





# **Family Assistance Legislation Amendment (More Help for Families— Increased Payments) Act 2004**

**No. 59, 2004**

***An Act to amend the A New Tax System (Family Assistance) Act 1999 and the A New Tax System (Family Assistance) (Administration) Act 1999, and for other purposes***

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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***An Act to amend the A New Tax System (Family Assistance) Act 1999 and the A New Tax System (Family Assistance) (Administration) Act 1999, and for other purposes***

*[Assented to 26 May 2004]*

The Parliament of Australia enacts:

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## 1 Short title

This Act may be cited as the *Family Assistance Legislation Amendment (More Help for Families—Increased Payments) Act 2004*.

## 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.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	26 May 2004
2. Schedule 1	1 July 2004.	1 July 2004
3. Schedule 2, Parts 1 and 2	1 July 2004.	1 July 2004
4. Schedule 2, Part 3	1 July 2006. However, if, because of section 85 of, and Schedule 4 to, the <i>A New Tax System (Family Assistance) Act 1999</i> , subsection 66(1) of that Act has effect before 1 July 2006 as if it referred to an amount more than \$4,000, the provision(s) do not commence at all.  As soon as practicable after 1 July 2006, the Minister must announce by notice in the <i>Gazette</i> whether the provision(s) commenced on 1 July 2006 or not.	

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
5. Schedule 2, Part 4	1 July 2008. However, if: (a) because of section 85 of, and Schedule 4 to, the <i>A New Tax System (Family Assistance) Act 1999</i> , subsection 66(1) of that Act has effect before 1 July 2008 as if it referred to an amount more than \$5,000; or (b) Part 3 of Schedule 2 to this Act does not commence; the provision(s) do not commence at all. As soon as practicable after 1 July 2008, the Minister must announce by notice in the <i>Gazette</i> whether the provision(s) commenced on 1 July 2008 or not.	
6. Schedule 2, Part 5	1 July 2008. However, if: (a) because of section 85 of, and Schedule 4 to, the <i>A New Tax System (Family Assistance) Act 1999</i> , subsection 66(1) of that Act has effect before 1 July 2008 as if it referred to an amount more than \$5,000; or (b) Part 3 of Schedule 2 to this Act commences on 1 July 2006; the provision(s) do not commence at all. As soon as practicable after 1 July 2008, the Minister must announce by notice in the <i>Gazette</i> whether the provision(s) commenced on 1 July 2008 or not.	
7. Schedules 3 and 4	1 July 2004.	1 July 2004
	Note:	This table relates only to the provisions of this Act as originally passed by 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—Amendments relating to FTB Part A supplement**

### **Part 1—Amendments**

#### *A New Tax System (Family Assistance) Act 1999*

##### **1 Clause 3 of Schedule 1 (after paragraph (c) of step 1 of the method statement)**

Insert:

(ca) the individual's FTB Part A supplement under Division 2A of Part 5 (clause 38A);
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##### **2 Clause 25 of Schedule 1 (after paragraph (c) of step 1 of the method statement)**

Insert:

(d) the individual's FTB Part A supplement under Division 2A of Part 5 (clause 38A).
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##### **3 After Division 2 of Part 5 of Schedule 1**

Insert:

### **Division 2A—FTB Part A supplement**

#### **38A Rate of FTB Part A supplement**

- (1) The amount of the FTB Part A supplement to be added in working out an individual's maximum rate under clause 3 or 25 is:
  - (a) if the individual has one FTB child—the applicable supplement amount for that child; or
  - (b) if the individual has 2 or more FTB children—the sum of the applicable supplement amounts for each of those children.
- (2) For the purposes of subclause (1), the *applicable supplement amount* for an FTB child of the individual is:

- (a) if the Secretary has determined under subsection 59(1) the percentage (the *specified percentage*) that is to be the individual's percentage of family tax benefit for the FTB child—the specified percentage of the FTB gross supplement amount; or
  - (b) in any other case—the FTB gross supplement amount.
- (3) For the purposes of subclause (2), the *FTB gross supplement amount* is \$600.
- (4) To avoid doubt, when the FTB gross supplement amount is indexed on a 1 July under Part 2 of Schedule 4, the amount, as it stood before that indexation, continues to apply in working out an individual's maximum rate under clause 3 or 25 for the income year ending just before that 1 July.

