debt owed by the payee of the enforceable maintenance liability or carer liability; or the payer; or both the payee and payer; and
- (b) the payer or the payee applies to the Registrar, in the manner specified by the Registrar, to have the amount, or part of the amount, received by the third party treated as having been paid to the Registrar; and
- (c) the amount paid, or a part of the amount paid, was intended by both the payer and the payee to be paid in complete or partial satisfaction of an amount payable under the enforceable maintenance liability in relation to the child support enforcement period or the carer liability;

the Registrar must, despite section 30 and section 69B, and in accordance with subsections 71A(2) and (3), credit the amount, or part of the amount, received by the third party against the amount payable under the enforceable maintenance liability or carer liability.

The note at the end of subsection 71A(1) signposts that section 16A provides for the Registrar to specify the manner in which an application may be made.

**Items 110, 111, 113, 114, 115, 116, 118, 119, 120, 122, 123, 136, 137, 138, 139, 140, 141, 146 to 150, 151, 153, 154, 155, 166, 167, 168, 169 170 and 171** are consequential amendments for the purposes of amendments made under this Part, which extend existing administrative and court recovery mechanisms for child support debts to carer liabilities or liabilities to pay a child support related debt.

**Item 112** repeals and replaces the heading to section 71E.

**Item 117** repeals and replaces the heading to section 72A.

**Item 121** repeals a number of definitional terms from subsection 72A(13) that have been made redundant due to new insertions to section 4 definitions under this Part.

**Item 124** adds new paragraph (e) at the end of subsection 72AA(2) for deductions from social security pensions and benefits. New paragraph 72AA(2)(e) adds that for a carer debt, a further requirement for the purposes of a notice given under

subsection 72AA(2), is to instruct the Secretary to deduct an amount, determined by the Registrar, from the payer's social security pension or social security benefit from a specified day until the debt is paid. The amount will be determined by the Registrar, taking into account all the circumstances of the case.

**Item 125** inserts new subsection 72AA(2A) after subsection 72AA(2). New subsection 72AA(2A) provides that in making a determination for the purposes of paragraph 72AA(2)(e), the Registrar may determine an amount that reduces a person's pension or benefit to nil if the person has consented to the amount of the deduction being an amount that would reduce the payment to nil.

**Item 126** repeals and replaces subsection 72AB(2). New subsection 72AB(2) provides that a child of a person is a **designated child support child** of the person if:

(a) all of the following apply:

- (i) the person has a registrable maintenance liability of a kind mentioned in section 17 in respect of the child;
- (ii) an amount payable under the liability is a child support debt;
- (iii) the day on which the debt became due and payable under section 66 has passed, and the debt remains unpaid in whole or in part; or

(b) all of the following apply:

- (i) the person owes a carer debt as a result of a payment to the person under a registered maintenance liability;
- (ii) the registered maintenance liability is of a kind mentioned in section 17 in respect of the child;
- (iii) the debt remains unpaid in whole or in part.

As a result of new paragraph 72AB(2)(b), if a person has an unpaid carer debt in relation to a child, but is also receiving family tax benefit in relation to the child, deductions can be made from the person's family tax benefit to repay the unpaid carer debt.

**Items 127 and 128** are consequential to the amendment made by **item 129**.

**Item 129** adds new subparagraph 72AC(1)(a)(iii) to include a person who is a payer of a carer liability for the purposes of the written notice under subsection 72AC(1) to make deductions from the person's veterans' pension or allowance.

**Item 130** adds new paragraph (e) at the end of subsection 72AC(2). New paragraph 72AC(2)(e) provides that if subparagraph 72AC(1)(a)(iii) applies, the notice must instruct the Repatriation Commission to make the deduction, determined by the Registrar, from the person's pension or allowance on the specified day until the liability to pay the debt is discharged. The amount will be determined by the Registrar taking into account all the circumstances of the case.

**Item 131** adds new subsection 72AC(3) at the end of section 72AC. New subsection 72AC(3) provides that in making a determination for the purposes of paragraph 72AC(2)(e), the Registrar may determine an amount that reduces a person's pension or allowance to nil if the person has consented to the amount of the deduction being an amount that would reduce the payment to nil.

**Item 132** is consequential to the amendment made by **item 133**.

**Item 133** adds new subparagraph 72AD(1)(b)(iii) to include a person who is a payer of carer liability for the purposes of the written notice under subsection 72AD(1) to make deductions from the person's parental leave pay instalments.

**Items 134 and 135** are consequential to the amendment made by **item 133**.

**Item 142** repeals and replaces the heading to section 72C.

**Items 143 and 145** are consequential to the amendment made by **item 144**.

**Item 144** repeals and replaces subsection 72C(2). New subsection 72C provides that the court may set aside the instrument or disposition, or restrain the making of the proposed instrument or disposition, if the court is satisfied that the instrument or disposition has been made, or is proposed to be made, for any of the following purposes:

- (i) to pay child support; or
- (ii) to pay any debt under, or to meet, the enforceable maintenance liability or carer liability.

**Items 146 to 151** make necessary consequential amendments to include references to carer liability.

**Item 152** repeals and replaces the heading to section 72F.

**Items 153 and 154** make necessary consequential amendments to include references to carer liability.

**Item 155** amends paragraph 74(1)(a) to include the crediting of amounts received by the Registrar in payment of carer debts to the Child Support Account.

**Item 156** inserts paragraph 75(1)(aa) into subsection 75(1). New paragraph 75(1)(aa) broadens the purposes of the Child Support Account to include payments made under subsection 69B(3) to payees of carer liabilities.

**Item 157** repeals and replaces the heading to section 76.

**Item 158** is a consequential amendment to **item 160**.

**Item 159** adds a note at the end of subsection 76(1). The note signposts that a debt may arise if the payee is overpaid (see section 69B).



**Item 160** repeals section 79, which is now dealt with under new section 69B.

**Item 161** repeals and replaces the heading to Division 3 of Part VI.

**Item 162** extends objection rights for **items 5, 6 and 7** in the table contained in subsection 80(1) to carer liabilities.

**Item 163** makes changes corresponding with **item 162** to the table contained in subsection 85(1).

**Items 164 to 168** are necessary consequential amendments to include references to carer liability, as a result of amendments to section 69B.

#### Division 2 – Application provisions

**Item 172** sets out the application provisions in relation to the overpayment amendments. Subitem 172(1) provides that **item 172** applies in relation to the following amendments made by this Part:

- (a) the amendments of the Family Assistance Administration Act;
- (b) the amendments of the Child Support Registration and Collection Act;

Subitem 172(2) provides that the amendments, except section 69B of the Child Support Registration and Collection Act, apply in relation to any liability to pay a debt that is payable after the commencement of this item, whether the debt arises before or after that commencement.

Subitem 172(3) provides that section 69B of the Child Support Registration and Collection Act applies in relation to debts that arise after commencement of this item.

