



Family Assistance Legislation Amendment (Participation Requirement) Act 2009

No. 129, 2009

**An Act to amend the law relating to family
assistance, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

1	Short title	1
2	Commencement	2
3	Schedule(s)	2
Schedule 1—FTB activity test		3
Part 1—Amendments		3
<i>A New Tax System (Family Assistance) Act 1999</i>		3
<i>A New Tax System (Family Assistance) (Administration) Act 1999</i>		7
Part 2—Application and transitional		8



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No. 129, 2009

**An Act to amend the law relating to family
assistance, and for related purposes**

[Assented to 10 December 2009]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Family Assistance Legislation
Amendment (Participation Requirement) Act 2009*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	10 December 2009
2. Schedule 1	1 January 2010.	1 January 2010

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—FTB activity test

Part 1—Amendments

A New Tax System (Family Assistance) Act 1999

1 Subsection 3(1)

Insert:

approved course of education or study has the meaning given by subsection 541B(5) of the *Social Security Act 1991* for the purposes of paragraph (1)(c) of that section.

2 Subsection 3(1)

Insert:

exempt from the FTB activity test: an individual is exempt from the FTB activity test in the circumstances mentioned in subsection 17B(2).

3 Subsection 3(1)

Insert:

satisfies the FTB activity test: an individual satisfies the FTB activity test in the circumstances mentioned in subsection 17B(1).

4 After section 17A

Insert:

17B FTB activity test

- (1) An individual *satisfies the FTB activity test* if:
- (a) the individual has completed the final year of secondary school, or an equivalent level of education; or
 - (b) the individual is undertaking full-time study in an approved course of education or study that would, in the Secretary's opinion, assist or allow the individual to complete the final year of secondary school or an equivalent level of education.
- (2) An individual is *exempt from the FTB activity test* if:
-

- (a) there is no locally accessible approved course of education or study (including any such course available by distance education); or
 - (b) where there is such a course:
 - (i) there is no place available on the course for the individual; or
 - (ii) the individual is not qualified to undertake the course; or
 - (iii) the individual lacks capacity to undertake the course because the individual has a physical, psychiatric or intellectual disability or a learning disability such as attention deficit disorder; or
 - (c) in the Secretary's opinion, special circumstances exist that make it unreasonable to require the individual to undertake an approved course of education or study.
- (3) If the Secretary determines that it is appropriate to do so having regard to an individual's circumstances, the Secretary may determine that the normal amount of full-time study for the individual in respect of a course is to be a number of hours per week specified in the determination, averaged over the duration of the period for which the individual is enrolled in the course.
- (4) The Secretary may, by legislative instrument, set guidelines for the exercise of the Secretary's discretion under either or both of the following:
- (a) paragraph (1)(b);
 - (b) paragraph (2)(c).
- (5) In forming an opinion for the purposes of paragraph (1)(b) or (2)(c), the Secretary must have regard to the guidelines.

5 Subsections 22(2) to (5)

Repeal the subsections, substitute:

Individual aged under 16

- (2) An individual is an **FTB child** of the adult if:
- (a) the individual is aged under 16; and
 - (b) the individual is in the adult's care; and

- (c) the individual is an Australian resident, is a special category visa holder residing in Australia or is living with the adult; and
- (d) the circumstances surrounding legal responsibility for the care of the individual are those mentioned in paragraph (5)(a), (b) or (c).

Individual aged 16-17

- (3) An individual is an **FTB child** of the adult if:
 - (a) the individual has turned 16 but is aged under 18; and
 - (b) the individual is in the adult's care; and
 - (c) the individual is an Australian resident, is a special category visa holder residing in Australia or is living with the adult; and
 - (d) the circumstances surrounding legal responsibility for the care of the individual are those mentioned in paragraph (5)(a), (b) or (c); and
 - (e) the individual satisfies or is exempt from the FTB activity test.