**4 Clause 2 of Schedule 4 (after table item 8)**

Insert:

8A	FTB gross supplement amount for family tax benefit (Part A)	FTB gross supplement amount (A)	[Schedule 1—subclause 38A(3)]
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**5 Subclause 3(1) of Schedule 4 (after table item 8)**

Insert:

8A	FTB gross supplement amount (A)	1 July	December	highest December quarter before reference quarter (but not earlier than December quarter 2002)	\$3.65
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**6 Subclause 7(1) of Schedule 4 (formula)**

Omit the formula, substitute:

$$\left[ \text{CPC rate} \times 16.6\% \right] - \text{FTB gross supplement amount}$$

**7 Subclause 7(3) of Schedule 4 (formula)**

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Omit the formula, substitute:

$$\left[ \text{CPC rate} \times 21.6\% \right] - \text{FTB gross supplement amount}$$

## **8 At the end of clause 7 of Schedule 4**

Add:

- (6) In this clause:

*FTB gross supplement amount* has the meaning given by subclause 38A(3) of Schedule 1.

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

## **9 At the end of Division 1 of Part 3**

Add:

### **Subdivision D—FTB reconciliation conditions**

#### **32A FTB Part A supplement to be disregarded unless and until individual has satisfied the FTB reconciliation conditions**

- (1) This section applies to a decision of the Secretary to make or vary a section 16 or 17 determination if, as a result of the decision, an individual (the *first individual*) is entitled to be paid family tax benefit at a particular rate in respect of a period (the *same-rate benefit period*) that consists of, or is included in, a particular income year (the *relevant income year*).
- (2) In making or varying the determination, the Secretary must disregard the following provisions:
  - (a) paragraph (ca) of step 1 of the method statement in clause 3 of Schedule 1 to the Family Assistance Act;
  - (b) paragraph (d) of step 1 of the method statement in clause 25 of Schedule 1 to the Family Assistance Act;
  - (c) subclause 38A(1) of Schedule 1 to the Family Assistance Act;

unless and until:

- (d) if the same-rate benefit period to which the decision relates is the only same-rate benefit period for the first individual for the relevant income year—the first individual has satisfied the FTB reconciliation conditions for the same-rate benefit period; or
- (e) if the same-rate benefit period to which the decision relates is one of 2 or more same-rate benefit periods for the first individual for the relevant income year—the first individual has satisfied the FTB reconciliation conditions for each of those same-rate benefit periods.

Note 1: If those provisions are disregarded, they will be taken into account when the determination or variation is reviewed under section 105—see section 105A.

Note 2: To work out when the first individual has satisfied the FTB reconciliation conditions, see section 32B.

### **32B When FTB reconciliation conditions are satisfied**

For the purposes of this Act, the first individual satisfies the FTB reconciliation conditions for a same-rate benefit period:

- (a) if only one of sections 32C to 32Q applies to the first individual for the same-rate benefit period—at the relevant reconciliation time; or
- (b) if 2 or more of sections 32C to 32Q apply to the first individual for the same-rate benefit period—at whichever of the relevant reconciliation times is the latest.

### **32C Relevant reconciliation time—member of a couple, income tax return lodged within 2 years**

- (1) This section applies to the first individual for a same-rate benefit period if:
  - (a) both:
    - (i) the first individual was a member of a couple throughout the same-rate benefit period; and
    - (ii) the first individual continues to be a member of the couple until the end of the second income year following the relevant income year; and
  - (b) the first individual or the other member of the couple is or was required to lodge an income tax return for the relevant income year.

- (2) If only one member of the couple was required to lodge an income tax return for the relevant income year, the relevant reconciliation time is the time when an assessment is made under the *Income Tax Assessment Act 1936* of the member's taxable income for the relevant income year, so long as the member's income tax return for the relevant income year was lodged before the end of the second income year following the relevant income year.
- (3) If:
- (a) both members of the couple were required to lodge an income tax return for the relevant income year; and
  - (b) both members of the couple lodged an income tax return for the relevant income year before the end of the second income year following the relevant income year;
- the relevant reconciliation time is whichever is the later of the following:
- (c) the time when an assessment is made under the *Income Tax Assessment Act 1936* of the first individual's taxable income for the relevant income year;
  - (d) the time when an assessment is made under the *Income Tax Assessment Act 1936* of the other member's taxable income for the relevant income year.