Subitem 172(4) provides that a debt that arose before the commencement of this item under section 79 of the Child Support Registration and Collection Act that is due and payable immediately before that commencement is taken, after that commencement, to have arisen under section 69B of that Act (as inserted by this Part). Therefore, a debt or liability raised under section 79 before commencement is intended to be taken to be a carer debt or carer liability for the purpose of the expanded recovery mechanisms under this Part.

Subitem 172(5) provides the amendments of section 74 and 75 of that Act apply in relation to any amounts received, and payments made, after the commencement of this item.

**Item 173** provides for the application of the amendments made by this Part to subsections 143(1), 143(3A) and 143(3B) of the Child Support Assessment Act.

Subitem 173(1) provides that the amendment of subsection 143(1) applies in relation to decisions, made after the commencement of this item, that a payer is not liable to pay an amount or that a registered maintenance liability should never have existed.

Subitem 173(2) provides that the amendments of subsections 143(3A) and (3B) apply in relation to findings by a court made after commencement of this item.

**Item 174** sets out the application provision for subsequently ascertaining or determining components of certain income for periods before 1 July 2008. Despite item 115 of Schedule 2 to the *Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures Act 2006*, subsection 58A(2) (as in force from time to time) of the Child Support Assessment Act applies in relation to any day in a child support period (whether before, on or after 1 July 2008) in relation to which the Registrar ascertains or determines the amount of a person's adjusted taxable income or child support income (within the meaning of the *Child Support Assessment Act* immediately before 1 July 2008) after the commencement of this item.

Currently, for a child support assessment for a period before 1 July 2008, if the assessment was based on a default or provisional income, and the parent's taxable income or supplementary amount is subsequently ascertained, the Registrar must amend the child support assessment on the basis that the taxable income or supplementary amount is or always has been the taxable income or supplementary amount that was subsequently ascertained. This is due to the application of provisions under the *Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures Act 2006*.

This application provision seeks to ensure the rules in place for periods from 1 July 2008 onwards apply where a parent's taxable income or supplementary amount is subsequently ascertained after commencement. That is:

- if the parent's taxable income or supplementary amount is subsequently ascertained and the new amount is lower than the previous income amount, the Registrar would not amend the child support assessment;
- if the new amount is higher than the previous amount, the Registrar must amend the child support assessment.

### **Division 3 – Date of effect rules**

#### **Child Support (Assessment) Act**

**Item 175** adds paragraph 12(2AA)(c) in subsection 12(2AA) where a child support terminating event happens in relation to a child. New paragraph 12(2AA)(c) provides that it will be a child support terminating event if paragraphs 12(2AA)(a) and (b) are met because all persons who were eligible carers of the child have ceased to be eligible carers of the child and a parent who was not an eligible carer of the child would have become an eligible carer of the child but for the Registrar or Secretary being notified or otherwise becoming aware of that matter more than 26 weeks after the relevant change of care (due to the new date of effect for a care percentage determination under item 176). Under this new paragraph, where notification of the event has been delayed and occurs after the 26-week time limit, a terminating event would occur with effect from the change of care day. New section 150F applies where notification of the event has been delayed but occurs within 26 weeks.

**Items 176 and 177** provide for when the revocation of a determination will be taken to have occurred, if there has been a change to the responsible person's cost percentage under section 54F or if there has been a revocation of a determination of a responsible person's percentage care under section 54H.

Under the new subsections 54F(3) and 54H(3), if a determination of a responsible person's percentage of care has been made under section 49 or 50 and the Secretary or Registrar is notified or otherwise becomes aware of a determination that the responsible person's percentage of care (the existing care percentage) within 28 days after the change of care day for the responsible person, the revocation of the determination will be taken to have effect the day before the change of care day.

If the Secretary or Registrar is notified or otherwise becomes aware of that matter more than 28 days after the change of care day for the responsible person and they have increased their care of the child, the revocation of the determination takes effect the day before the Registrar is notified or otherwise becomes aware of that matter.

Alternatively, if the Secretary or Registrar is notified or otherwise becomes aware of that matter more than 28 days after the change of care day and the responsible person reduced their care of the child, the revocation of the determination takes effect the day before the change of care day.

The obligation to notify of a person's increase or reduction in care applies to that person. If a person fails to comply with that obligation, they should not benefit from that failure. Where there is delayed notification of a care change, an increased care percentage will only apply from date of notification. The person with increased care will continue to not have the benefit of a backdated increase to the child's care percentage. However, a reduced care percentage will be backdated to apply from the date of the care change. This means the child support assessment would reflect the costs associated with that person's actual rather than an inflated level of care.

**Item 178** inserts new section 150F after section 150E. New Section 150F deals with the suspension of liability to pay child support if there is a delay in notifying when persons have swapped eligible carer roles. Subsection 150F(1) provides that the Registrar must make a suspension determination that child support is not payable for a child by a liable parent to another person if:

- (a) the Secretary or Registrar is notified, or otherwise becomes aware, that
  - (i) all persons who were eligible carers of the child have ceased to be eligible carers of that child;
  - (ii) a parent who was not an eligible carer of the child would have become an eligible carer, but for subparagraph 54F(3)(b)(i); and
- (b) there is a delay of more than 28 days in the Registrar or Secretary being notified, or otherwise becoming aware, of the relevant change of care day, but before the end of 26 weeks after that day.

Due to the new care percentage revocation date of effect rules in this Division, there will be some situations where all persons are assessed as having a care percentage of less than 35 per cent for a child during the period from the date of the care change until the day before notification of the care change. This could occur where, for example, parents swap the eligible carer role for a child (that is, one parent ceases to be an eligible carer at the same time the other parent becomes an eligible carer for the child), and there is a delay in notification of the care change.

Subsection 150F(2) provides that if the Secretary or Registrar makes a suspension determination, child support for the child is not payable by the liable parent to the other person from that change of care day and until the day before the Registrar is notified, or otherwise becomes aware, of that change of care day.

During this suspension period, a terminating event under subsection 12(2AA) would not occur, subject to a time limit of 26 weeks between the care change and notification of the care change. If notification occurs within the 26 week time limit, the assessment would not be in force for the child in the period from the date of event to the day before notification.

**Item 179** is a necessary consequential amendment to **item 178**.

**Item 180** is a necessary consequential amendment to **item 178**.

**Item 181** inserts new subparagraph 151C(2)(b)(ia) which provides that the Registrar must accept a section 151B application if, and only if, the Registrar is satisfied, among other things, that a suspension determination under section 150F provides that child support is not payable in respect of the day before the child's 18<sup>th</sup> birthday. This means that the Registrar can accept an application for a child support assessment to continue beyond a child's 18<sup>th</sup> birthday, despite an assessment not being in force on the day before the child's 18<sup>th</sup> birthday as a result of a section 150F suspension (due to a care change which occurred after the application was made under section 151B).

**Item 182** is consequential to the amendment made by **item 178**.

**Item 183** provides that the amendments made by **items 175 to 182** will apply in relation to changes of care days that occur on or after the day this item commences and changes of care days that occur before the day this item commences if the Registrar or Secretary is notified or otherwise becomes aware of the change of care more than 26 weeks after the day this item commences.