Individual aged 18-20

- (4) An individual is an **FTB child** of the adult if:
 - (a) the individual has turned 18 but is aged under 21; and
 - (b) the individual is in the adult's care; and
 - (c) the individual is an Australian resident, is a special category visa holder residing in Australia or is living with the adult; and
 - (d) the individual satisfies or is exempt from the FTB activity test.

Legal responsibility for the individual

- (5) The circumstances surrounding legal responsibility for the care of the individual are:
 - (a) the adult is legally responsible (whether alone or jointly with someone else) for the day-to-day care, welfare and development of the individual; or
 - (b) under a family law order, registered parenting plan or parenting plan in force in relation to the individual, the adult

is someone with whom the individual is supposed to live or spend time; or

- (c) the individual is not in the care of anyone with the legal responsibility for the day-to-day care, welfare and development of the individual.

6 Paragraph 22(6A)(a)

Omit “, (5)”.

7 After paragraph 23(1)(a)

Insert:

- (aa) the circumstances surrounding legal responsibility for the care of the individual are those mentioned in paragraph 22(5)(a) or (b); and

8 Subsection 23(2)

Repeal the subsection, substitute:

When the child remains an FTB child of the adult

- (2) The child is an FTB child of the adult for that part of the qualifying period (see subsection (5)) for which:
 - (a) the child would have been an FTB child of the adult under subsection 22(2) or (3) if the child had not ceased to be in the adult’s care; and
 - (b) the circumstances surrounding legal responsibility for the care of the child are those mentioned in paragraph 22(5)(a) or (b).

9 Subsection 23(3)

Omit “paragraph (1)(a) and subsection (2)”, substitute “paragraphs (1)(a) and (2)(a)”.

10 Paragraph 34(1)(a)

Repeal the paragraph, substitute:

- (a) the individual:
 - (i) is aged under 16; or
 - (ii) has turned 16 but is aged under 21 and satisfies or is exempt from the FTB activity test; or

- (iii) has turned 21 but is aged under 25 and is undertaking full-time study; and

A New Tax System (Family Assistance) (Administration) Act 1999

11 After subsection 29(2A)

Insert:

- (2B) Without limiting subsection (2), if the Secretary considers that the information or document is relevant to whether an individual satisfies or is exempt from the FTB activity test, the Secretary may vary the determination so as to disregard the individual for the purposes of working out whether the claimant is entitled to be paid family tax benefit, and if so the rate at which it is to be paid:
- (a) for any day on which the determination was or will be in force after the end of the last instalment period before the variation takes place; or
 - (b) for any later day on which the determination was or will be in force specified by the Secretary in the variation.

12 Subsection 29(3)

Omit “subsection (2) or (2A)” (wherever occurring), substitute “subsection (2), (2A) or (2B)”.

Part 2—Application and transitional

13 Application

- (1) If a claim for the payment of family tax benefit by instalment is made on or after 1 January 2010, the amendments made by Part 1 of this Schedule apply for the purposes of working out the claimant's entitlement to the payment of family tax benefit by instalment.
- (2) If a claim for the payment of family tax benefit by instalment is made before 1 January 2010, the amendments made by Part 1 of this Schedule apply for the purposes of working out the claimant's entitlement to the payment of family tax benefit by instalment for a day that falls on or after 1 May 2010.
- (3) The amendments made by Part 1 of this Schedule apply to the payment of family tax benefit for a past period to the extent that the period falls on or after 1 January 2010.

14 Obtaining information during the transition period

- (1) If the Secretary considers that information or a document that is in a person's custody or under a person's control may be relevant to whether an individual will satisfy or be exempt from the FTB activity test on 1 May 2010, the Secretary may require the person to give the information or produce the document during the transition period to a specified agency.
- (2) The *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999* apply as if this item were a requirement under Division 1 of Part 6 of the *A New Tax System (Family Assistance) (Administration) Act 1999*.
- (3) The **transition period** is the period beginning at the start of 1 January 2010 and ending at the end of 30 April 2010.

*[Minister's second reading speech made in—
House of Representatives on 16 September 2009
Senate on 23 November 2009]*

(178/09)