**32D Relevant reconciliation time—individual not member of a couple, income tax return lodged within 2 years**

- (1) This section applies to the first individual for a same-rate benefit period if:
- (a) the first individual was not a member of a couple at any time during the same-rate benefit period; and
  - (b) the first individual is or was required to lodge an income tax return for the relevant income year; and
  - (c) clause 17 of Schedule 1 to the Family Assistance Act did not apply to the first individual at any time during the same-rate benefit period.
- (2) The relevant reconciliation time is the time when an assessment is made under the *Income Tax Assessment Act 1936* of the first individual's taxable income for the relevant income year, so long as the first individual's income tax return for the relevant income

year was lodged before the end of the second income year following the relevant income year.

**32E Relevant reconciliation time—couple separates before the end of the relevant income year, individual lodges income tax return**

- (1) This section applies to the first individual for a same-rate benefit period if:
  - (a) the first individual was a member of a couple throughout the same-rate benefit period; and
  - (b) the first individual is not a member of the couple just before the end of the relevant income year; and
  - (c) the first individual is or was required to lodge an income tax return for the relevant income year.
- (2) The relevant reconciliation time is the time when an assessment is made under the *Income Tax Assessment Act 1936* of the first individual's taxable income for the relevant income year, so long as the first individual's income tax return for the relevant income year was lodged before the end of the second income year following the relevant income year.

**32F Relevant reconciliation time—couple separates after the end of the relevant income year, at least one member of the couple lodges income tax return**

- (1) This section applies to the first individual for a same-rate benefit period if:
  - (a) the first individual was a member of a couple throughout the same-rate benefit period; and
  - (b) the first individual ceased to be a member of the couple during the period:
    - (i) beginning at the start of the next income year; and
    - (ii) ending at the end of the designated date in the next income year; and
  - (c) the first individual or the other member of the couple is or was required to lodge an income tax return for the relevant income year; and

- (d) at least one of the members of the couple lodged an income tax return for the relevant income year before the end of the designated date in the next income year.
- (2) If both members of the couple lodged an income tax return for the relevant income year before the end of the designated date in the next income year, the relevant reconciliation time is whichever is the later of the following:
- (a) the time when an assessment is made under the *Income Tax Assessment Act 1936* of the first individual's taxable income for the relevant income year;
  - (b) the time when an assessment is made under the *Income Tax Assessment Act 1936* of the other member's taxable income for the relevant income year.
- (3) If:
- (a) the first individual lodged an income tax return for the relevant income year before the end of the designated date in the next income year; and
  - (b) the other member of the couple was not required to lodge an income tax return for the relevant income year;
- the relevant reconciliation time is the time when an assessment is made under the *Income Tax Assessment Act 1936* of the first individual's taxable income for the relevant income year.
- (4) If:
- (a) the first individual lodged an income tax return for the relevant income year before the end of the designated date in the next income year; and
  - (b) the other member of the couple is or was required to lodge an income tax return for the relevant income year, but did not lodge an income tax return for the relevant income year before the end of the designated date in the next income year;
- the relevant reconciliation time is the end of the designated date in the next income year.
- (5) If:
- (a) the other member of the couple lodged an income tax return for the relevant income year before the end of the designated date in the next income year; and

- (b) the first individual was not required to lodge an income tax return for the relevant income year;

the relevant reconciliation time is the time when an assessment is made under the *Income Tax Assessment Act 1936* of the other member's taxable income for the relevant income year.

- (6) If:

- (a) the other member of the couple lodged an income tax return for the relevant income year before the end of the designated date in the next income year; and

- (b) the first individual is or was required to lodge an income tax return for the relevant income year, but did not lodge an income tax return for the relevant income year before the end of the designated date in the next income year;

the relevant reconciliation time is the time when an assessment is made under the *Income Tax Assessment Act 1936* of the first individual's taxable income for the relevant income year, so long as the first individual's income tax return for the relevant income year was lodged before the end of the second income year following the relevant income year.

Note: For *designated date*, see section 32R.

**32G Relevant reconciliation time—couple separates after the end of the relevant income year, neither have lodged a tax return by the end of the designated date**

- (1) This section applies to the first individual for a same-rate benefit period if:

- (a) the first individual was a member of a couple throughout the same-rate benefit period; and

- (b) the first individual ceased to be a member of the couple during the period:

- (i) beginning at the start of the next income year; and
- (ii) ending at the end of the designated date in the next income year; and

- (c) the first individual or the other member of the couple is or was required to lodge an income tax return for the relevant income year; and

- (d) neither the first individual, nor the other member of the couple, have lodged an income tax return for the relevant

income year at a time before the end of the designated date in the next income year.