## Schedule 2 – Family Tax Benefit amendments

### Summary

This Schedule implements the *Supporting No Job No Pay - Healthy Start for School* — *new compliance arrangements* measure announced in the 2017-18 Budget.

This measure builds on the 2015-16 Budget measure titled *No Job No Pay* and the 2011-12 Budget measure titled *Healthy Start for School*.

### Background

This Schedule replaces the current compliance incentives that make the payment of the FTB Part A end of year supplement dependent on a four year old child of an individual or their partner receiving income support, undergoing a health check and on each FTB child in a family meeting immunisation requirements.

From 1 July 2018, families who do not meet the health check requirements or immunisation requirements for a child will, instead of losing their FTB Part A end of year supplement, have approximately \$28 per child withheld from their fortnightly rate of FTB Part A.

#### *Healthy Start for School*

Section 61A of the *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act) currently provides that, subject to some exceptions, unless an FTB child meets the health check requirements (set out in a legislative instrument made by the Minister) before the end of the first income year after the income year in which the child turned 4, an individual must not be paid an end of year FTB Part A supplement in respect of that child.

Section 61A only applies to an individual if the individual or their partner is receiving a social security pension, a social security benefit, a service pension or income support supplement in the income year in which the child turned 4.

The amendments in Part 2 of this Schedule would, beginning 1 July 2018, repeal current section 61A and replace this with a new legislative framework for ensuring in-scope families meet the health check requirements under the *Healthy Start for School* initiative. Under the new section 61A, if a child does not meet the health check requirements before their fifth birthday, an individual will have their FTB Part A daily rate reduced from that day (or in some circumstances a later day) by approximately \$2.02 per day. The number of days to which the FTB rate reduction would apply will be the number of days in the income year in which the child turned 4 that the individual was both entitled to be paid FTB and the individual or their partner received income support.

### *No Jab No Pay*

Section 61B of the Family Assistance Act currently provides that, subject to some exceptions, unless an FTB child that has turned 1 meets the immunisation requirements, an individual must not be paid an end of year FTB Part A supplement in respect of that child.

The amendments in Part 2 of this Schedule would, beginning 1 July 2018, repeal current section 61B and replace this with a new legislative framework under which an individual's rate of FTB Part A would be reduced when a child becomes overdue for immunisation. If an individual who is entitled to be paid FTB for the child fails to comply with the immunisation requirements in section 6 of the Family Assistance Act the Secretary of the Department of Social Services will notify the individual of the failure to meet these requirements. The individual would then have a 63 day grace period from the date of the notification to ensure that the child meets the immunisation requirements (which includes having a valid exemption). If immunisation requirements are not met within 63 days, fortnightly FTB Part A reductions would commence from the start of the grace period (i.e. from the date of the notification). The individual's daily rate of FTB Part A would be reduced by approximately \$2.02 per day.

Where an individual elects to receive their FTB payments by way of a past period (i.e. lump sum) claim, the child's immunisation status at the date the claim is determined will determine whether or not an FTB rate reduction applies. If the child is not immunised at the date the claim is determined the annual FTB child rate for the child will be reduced by \$737.30 when determining the individual's daily rate for days falling within the past period to which the claim relates. This will result in an approximately \$2.02 per day reduction to the daily rate of FTB Part A for days falling within this past period.

### *Other amendments*

Part 1 of this Schedule amends section 6 of the Family Assistance Act which sets out when a child meets the immunisation requirements for the purposes of the family assistance law. The amendments in Part 1 of this Schedule would allow the Secretary to require that requests for certain exemptions from the immunisation requirements be made in a particular form and manner, contain any information and be accompanied by any documents required by the Secretary.

The amendments made by Part 1 of this Schedule commence on the day after the *Family Assistance and Child Support Legislation Amendment (Protecting Children) Act 2017* receives Royal Assent.

The amendments made by Part 2 of this Schedule commence on a single day to be fixed by Proclamation. However, if Part 2 does not commence within the period of 12 months beginning on the day the *Family Assistance and Child Support Legislation Amendment (Protecting Children) Act 2017* receives Royal Assent, they commence on the day after the end of that period.

## **Explanation of the changes**

### ***Part 1 – Amendments commencing day after Royal Assent***

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

**Item 1** adds new subsection 6(8) at the end of section 6. New subsection 6(8) provides that a certification under paragraph 6(3)(a) or 6(3)(b), 6(4)(b) or 6(5)(b) or an application for a determination under subsection 6(6) must be made in the form and manner, contain any information, and be accompanied by any documents, required by the Secretary. This amendment would allow the Secretary to require that requests for certain exemptions from meeting the immunisation requirements be made in a particular form and manner, contain any information, and be accompanied by any documents, required by the Secretary.

**Item 2** is an application provision for the amendments made to section 6 by this Part. Item 2 provides that the amendments of section 6 made by this Part apply in relation to certifications, and applications for determinations, made after item 2 commences.

### ***Part 2 – Amendments commencing on Proclamation***

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

**Item 3** inserts a definition of ***FTB child rate reduction period*** in subsection 3(1). ‘FTB child rate reduction period’ has the meaning given by new subsection 61A(2) or 61B(2) (see item 5). A note at the end of item 3 states that the FTB child rate reduction period relates to a child who does not meet the health check or immunisation requirements under section 61A or 61B (see item 5).

**Item 4** repeals current paragraph 6(1)(b) and substitutes a new paragraph. This amendment is consequential to the amendments made by this Part.

**Item 5** repeals sections 61A and 61B and substitutes new sections 61A and 61B. Item 5 also inserts new sections 61C and 61D.

#### **New section 61A**

New **section 61A** provides for a reduction to the FTB child rate for a child if the child does not meet the health check requirements before the day the child turns 5.

The FTB child rate for a child is used to calculate an individual’s standard rate of FTB Part A under Methods 1 and 2 in the FTB rate calculator in Schedule 1. An individual’s standard rate of FTB is the sum of the FTB child rates for each child of the individual.

Under new section 61A the FTB child rate for a child that does not meet the health check requirements before the day the child turns 5 will be reduced from that day (or any later day determined by the Secretary) until the end of the FTB child rate reduction period for the child.

The FTB child rate reduction period for the child will be determined by adding together the number of days in the income year in which the child turned 4 that the individual was both entitled to be paid FTB in respect of the child and received (or their partner received) a social security pension, a social security benefit, a service pension or income support supplement. The total number of days on which the individual meets both of these criteria will then determine the length of the FTB child rate reduction period.

The health check requirements will be specified in a legislative instrument made by the Minister under new subsection 61A(8)).

There will continue to be exemptions from the health check requirements for certain children.

New **paragraph 61A(1)(a)** provides that an individual's FTB child rate in relation to an FTB child is reduced under subclause 7(2) or 26(3) of Schedule 1 if in the income year in which the child turned 4:

- (i) the individual was entitled to be paid FTB in respect of the child; and
- (ii) the individual, or the individual's partner, was receiving a social security pension, a social security benefit, a service pension or income support supplement.