- (2) The relevant reconciliation time is the time when an assessment is made under the *Income Tax Assessment Act 1936* of the first individual's taxable income for the relevant income year, so long as the first individual's income tax return for the relevant income year was lodged before the end of the second income year following the relevant income year.

Note: For *designated date*, see section 32R.

### **32H Relevant reconciliation time—couple separates after the end of the designated date**

- (1) This section applies to the first individual for a same-rate benefit period if:
- (a) the first individual was a member of a couple throughout the same-rate benefit period; and
  - (b) the first individual ceased to be a member of the couple during the period:
    - (i) beginning just after the designated date in the next income year; and
    - (ii) ending at the end of the second income year after the relevant income year; and
  - (c) the first individual is or was required to lodge an income tax return for the relevant income year.
- (2) If the first individual ceased to be a member of the couple before the time when an assessment is made under the *Income Tax Assessment Act 1936* of the first individual's taxable income for the relevant income year, the relevant reconciliation time is the time when the assessment is made, so long as the first individual's income tax return for the relevant income year was lodged before the end of the second income year following the relevant income year.
- (3) If the first individual ceased to be a member of the couple after the time when an assessment is made under the *Income Tax Assessment Act 1936* of the first individual's taxable income for the relevant income year, the relevant reconciliation time is the time when the first individual ceased to be a member of the couple.

Note: For *designated date*, see section 32R.

**32J Relevant reconciliation time—individual not required to lodge an income tax return**

- (1) This section applies to the first individual for a same-rate benefit period if:
  - (a) the first individual; or
  - (b) any other individual (other than an FTB child of the first individual) whose adjusted taxable income is relevant in working out the first individual's entitlement to, or rate of, family tax benefit for the same-rate benefit period;is not required to lodge an income tax return for the relevant income year.
- (2) The relevant reconciliation time is whichever is the earlier of the following times:
  - (a) the time after the end of the relevant income year when the first individual notifies the Secretary of the amount of the first individual's adjusted taxable income for the relevant income year;
  - (b) the time after the end of the relevant income year when the Secretary becomes satisfied that the first individual's adjusted taxable income for the relevant income year can be worked out without receiving a notification from the first individual.

**32K Relevant reconciliation time—child aged 5 or more and less than 16**

- (1) This section applies to the first individual for a same-rate benefit period if the following conditions are satisfied in relation to another individual:
  - (a) the other individual is aged 5 or more and less than 16;
  - (b) the other individual is not undertaking full-time study or primary education;
  - (c) before the end of the relevant income year, the first individual gives the Secretary an estimate of the other individual's adjusted taxable income for the relevant income year;

- (d) assuming that the other individual had adjusted taxable income for the relevant income year that is less than the cut-out amount (as defined by subsection 22A(2) of the Family Assistance Act), the other individual would be an FTB child of the first individual.
- (2) The relevant reconciliation time is whichever is the earlier of the following times:
    - (a) the time after the end of the relevant income year when the first individual notifies the Secretary of the amount of the other individual's adjusted taxable income for the relevant income year;
    - (b) the time after the end of the relevant income year when the Secretary becomes satisfied that the amount of the other individual's adjusted taxable income for the relevant income year can be worked out without receiving a notification from the first individual.
  - (3) For the purposes of this section, the question whether the other individual is undertaking primary education is to be determined in the same way as that question is determined under section 22A of the Family Assistance Act.

### **32L Relevant reconciliation time—child aged 16 or more**

- (1) This section applies to the first individual for a same-rate benefit period if the following conditions are satisfied in relation to another individual:
  - (a) the other individual is aged 16 or more;
  - (b) before the end of the relevant income year, the first individual gives the Secretary an estimate of the other individual's adjusted taxable income for the relevant income year;
  - (c) assuming that the other individual had adjusted taxable income for the relevant income year that is less than the cut-out amount (as defined by subsection 22A(2) of the Family Assistance Act), the other individual would be an FTB child of the first individual.
- (2) The relevant reconciliation time is whichever is the earlier of the following times:

- (a) the time after the end of the relevant income year when the first individual notifies the Secretary of the amount of the other individual's adjusted taxable income for the relevant income year;
- (b) the time after the end of the relevant income year when the Secretary becomes satisfied that the amount of the other individual's adjusted taxable income for the relevant income year can be worked out without receiving a notification from the first individual.

**32M Relevant reconciliation time—target foreign income, tax free pension/benefit or child maintenance expenditure**

- (1) This section applies to the first individual for a same-rate benefit period if any of the following were taken into account in working out the first individual's adjusted taxable income for the relevant income year:
  - (a) the first individual's target foreign income for the relevant income year (as defined by clause 5 of Schedule 3 to the Family Assistance Act);
  - (b) the first individual's tax free pension or benefit for the relevant income year (as defined by clause 7 of Schedule 3 to the Family Assistance Act);
  - (c) the first individual's child maintenance expenditure for the relevant income year (as defined by clause 8 of Schedule 3 to the Family Assistance Act);
  - (d) another individual's target foreign income for the relevant income year (as defined by clause 5 of Schedule 3 to the Family Assistance Act);
  - (e) another individual's tax free pension or benefit for the relevant income year (as defined by clause 7 of Schedule 3 to the Family Assistance Act);
  - (f) another individual's child maintenance expenditure for the relevant income year (as defined by clause 8 of Schedule 3 to the Family Assistance Act).
- (2) The relevant reconciliation time is whichever is the earlier of the following times:
  - (a) the time after the end of the relevant income year when the first individual notifies the Secretary of the amount of the

first individual's adjusted taxable income for the relevant income year;

- (b) the time after the end of the relevant income year when the Secretary becomes satisfied that the first individual's adjusted taxable income for the relevant income year can be worked out without receiving a notification from the first individual.

**32N Relevant reconciliation time—individual has maintenance income**

- (1) This section applies to the first individual for a same-rate benefit period if:
  - (a) the first individual has an annualised amount of maintenance income (as defined by Division 5 of Part 2 of Schedule 1 to the Family Assistance Act) for the relevant income year; and
  - (b) clause 19B of Schedule 1 to the Family Assistance Act did not apply to the first individual at any time during the same-rate benefit period.
- (2) The relevant reconciliation time is whichever is the earlier of the following times:
  - (a) the time after the end of the relevant income year when the first individual notifies the Secretary of information that is sufficient to work out the first individual's annualised amount of maintenance income for the relevant income year;
  - (b) the time after the end of the relevant income year when the Secretary becomes satisfied that the first individual's annualised amount of maintenance income for the relevant income year can be worked out without receiving a notification from the first individual.

**32P Relevant reconciliation time—individual not member of a couple, no maintenance income etc.**

- (1) This section applies to the first individual for a same-rate benefit period if:
  - (a) the first individual was not a member of a couple at any time during the same-rate benefit period; and

- (b) clause 17 of Schedule 1 to the Family Assistance Act applied to the first individual throughout the same-rate benefit period; and
  - (c) either:
    - (i) the first individual did not have an annualised amount of maintenance income (as defined by Division 5 of Part 2 of Schedule 1 to the Family Assistance Act) for the relevant income year; or
    - (ii) clause 19B of Schedule 1 to the Family Assistance Act applied to the first individual throughout the same-rate benefit period; and
  - (d) the first individual does not have an FTB child whose adjusted taxable income is relevant in working out the first individual's entitlement to, or rate of, family tax benefit for the same-rate benefit period.
- (2) The relevant reconciliation time is the end of the relevant income year.

**32Q Relevant reconciliation time—individual covered by determination made by the Secretary**

- (1) The Secretary may, by writing, determine that:
  - (a) this section applies to a specified class of individuals for a same-rate benefit period in specified circumstances; and
  - (b) the relevant reconciliation time applicable to that class for the same-rate benefit period is the time ascertained in accordance with the determination.
- (2) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**32R Designated date**

- (1) The Secretary may, by writing, determine that a specified date is the *designated date* for the purposes of this Subdivision.
- (2) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) In subsection (1):

*date* means a date that recurs each income year.