Subsection 3(1) provides a definition to use when determining whether an individual (or their partner) is receiving a social security pension, a social security benefit, a service pension or income support supplement (see the definition of **receiving** in subsection 3(1)).

Section 22 sets out when an individual is an FTB child of another individual.

New **paragraph 61A(1)(b)** then provides that an individual's FTB child rate is reduced if, before the day the child turned 5, the individual was sent a notice by the Secretary informing the individual of the following:

- (i) the requirement for the child to undertake a health check before the day the child turns 5, or before any later day determined by the Secretary under new subsection 61A(5));
- (ii) the fact that the individual's FTB child rate in relation to the child will be reduced if the child does not meet the requirement.

New **paragraph 61A(1)(c)** then provides that an individual's FTB child rate is reduced if the child was an FTB child of the individual on the day the child turned 5. Section 22 sets out when an individual is an FTB child of another individual.

New **paragraph 61A(1)(d)** then provides that there will be a reduction if none of the following applies:



- (i) the FTB child meets the health check requirement before the applicable day (see new subsections 61A(4) and 61A(8));
- (ii) the FTB child is in a class exempted from the health check requirement by a determination under new paragraph 61A(9)(b);
- (iii) the FTB child is in a class that is taken to meet the health check requirement by a determination under new paragraph 61A(9)(c);
- (iv) the Secretary is satisfied that special circumstances exist in relation to the individual or the individual's partner (or both) that make it inappropriate for the individual, and the individual's partner, to arrange for the FTB child to meet the health check requirement.

A note at the end of new subsection 61A(1) refers the reader to new sections 61C (persons still entitled to FTB despite reductions to nil) and 61D (death of an FTB child).

New **subsection 61A(2)** sets out the meaning of ***FTB child rate reduction period*** for the purposes of new section 61A. This new subsection provides that the individual's FTB child rate in relation to the child is reduced for each day in the period (the ***FTB child rate reduction period***):

- (a) beginning on the applicable day (see new subsection 61A(4)); and
- (b) ending after the relevant number of days (see new subsection 61A(3)) (whether or not the individual continues to be entitled to be paid family tax benefit in respect of the child for the whole period).

New **subsection 61A(3)** sets out the meaning of ***relevant number of days*** for the purposes of new section 61A. This new subsection provides that the ***relevant number of days*** is the number of days, in the income year in which the child turned 4, on which:

- (a) the individual was entitled to be paid FTB in respect of the child; and
- (b) the individual, or the individual's partner, received a social security pension, a social security benefit, a service pension or income support supplement.

The 'relevant number of days' is used to determine when the individual's 'FTB child rate reduction period' ends.

New **subsection 61A(4)** provides that for the purposes of new section 61A, the ***applicable day*** is:

- (a) the day the child turns 5; or
- (b) the day after any later day determined by the Secretary under new subsection 61A(5).

The ‘applicable day’ is the day the individual’s ‘FTB child rate reduction period’ begins.

New **subsection 61A(5)** provides that the Secretary may, in writing, determine a later day for the purposes of new section 61A.

New **subsection 61A(6)** provides that for the purposes of new paragraph 61A(4)(b):

- (a) an application for a later day may be made after the child turns 5, but must be made before the child turns 6; and
- (b) the Secretary must not determine a later day unless the Secretary is satisfied that there are special circumstances which prevented the individual, or the individual’s partner (or both), from arranging for the child to undertake the health check before the day the child turned 5; and
- (c) any later day determined by the Secretary must not be after the day the child turns 6.

New **subsection 61A(7)** provides that an application under new subparagraph 61A(1)(d)(iv) must be:

- (a) made before the child turns 5; and
- (b) must be made in the form and manner, contain any information, and be accompanied by any documents, required by the Secretary.

New **subsection 61A(8)** provides that for the purposes of new section 61A, the **health check requirement** for a child is that the child must meet the requirements specified in an instrument under new paragraph 61A(9)(a).

New **subsection 61A(9)** provides that the Minister may, by legislative instrument:

- (a) specify requirements relating to the health of children for the purposes of new subsection 61A(8); or
- (b) determine that children included in a specified class are exempt from the health check requirement; or
- (c) determine that children included in a specified class are taken to meet the health check requirement.

### **New section 61B**

New **section 61B** provides for a reduction to the FTB child rate for a child if the child does not meet the immunisation requirements in section 6.

The FTB child rate for a child is used to calculate an individual's standard rate of FTB Part A under Methods 1 and 2 in the FTB rate calculator in Schedule 1. An individual's standard rate of FTB is the sum of the FTB child rates for each child of the individual.

*The FTB child rate reduction for an individual paid FTB by instalment*

Where the Secretary becomes aware that a child does not meet the immunisation requirements, the Secretary will issue a notice to the individual informing them that they have a 63 day grace period in which they must ensure that the child meets the immunisation requirements.

If the immunisation requirements have not been met by the end of this grace period, the FTB child rate for that child will be reduced during the FTB child rate reduction period.

The FTB child rate reduction period is taken to begin the day the Secretary sent the individual the notice that started the 63 day grace period and ends the day the immunisation requirements are met for the child.

*The FTB child rate reduction for an individual paid FTB for a past period*

Where an individual claims FTB in respect of a child for a past period and the child does not meet the immunisation requirements on the day the claim is determined, the individual's FTB child rate for that child will be reduced by \$737.30.

Section 6 will continue to provide for exemptions from the immunisation requirements in certain circumstances.

New **subsection 61B(1)** provides that an individual's FTB child rate in relation to an FTB child is reduced under subclause 7(2) or (3) or 26(3) or (4) of Schedule 1 if:

- (a) the child is an FTB child of the individual or the individual's partner; and
- (b) the child does not meet the immunisation requirements set out in section 6:
  - (i) for a claim made under the Family Assistance Administration Act for payment of FTB for a past period—on the day the claim is determined; or
  - (ii) for FTB paid to the individual in instalments—before the end of the grace period (see new subsection 61B(4)).

A note at the end of new subsection 61B(1) refers the reader to new sections 61C (persons still entitled to FTB despite reductions to nil) and 61D (death of an FTB child).

New **subsection 61B(2)** provides that if FTB is paid to the individual in instalments, the individual's FTB child rate in relation to the child is reduced for each day in the period (the ***FTB child rate reduction period***):

- (a) beginning on the day specified as the date of the notice given in relation to the child under new subsection 61B(3); and
- (b) ending on the day the child meets the immunisation requirements (whether or not the individual continues to be entitled to be paid FTB in respect of the child for the whole period).

A note at the end of new subsection 61B(2) states that for an individual who claims FTB for a past period, the FTB child rate is reduced as a lump sum (instead of for a day) and refers the reader to new subclauses 7(3) and 26(4) of Schedule 1 (added by **items 7 and 9**).

New **subsection 61B(3)** provides that for the purposes of new subparagraph 61B(1)(b)(ii), if, at any time, the Secretary becomes aware that an FTB child of an individual does not meet the immunisation requirements set out in section 6, the Secretary must give a notice to the individual informing the individual of the following:

- (a) the fact that the child does not meet the immunisation requirements;
- (b) the requirement for the child to meet the immunisation requirements before the end of the grace period;
- (c) the fact that the individual's FTB child rate in relation to the child will be reduced if the child does not meet the requirements before the end of that period.