## **10 After section 105**

Insert:

### **105A Review of determination or variation—taking account of FTB Part A supplement**

- (1) This section applies to a decision of the Secretary to make or vary a section 16 or 17 determination if, as a result of the decision, an individual (the *first individual*) is entitled to be paid family tax benefit at a particular rate in respect of a period (the *same-rate benefit period*) that consists of, or is included in, a particular income year (the *relevant income year*).
  - (2) If:
    - (a) in making or varying the determination, the Secretary disregarded one or more of the following provisions:
      - (i) paragraph (ca) of step 1 of the method statement in clause 3 of Schedule 1 to the Family Assistance Act;
      - (ii) paragraph (d) of step 1 of the method statement in clause 25 of Schedule 1 to the Family Assistance Act;
      - (iii) subclause 38A(1) of Schedule 1 to the Family Assistance Act; and
    - (b) if section 32A had not been enacted, the Secretary would have been required to take account of one or more of the provisions mentioned in paragraph (a); and
    - (c) either:
      - (i) if the same-rate benefit period to which the decision relates is the only same-rate benefit period for the first individual for the relevant income year—the first individual satisfies the FTB reconciliation conditions for the same-rate benefit period; or
      - (ii) if the same-rate benefit period to which the decision relates is one of 2 or more same-rate benefit periods for the first individual for the relevant income year—the first individual satisfies the FTB reconciliation conditions for each of those same-rate benefit periods;
- then:

- (d) for the purposes of subsection 105(1), the Secretary is taken to be satisfied that there is sufficient reason to review the determination or variation; and
- (e) the Secretary must exercise the power conferred by subsection 105(1) to review the determination or variation; and
- (f) the review must take account of whichever of the provisions mentioned in paragraph (a) are relevant.

Note: To work out when the first individual has satisfied the FTB reconciliation conditions, see section 32B.

- (3) Paragraph (2)(f) does not limit the scope of the review.

## **Part 2—Application provisions**

### **11 Application of amendments**

- (1) The amendments made by items 1, 2, 3, 6, 7, 8, 9 and 10 apply in relation to family tax benefit for the 2003-2004 income year or a later income year.
- (2) The amendments made by items 4 and 5 apply in relation to family tax benefit for the 2004-2005 income year or a later income year.

## **Schedule 2—Amendments relating to maternity payment and maternity immunisation allowance**

### **Part 1—Maternity payment amendments commencing on 1 July 2004**

#### **Division 1—Main amendments**

#### *A New Tax System (Family Assistance) Act 1999*

##### **1 Division 2 of Part 3**

Repeal the Division, substitute:

#### **Division 2—Eligibility for maternity payment**

##### **Subdivision A—Eligibility of individuals for maternity payment in normal circumstances**

##### **36 When an individual is eligible for maternity payment in normal circumstances**

- (1) An individual is eligible for maternity payment in respect of a child in any of the 4 cases set out in this section.

###### *Parent of child*

- (2) First, an individual is eligible for maternity payment in respect of a child if:
- (a) the individual is a parent of the child; and
  - (b) the individual either:
    - (i) is eligible for family tax benefit in respect of the child at any time within the period of 13 weeks starting on the day of the child's birth; or
    - (ii) would be so eligible except that the individual's rate of family tax benefit, worked out under Division 1 of Part 4, is nil.
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*Child entrusted to care of individual*

- (3) Second, an individual is eligible for maternity payment in respect of a child if:
- (a) the individual is not a parent of the child; and
  - (b) the child is entrusted to the care of the individual or the individual's partner within the period of 13 weeks starting on the day of the child's birth; and
  - (c) the child continues, or is likely to continue, in that care for not less than 13 weeks; and
  - (d) the individual either:
    - (i) is eligible for family tax benefit in respect of the child at any time within the period of 13 weeks starting on the day of the child's birth; or
    - (ii) would be so eligible except that the individual's rate of family tax benefit, worked out under Division 1 of Part 4, is nil.

*Stillborn child*

- (4) Third, an individual is eligible for maternity payment in respect of a child if:
- (a) the child is a stillborn child; and
  - (b) either:
    - (i) the individual would have been eligible for family tax benefit in respect of the child, at any time within the period of 13 weeks starting on the day of the child's delivery, assuming the child had not been a stillborn child; or
    - (ii) the individual would have been so eligible on the assumption described in subparagraph (i) except that the individual's rate of family tax benefit, worked out under Division 1 of Part 4, is nil.

*Adoption*

- (5) Fourth, an individual is eligible for maternity payment in respect of a child if:
- (a) as part of the process for the adoption of the child by the individual, the child is entrusted to the care of the individual by an authorised party; and
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- (b) the child is not more than 26 weeks of age at the time the child is entrusted to the care of the individual; and
- (c) the individual either:
  - (i) is eligible for family tax benefit in respect of the child at any time within the period of 13 weeks starting on the day the child is entrusted to the care of the individual; or
  - (ii) would be so eligible except that the individual's rate of family tax benefit, worked out under Division 1 of Part 4, is nil.

**37 Generally only one individual eligible for maternity payment in respect of a child**

- (1) Only one individual is eligible for maternity payment in respect of a child.
- (2) If 2 or more individuals would otherwise be eligible for maternity payment in respect of the same child, the individual who is eligible is the one determined by the Secretary to be eligible.
- (3) However, if the Secretary is satisfied that it is reasonable that 2 or more of the individuals should be eligible for maternity payment:
  - (a) each individual who is determined by the Secretary to be eligible is eligible; and
  - (b) the Secretary must determine the percentage that is to be each eligible individual's percentage of maternity payment in respect of the child.
- (4) If the Secretary determines that an individual who is a member of a couple is eligible for maternity payment in respect of a child, the Secretary must not determine that the partner of the individual is eligible for maternity payment in respect of that child.

**Subdivision B—Eligibility of individuals for maternity payment where death occurs**

**38 What happens if an individual eligible for maternity payment dies**

If:

- (a) an individual is eligible for maternity payment (the *subject payment*) in respect of a child; and
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- (b) the individual dies; and
- (c) before the individual died, either:
  - (i) none of the subject payment had been paid to the individual (whether or not a claim had been made under Part 3 of the *A New Tax System (Family Assistance) (Administration) Act 1999*); or
  - (ii) one or more amounts of the subject payment totalling less than the whole of the subject payment had been paid to the individual under subsection 47(2) of that Act; and
- (d) another individual makes a claim under that Part for payment of maternity payment because of the death of the first-mentioned individual, stating that he or she wishes to become eligible for the subject payment; and
- (e) the claim is made:
  - (i) within 26 weeks after the death; or
  - (ii) within a further period allowed by the Secretary in special circumstances; and
- (f) the Secretary considers that the other individual ought to be eligible for the subject payment;

the other individual is eligible for the subject payment to the extent to which it was not paid to the first-mentioned individual. No-one else is, or can become, eligible for or entitled to be paid that payment.

## **2 Division 2 of Part 4**

Repeal the Division, substitute:

### **Division 2—Maternity payment**

#### **66 Amount of maternity payment**

- (1) The amount of maternity payment in respect of a child is \$3,000.
- (2) However, if, because of determinations by the Secretary under subsection 37(3), 2 or more individuals are eligible for maternity payment in respect of the same child, each individual is eligible only for the individual's percentage of maternity payment determined under that subsection.

### **3 Application of amendments made by this Division**

The amendments made by this Division apply in relation to:

- (a) children born or delivered on or after 1 July 2004; and
- (b) children born before 1 July 2004 who are, as part of the process for the adoption of the children by individuals, entrusted to the care of the individuals at times on or after 1 July 2004 when the children are not more than 26 weeks of age.

## **Division 2—Related amendments**

### ***A New Tax System (Family Assistance) Act 1999***

#### **4 Subsection 3(1) (paragraph (b) of the definition of *family assistance*)**

Omit “maternity allowance”, substitute “maternity payment”.

#### **5 Subsection 3(1) (definition of *maternity allowance*)**

Repeal the definition.

#### **6 Subsection 3(1)**

Insert:

*maternity payment* means the payment for which an individual is eligible under Division 2 of Part 3.

#### **7 Subsection 39(3)**

Omit “maternity allowance”, substitute “maternity payment”.

#### **8 Application of amendment of subsection 39(3)**

The amendment of subsection 39(3) of the *A New Tax System (Family Assistance) Act 1999* made by this Division applies in relation to stillborn children delivered on or after 1 July 2004.

#### **9 At the end of section 85**

Add:

- (2) Schedule 4 also provides for the indexation of amounts of maternity payment and maternity immunisation allowance.
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Note: The heading to section 85 is altered by omitting “used in rate calculations”.

### 10 Clause 2 of Schedule 4 (after table item 17)

Insert:

17A	Maternity payment	MAT	[subsection 66(1)]
17B	Maternity immunisation allowance	MIA	[section 67]

### 11 Subclause 3(1) of Schedule 4 (after table item 17)

Insert:

17A	MAT	(a) 20 March	(a) December	highest June or December quarter before reference quarter (but not earlier than December quarter 2003)	\$1.00
		(b) 20 September	(b) June		
17B	MIA	(a) 20 March	(a) December	highest June or December quarter before reference quarter (but not earlier than December quarter 2003)	\$0.10
		(b) 20 September	(b) June		

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

### 12 Subsection 3(1) (paragraph (c) of the definition of *TFN claim person*)

Omit “maternity allowance”, substitute “maternity payment”.