New **subsection 61B(4)** provides that the *grace period*:

- (a) begins on the day specified as the date of the notice given to the individual in relation to the child; and
- (b) ends 63 days after that day.

### **New section 61C**

New **section 61C** provides that despite section 31 of the Family Assistance Administration Act, the Secretary must not vary a determination so that the individual is not entitled to be paid FTB merely because the individual's rate of FTB is nil as a result of new section 61A or new section 61B.

The effect of this provision is that if an individual's failure to comply with new section 61A or new section 61B results in the individual no longer being eligible for FTB (because their rate of FTB has been reduced to nil) the Secretary must not, under paragraph 31(1)(d) of the Family Assistance Administration Act, vary a determination of entitlement made under that Act such that the individual is not entitled to be paid FTB.

### **New section 61D**

New **section 61D** addresses circumstances in which an FTB child of an individual dies.

New **subsection 61D(1)** provides that new section 61A or 61B (which provide for a reduction to an individual's FTB child rate) does not apply in relation to an FTB child if the FTB child dies.

New **paragraph 61D(1)(a)** provides that new section 61A does not apply to reduce the FTB child rate for a child if the child dies before the child turns 5, or any later day determined by the Secretary under new subsection 61A(5).

New **paragraph 61D(1)(b)** provides that new section 61B does not apply to reduce the FTB child rate for a child if the child dies during the grace period in new subsection 61B(4).

New **paragraph 61D(1)(c)** also provides that section 61A and section 61B will not apply to reduce the FTB child rate for a child if the child dies during the FTB child rate reduction period in relation to the child.

New **subsection 61D(2)** further provides that new sections 61A and 61B do not apply on and from the day the child dies. This makes clear that if a child dies during an FTB child rate reduction period for the child, the FTB child rate reduction period ends starting the day the child dies (not at the beginning of the FTB child rate reduction period).

**Item 6** amends clause 7 of Schedule 1. This amendment is consequential to the amendments made by **item 7**.

**Item 7** adds new subclauses 7(2) and 7(3) at the end of clause 7 of Schedule 1.

Clause 7 of Schedule 1 sets out Method 1 for calculating an individual's standard rate of FTB Part A. The individual's standard rate of FTB is the sum of the FTB child rates for each FTB child of the individual. The individual's standard rate, and the FTB child rates that are added together to determine this standard rate, are annual amounts. These annual amounts go towards determining the individual's annual rate of FTB and this annual rate is then divided by 365 to determine the individual's daily rate for a day.

New **subclause 7(2)** provides for a reduction to an individual's annual FTB child rate during an FTB child rate reduction period if the individual fails to meet the health check or immunisation requirements. The new subclause provides that if either or both section 61A or subparagraph 61B(1)(b)(ii) (see item 5) apply in relation to an individual and an FTB child of the individual, the annual FTB child rate in relation to the child is reduced by \$737.30 for each day in the FTB child rate reduction period (except any day in a past period to which new subclause 7(3) applies).

## Schedule 2 – Family Tax Benefit amendments

This new subclause will operate to reduce the annual FTB child rate for a child by \$737.30 when determining the annual FTB child rate to apply to an individual for days that fall within an FTB rate reduction period. For FTB rate calculations undertaken in respect of these days the applicable annual FTB child rate contained in the table in subclause 7(1) of Schedule 1 will be reduced by \$737.30 and it is this reduced annual FTB child rate that will be used in determining an individual's total annual rate of FTB.

Once all other relevant steps in the rate calculation process have been applied to the individual and the individual's total annual rate of FTB in respect of a particular day has been calculated, this annual rate of FTB is then divided by 365 to produce a daily rate for that day (under section 58 of the Family Assistance Act). A \$737.30 reduction to the individual's annual FTB child rate will result in a reduction to an individual's daily rate of approximately \$2.02.

Where a day in an FTB rate reduction period falls within a past period to which new subclause 7(3) applies, there will be no \$737.30 reduction to the annual FTB child rate for that day under new subclause 7(2). This is because new subclause 7(3) will apply to reduce the annual FTB child rate by \$737.30 for that day.

New **subclause 7(3)** provides for a reduction to the annual FTB child rate for a child where an FTB child of an individual does not meet immunisation requirements. This new subclause applies in relation to past period (i.e. lump sum) claims for FTB. The new subclause provides that the annual FTB child rate in relation to an FTB child of an individual is reduced by \$737.30 if new subparagraph 61B(1)(b)(i) (see item 5) applies in relation to the individual and the child.

This new subclause will operate to reduce the annual FTB child rate for a child by \$737.30 when determining the annual FTB child rate that applies for days occurring within a past period to which a past period claim under the Family Assistance Administration Act relates. For rate calculations undertaken in respect of these days the applicable annual FTB child rate contained in the table in subclause 7(1) of Schedule 1 will be reduced by \$737.30 and it is this reduced FTB child rate that will be used in determining the daily rates for the days that fall within the past period to which the past period claim relates.

For each day that falls within the past period the individual's daily rate will, based on a \$737.30 reduction to their annual FTB child rate, be reduced by \$2.02.

**Item 8** amends subclause 26(1) of Schedule 1. This amendment is consequential to the amendments made by **item 9**.

**Item 9** adds new subclauses 26(3) and 26(4) at the end of clause 26 of Schedule 1.

Clause 26 of Schedule 1 sets out Method 2 for calculating an individual's standard rate of FTB Part A. The individual's standard rate of FTB is the sum of the FTB child rates for each FTB child of the individual. The individual's standard rate, and the FTB child rates that are added together to determine this standard rate, are annual amounts. These annual amounts go towards determining the individual's annual rate of FTB and this annual rate is then divided by 365 to determine the individual's daily rate for a day.

New **subclause 26(3)** provides for a reduction to an individual's annual FTB child rate during an FTB child rate reduction period if the individual fails to meet the health check or immunisation requirements. The new subclause provides that if either or both section 61A or subparagraph 61B(1)(b)(ii) (see item 5) apply in relation to an individual and an FTB child of the individual, the annual FTB child rate in relation to the child is reduced by \$737.30 for each day in the FTB child rate reduction period (except any day in a past period to which new subclause 26(4) applies).

This new subclause will operate to reduce the annual FTB child rate for a child by \$737.30 when determining the annual FTB child rate to apply to an individual for days that fall within an FTB rate reduction period. For FTB rate calculations undertaken in respect of these days the annual FTB child rate contained in subclause 26(2) of Schedule 1 will be reduced by \$737.30 and it is this reduced annual FTB child rate that will be used in determining an individual's total annual rate of FTB.

Once all other relevant steps in the rate calculation process have been applied to the individual and the individual's total annual rate of FTB in respect of a particular day has been calculated, this annual rate of FTB is then divided by 365 to produce a daily rate for that day (under section 58 of the Family Assistance Act). A \$737.30 reduction to the individual's annual FTB child rate will result in a reduction to an individual's daily rate of approximately \$2.02.

Where a day in an FTB rate reduction period falls within a past period to which new subclause 26(4) applies, there will be no \$737.30 reduction to the annual FTB child rate for that day under new subclause 26(3). This is because new subclause 26(4) will apply to reduce the annual FTB child rate by \$737.30 for that day.

New **subclause 26(4)** provides for a reduction to the annual FTB child rate for a child where an FTB child of an individual does not meet immunisation requirements. This new subclause applies in relation to past period (i.e. lump sum) claims for FTB. The new subclause provides that the annual FTB child rate in relation to an FTB child of an individual is reduced by \$737.30 if new subparagraph 61B(1)(b)(i) (see item 5) applies in relation to the individual and the child.

## Schedule 2 – Family Tax Benefit amendments

This new subclause will operate to reduce the annual FTB child rate for a child by \$737.30 when determining the annual FTB child rate that applies for days occurring within a past period to which a past period claim under the Family Assistance Administration Act relates. For rate calculations undertaken in respect of these days the annual FTB child rate contained in subclause 26(2) of Schedule 1 will be reduced by \$737.30 and it is this reduced FTB child rate that will be used in determining the daily rates for the days that fall within the past period to which the past period claim relates.

For each day that falls within the past period the individual's daily rate will, based on a \$737.30 reduction to their annual FTB child rate, be reduced by \$2.02.

**Items 10 to 16** amend clause 2, subclause 3(1) and subclause 3(3) of Schedule 4.

Schedule 4 provides for the indexation or adjustment (as relevant) of specified amounts.

The amendments made by these items operate to apply indexation to the amounts provided for in new subclauses 7(2) and (3) and new subclauses 26(3) and (4) (see items 7 and 9).

Item 16 also amends subclause 3(3) of Schedule 4 to ensure the amounts provided for in new subclauses 7(2) and (3) and new subclauses 26(3) and (4) are also not to be indexed on 1 July 2017 and 1 July 2018. This is consistent with the pause on indexation for the FTB child rate currently provided for in subclause 3(3) of Schedule 4.

### Amendments to the Family Assistance Administration Act

**Items 17 to 21** make various amendments to sections 107, 109D and 109E. These amendments are consequential to the amendments made by **item 5** (which repeals sections 61A and 61B of the Family Assistance Act and substitutes new sections).

**Item 22** is an application provision for the amendments made to the Family Assistance Act and Family Assistance Administration Act by this Part. Item 22 provides that the amendments made to those Acts by this Part only apply in relation to the day (the **commencement day**) item 22 commence and later days.

Item 22 also provides that despite the amendments of those Acts made by this Part, those Acts, as in force before the commencement day, continue to apply in relation to any days that occur before the commencement day.



## STATEMENTS OF COMPATIBILITY WITH HUMAN RIGHTS

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

### **FAMILY ASSISTANCE AND CHILD SUPPORT LEGISLATION AMENDMENT (PROTECTING CHILDREN) BILL 2017**

This Bill 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*.

#### **SCHEDULE 1 – Child support amendments**

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*.

#### **Part 1 – Interim periods**

##### **Overview**

This Part amends provisions in child support and family assistance legislation to extend the current 14-week interim period that may apply before child support and family tax benefit (FTB) is adjusted to reflect a change in care of the child, where the care change is disputed.

From 1 January 2018:

- For court-ordered care arrangements, the interim period will be extended:
  - for up to 52 weeks, if a disputed care change occurs within the first year of the court order, or
  - to 26 weeks, for older court orders if the person with increased care does not take reasonable action to participate in family dispute resolution.
- For care arrangements in a non-enforceable agreement or parenting plan, the interim period will be reduced to four weeks if a disputed care change occurs after the first year of the agreement/plan and the person with increased care takes reasonable action to participate in family dispute resolution.

The changes made in this Part align with Recommendation 8 of the 'Australian Government response to the House of Representatives Standing Committee on Social Policy and Legal Affairs report: From conflict to cooperation – Inquiry into the Child Support Program' ('the Government response'), which was tabled in Parliament on 31 August 2016, in which the Government agreed that the current interim period should be extended in certain circumstances.

##### **Human Rights Implications**

This Part engages the following human rights:

### Rights of parents and children

Article 9 of the *Convention of the Rights of the Child* (CRC) requires countries to ensure that a child is not separated from his or her parents against their will, except when authorities determine in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. This includes determinations about the child's place of residence where the parents are living separately.

This Part strengthens this particular right by reflecting court-ordered care arrangements (where a court has made an objective determination about the child's care, taking into account the child's best interests) for a longer period of time for the purpose of calculating child support and FTB. This removes any perceived financial 'benefit' to the person with increased care, as court-ordered care arrangements will be reflected for at least the first 52 weeks from the day they take effect. This Part also strengthens incentives for parents to comply with court orders and/or resolve the care dispute, by imposing a longer interim period in situations where the person with increased care does not participate in family dispute resolution. The current discretion to decide that an interim period does not apply, such as in cases of family violence, will be retained.

### Right to Social Security

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) recognises the right of every person to benefit from social security. Article 26 of the *Convention on the Rights of the Child* (CRC) recognises the right of a child to benefit from social security, taking into account the resources and circumstances of both the child and persons having responsibility for the maintenance of the child.

This Part amends existing provisions in child support and family assistance legislation that apply to interim periods, by extending the existing interim period. During the interim period, a paying parent must continue making child support payments, and either parent's entitlement to FTB is calculated, in accordance with the existing court order, parenting plan or written agreement. This may result in less or no FTB being paid to the person who actually has care of the child for an extended period, which limits this human right. However, these amendments also include incentives for the person with increased care to attend family dispute resolution to resolve the care dispute, which in many cases will result in a shorter interim period than would otherwise apply. In addition, one of the main objectives of these amendments is to better recognise court-ordered care arrangements, particularly where those arrangements were recently made. Given it is within the control of the person with increased care to resume the previous care arrangement, any limitation on this human right is reasonable, necessary and proportionate to achieve this objective.

### Right to an adequate standard of living

Article 11 of the ICESCR recognises the rights of every person to an adequate standard of living. Article 27 of the CRC recognises the rights of a child to an

adequate standard of living. Parents, or others responsible for a child, have the primary responsibility to secure within their abilities and financial capacity, the conditions of living necessary for a 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.

During the interim period, a paying parent must continue making child support payments in accordance with the existing child support agreement, parenting plan or court order. This may result in the person with increased actual care of the child still receiving child support (or being required to pay child support) during the interim period based on the previously-agreed level of care, which may be considered a limitation on this human right. However, given it is within the control of the person with increased care to resume the previous care arrangement, any limitation on this human right is reasonable, necessary and proportionate to achieve the objective of better recognising recent court-ordered care arrangements and encouraging parents to attend family dispute resolution to resolve care disputes.

### ***Conclusion***

This Part is compatible with human rights. To the extent that it may have limited impacts on a person's right to social security, and a person's right to an adequate standard of living, the limitation is reasonable, proportionate to the policy objective and for legitimate reasons.

## **Part 2 – Amended tax assessments**

### ***Overview***

This Part amends provisions in child support legislation to allow amended tax assessments to be used in child support assessments in a broader range of circumstances.

From 1 January 2018, an amended tax assessment will be taken into account in an administrative assessment of child support if it results in a higher taxable income, or, in the case of a lower taxable income, if certain conditions are met based on the reason for the amended tax assessment and the timeliness of action taken to obtain an amended tax assessment.

The changes made in this Part align with Recommendation 12 of the Government response, in which the Government agreed to consider amendments to allow amended tax assessments to be taken into account in a broader range of circumstances.

### **Right to an adequate standard of living**

As detailed earlier, Article 27 of the CRC recognises the rights of a child to an adequate standard of living, which includes the recovery of maintenance for the child.

This Part broadens existing provisions in child support legislation that apply to amended tax assessments which means child support assessments will more accurately reflect the financial circumstances of both parents in a greater number of cases. These amendments simplify the procedures for amending tax assessments through automation (in many cases), so parents will no longer need to apply for a change of assessment or lodge an estimate of income to recognise their financial circumstances for the purposes of child support, provided they meet the requirements of the new provisions.

### ***Conclusion***

This Part is compatible with human rights as it does not raise any human rights issues.

## **Part 3 – Child support agreements**

### ***Overview***

This Part amends provisions in child support legislation to remove the hurdles for courts to set aside child support agreements made before 1 July 2008, as well as allowing all child support agreements to be set aside without having to go to court if certain circumstances change.

From 1 July 2018 the following changes will apply:

- For a child support agreement made before 1 July 2008 that transitioned as a binding agreement from 1 July 2008, a separate and less restrictive test will apply for a court to set aside the agreement (in comparison to binding agreements made from 1 July 2008).
- For all child support agreements, new provisions will apply to terminate the agreement, or to suspend the effect of the agreement, if the parent who is entitled to child support for a child under the agreement ceases to be an eligible carer of the child.

The changes made in this Part align with Recommendation 12 of the Government response, in which the Government agreed to monitor the effect of the child support legislation and acknowledged that legislative clarification in relation to child support agreements could help to ensure consistent and equitable outcomes for separated families.

### ***Human Rights Implications***

This Part engages the following human rights:

#### **Right to an adequate standard of living**

As detailed earlier, Article 27 of the CRC recognises the rights of a child to an adequate standard of living, which includes the recovery of maintenance for the child.

The amendments in this Part will ensure that if a parent entitled to child support under a child support agreement ceases to be an eligible carer of the child and the other parent is an eligible carer, the agreement will be suspended or terminated so that child support is not paid to the parent who is not an eligible carer. This will avoid the need for parents to apply to a court to set aside a child support agreement where there has been an eligible carer 'role swap'. During a suspension period or after termination of a child support agreement, the child support formula provisions could apply which would more accurately reflect the care arrangements and financial circumstances of both parents.

### ***Conclusion***

This Part is compatible with human rights as it does not raise any human rights issues.

## **Part 4 – Child support overpayments**

### ***Overview***

This Part amends child support legislation to provide greater equity in the collection of child support debts and overpayments, as well as making other consequential amendments.

From 1 July 2018, the following changes will apply:

- The methods to enforce recovery of a child support overpayment from a payee will be expanded to align with the methods for recovering a child support debt from a payer.
- The basis for an overpayment to be recoverable will expand to ensure that all backdated reductions to a child support assessment collected will be recoverable.
- New backdating provisions will provide a fairer basis for retrospectively creating a child support overpayment or underpayment due to a change of circumstances. This will take into account the type of change of circumstances and the timeliness of action to notify of the change of circumstances.

The changes made in this Part align with Recommendation 22 of the Government response, in which the Government agreed to administratively collect child support overpayments in a wider range of circumstances, providing greater equity in the collection of child support debts and overpayments. The Government also agreed that in the collection of overdue child support or child support overpayments, an appropriate balance should apply between collecting amounts in the shortest time possible and ensuring parents are not placed into undue hardship.

### ***Human Rights Implications***

This Part engages the following human rights:

### Right to freedom of movement

Article 12 of the *International Covenant on Civil and Political Rights* (ICCPR) provides the right for everyone to have liberty of movement and to be free to leave any country, including their own country. These rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present Covenant.

This Part seeks to correct the imbalance in which Departure Prohibition Orders (DPOs) currently apply to payer debts, but not to payee overpayments. DPOs will be extended to payees in an active or ended case with a child support overpayment, where the payee has not made satisfactory arrangements to repay the overpayment. Where a payee has the means to repay their debt, they should do so. It is considered that where a payee with a debt, not in an acceptable repayment arrangement but has the means to travel overseas, their travel movements should be restricted to enable them to enter into suitable arrangements to repay their debt. Debtors will continue to be allowed to travel overseas where they have wholly repaid the debt, or made a satisfactory arrangement to repay the debt.

Exceptions in place will allow for travel on humanitarian grounds or where the debtor's travel may be in Australia's best interests, through the issuance of a Departure Authorisation Certificate despite a DPO being in place.

To the extent that this Part limits the right to freedom of movement, this limitation is necessary and proportionate to the aims of ensuring consistency in the recovery of debts between child support payers and payees.

### Right to Social Security

As detailed earlier, Article 9 of the ICESCR and Article 26 of the CRC recognises the right of a person and child to benefit from social security.

Where possible, recovery of payee overpayments will be through deductions from future child support payments or through cash payment arrangements. However, where this is not possible, this Part will allow deductions from social security, veterans' entitlements and family assistance payments to apply to the recovery of payee overpayments. This is consistent with the ability to make deductions from these payments for payer debts. In determining the amount of the deduction, the payee's financial circumstances will be considered to determine an appropriate rate of recovery.

To the extent that this Part limits the right to social security, this limitation is necessary and proportionate to the aims of ensuring consistency in the recovery of debts between child support payers and payees.

***Conclusion***

This Part is compatible with human rights. To the extent that it may limit the freedom of movement of a person, or the right to social security, the limitation is reasonable and proportionate to the policy objective and for legitimate reasons.

## SCHEDULE 2 – Family Tax Benefit amendments

This Bill makes amendments:

- a) to reduce from 1 July 2018 an amount of around \$28 fortnightly from the payment recipients of Family Tax Benefit Part A for each child in their family who does not meet immunisation or health check requirements;
- b) to repeal the current No Jab, No Pay and Healthy Start for School compliance measures; and
- c) to make a technical amendment to the exemption provisions under section 6 of *A New Tax System (Family Assistance) Act 1999*.

### ***Human rights implications – Family Tax Benefit Part A immunisation requirements and health check requirement***

Currently, families who receive Family Tax Benefit (FTB) Part A are subject to the immunisation requirements for a child aged one and over, and a health check requirement if they receive income support in the year their child turns four. Families who fail to meet the immunisation and/or health check requirement for their child are not eligible to receive the FTB Part A end of year supplement (\$737.30 in 2017-18).

This Bill proposes to replace the current FTB Part A immunisation requirement arrangements with a real-time compliance response for families who do not immunise a child on time.

Where an FTB Part A child does not meet the immunisation requirements, the Department of Human Services will notify their family that their fortnightly entitlement will be reduced by around \$28 per fortnight if their child does not receive the appropriate vaccinations. Families who receive FTB Part A by fortnightly instalments will have a 63 day grace period to get their child vaccinated before their rate of FTB Part A is reduced.

Where the child meets the immunisation requirements within the grace period their normal rate will be maintained. However, if they do not meet the immunisation requirement within the grace period, their fortnightly rate will be reduced from the day start of the grace period. On commencement of the measure, the maximum annual reduction is \$737.30, which will be subject to the same indexation that FTB Part A is subject. The first indexation will not occur until 1 July 2019, consistent with the current indexation pause.

Where a family lodges a past period claim for FTB Part A and their child does not meet the immunisation requirements at the date of determination, their child's maximum rate of FTB Part A will be reduced by \$737.30 for that income year.

The new immunisation requirement will now apply to FTB Part A children from two months of age.

This Bill also proposes to replace the current FTB Part A health check requirement arrangements.



From 1 July 2018, where a family does not meet the health check requirement, their fortnightly rate of FTB Part A will be reduced from the child's fifth birthday. The maximum annual reduction that can be applied to a family will be \$737.30 (subject to indexation) for each child that does not meet the health check requirement, however, the family's annual reduction will be equivalent to \$2.02 for every day (or around \$28 per fortnight) in the income year the child turns four that the family was subject to the health check requirement. For example, if a family who did not meet the health check requirement was subject to the health check requirement for 100 days in the relevant income year, the maximum reduction would be \$202.

This Bill ensures that the maximum annual amount a child's rate of FTB Part A can be reduced is \$737.30. Where a family does not meet both the immunisation and health check requirement for a child, their maximum annual reduction is \$737.30. While families will now be subject to a fortnightly reduction, they may now be eligible for the FTB Part A end of year supplement even if their child does not meet the immunisation and/or health check requirement.

This Bill engages the following human rights:

The right to physical and mental health

The FTB Part A immunisation and health check requirements engage article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 12 recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In particular, State Parties shall take steps necessary for 'the reduction of ... infant mortality and for the healthy development of the child' and the 'prevention, treatment and control of epidemic, endemic, occupational and other diseases'. Similarly, article 24 of the Convention of the Rights of the Child (CRC) recognises the right of the child to the enjoyment of the highest attainable standard of health, and measures 'to diminish infant death and child mortality' and to 'combat disease'.

The Australian Government considers that immunisation is an important health measure for children and their families as it is the safest and most effective way to prevent the spread of many diseases. Encouraging vaccination aims to extend the benefit of immunisation within the Australian community.

The FTB Part A health check was introduced to encourage parents and carers receiving an income support payment to organise a health check for their child before the child starts school. Health checks may detect developmental delays and conditions, such as problems affecting hearing and vision, which are problems that make it more difficult for children to learn when they start school. These checks allow for early identification of health issues and intervention strategies before the child starts school.

Under current rules, families have up to twelve months from the end of an entitlement year to meet the immunisation and/or health check requirement. This means a family can meet the immunisation and/or health check requirement up to two years after the child was due to be vaccinated or access a health check. This Bill promotes the right to physical and mental health by introducing new rules for the current immunisation and health check requirements to prompt parents to vaccinate and access a health check for their children at the right age.

#### The right to freedom of thought, conscience and religion

Article 18 of the International Covenant on Civil and Political Rights provides that these freedoms may be subject to limitations as prescribed by law and which are necessary to protect public health or the fundamental rights and freedoms of others. The objection to vaccination can limit the rights of others to physical and mental health. As the most effective method of preventing infectious diseases, vaccination provides a necessary protection of public health.

This Bill does not propose to limit a parent or carer's right to choose not to vaccinate their child or access a health check. This Bill proposes to change the timing of the impact on a family's FTB Part A entitlement if they do not meet these requirements. While families will continue to have the right to decide not to vaccinate their children based on personal or philosophical beliefs, if they are doing so, their decision will not be endorsed by the provision of taxpayer funds in the form of family assistance payments.

These changes will improve the timeliness of the FTB Part A immunisation and health check requirements. Under current rules, families have up to twelve months after an entitlement year to meet the immunisation and/or health check requirement or they cease to be eligible for the FTB Part A end of year supplement. This Bill proposes to introduce a real-time impact on a family's rate of FTB Part A and reduce the maximum rate for a child of around \$28 per fortnight (a maximum amount of \$737.30 per year).

#### The right to social security

Article 9 of the ICESCR recognises the right of everyone to social security, and article 26 of the CRC recognises the right of every child to benefit from social security.

#### *Immunisation requirements*

Under current rules, if a child does not meet the immunisation requirement within twelve months of the end of an entitlement year, their family is not eligible for the FTB Part A end of year supplement for that child.

This Bill introduces changes to ensure families are prompted to immunise their child as soon as their child is overdue to be vaccinated. Where a family vaccinates their child before the end of a 63 grace period, their entitlement to FTB Part A will not be affected. Where a family does not vaccinate their child before the end of the grace period, their FTB Part A will be reduced by around \$28 a fortnight until the child does meet the immunisation requirement.

Where a family claims FTB Part A by past period claim and does not meet the immunisation requirements when their claim is determined, the maximum annual reduction (\$737.30) will apply. This is similar to the current immunisation requirement impact for families. While families will now be subject to a fortnightly reduction, they may now be eligible for the FTB Part A end of year supplement even if their child does not meet the immunisation and/or health check requirement.

### Health Check Requirement

Under current rules, if that child does not meet the health check requirement within twelve months of the end of an entitlement year, their family is not eligible for the FTB Part A end of year supplement for that child.

This Bill proposes new rules, which reduce a family's fortnightly rate of FTB Part A from their child's fifth birthday. The maximum annual reduction that can be applied to a family will be \$737.30 for each child that does not meet the health check requirement, however, the family's annual reduction will be equivalent to \$2.02 for every day (or around \$28 per fortnight) in the income year the child turns four that the family was subject to the health check requirement. For example, if a family who did not meet the health check requirement was subject to the health check requirement for 100 days in the relevant income year, the maximum reduction would be \$202.

It is important to note that where families do not meet both the immunisation and the health check requirement they will still have a maximum annual reduction of \$737.30 for that child.

The limitation to the right to social security is necessary and proportionate to the legitimate aim of promoting the right to physical and mental health. Families affected by this measure will still be eligible to receive fortnightly payments of FTB Part A and the end of year supplement to assist with the costs of raising children.

### **Conclusion**

This Bill is compatible with human rights because it advances the protection of the right to physical health, and, to the extent that it may also limit human rights, those limitations are reasonable, necessary and proportionate.

**[Circulated by the authority of the Minister for Social Services,  
the Hon Christian Porter MP]**