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**13 Subsection 3(1) (paragraph (c) of the definition of *TFN substitution person*)**

Omit “maternity allowance”, substitute “maternity payment”.

**14 Saving provision for claims for maternity allowance**

- (1) Despite the amendments of section 3 of the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Division, that Act applies in relation to claims for maternity allowance as if the amendments had not been made.
- (2) It does not matter whether the claims were or are made before, on or after the commencement of this Division.

**15 Division 3 of Part 3 (heading)**

Repeal the heading, substitute:

**Division 3—Maternity payment and maternity immunisation allowance**

**16 Sections 36, 38, 39, 41 and 42**

Omit “maternity allowance” (wherever occurring), substitute “maternity payment”.

Note 1: The headings to sections 38A and 38B are altered by omitting “**maternity allowance**” and substituting “**maternity payment**”.

Note 2: The headings to subsections 39(2) and 41(3) are altered by omitting “*maternity allowance*” and substituting “*maternity payment*”.

**17 Section 42**

Omit “allowance” (last occurring), substitute “maternity payment or maternity immunisation allowance and must determine the amount of the maternity payment or maternity immunisation allowance that the claimant is entitled to be paid”.

**18 Section 43**

Omit “maternity allowance” (wherever occurring), substitute “maternity payment”.

**19 Section 43**

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Omit “allowance” (last occurring), substitute “maternity payment or maternity immunisation allowance and must determine the amount of the maternity payment or maternity immunisation allowance that the claimant is entitled to be paid”.

**20 Section 44**

Omit “maternity allowance”, substitute “maternity payment”.

**21 Paragraph 46(1)(a)**

Omit “maternity allowance”, substitute “maternity payment”.

**22 Paragraph 46(1)(b)**

Omit “allowance”, substitute “maternity payment or maternity immunisation allowance”.

**23 Section 47**

Repeal the section, substitute:

**47 Payment of maternity payment or maternity immunisation allowance**

- (1) If the claimant is entitled to be paid maternity payment or maternity immunisation allowance, the Secretary must pay it to the claimant, at such time as the Secretary considers appropriate and to the credit of a bank account nominated and maintained by the claimant.

*Payment of maternity payment by instalment*

- (2) However, if:
- (a) the claimant is entitled to be paid maternity payment in respect of a child; and
  - (b) at a time before the claimant is paid any of the payment, the Secretary is satisfied that it is appropriate to do so;
- the Secretary must, after each of the first 6 instalment periods ending after that time, pay to the claimant  $\frac{1}{6}$  of the amount of maternity payment that the claimant is entitled to be paid. The Secretary must pay it at such time as the Secretary considers appropriate and to the credit of a bank account nominated and maintained by the claimant.
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(3) In subsection (2):

*instalment period* means, subject to subsection (4):

- (a) the period of 14 days beginning on such day as the Secretary considers appropriate in relation to the claimant, or class of claimants in which the claimant is included; and
  - (b) each successive period of 14 days.
- (4) The Secretary may change the day on which successive instalment periods are to begin in relation to a claimant or class of claimants. If the Secretary does so, the last instalment period before the first day on which the new instalment periods are to begin is shortened so that it ends immediately before that day.

*Alternative payment arrangements*

- (5) The Secretary may direct that the whole or a part of an amount which is to be paid for the purposes of this section is to be paid in a different way from that provided for by subsection (1) or (2). If the Secretary gives the direction, the amount is to be paid in accordance with the direction (despite those subsections).
- (6) If the Secretary is satisfied that an amount that would, apart from this subsection, be paid under subsection (2) on a particular day cannot reasonably be paid on that day, the Secretary may direct that the amount be paid on an earlier day.

*Rounding of payments*

- (7) If an amount to be paid under this section is not a whole number of cents, it must be rounded to the nearest cent (rounding 0.5 cents upwards).

*Relationship of this section with other provisions*

- (8) This section is subject to Part 4, Division 3 of Part 8B and sections 225 and 226.

## **24 Section 47A**

Omit “maternity allowance” (wherever occurring), substitute “maternity payment”.

## **25 Saving provision for maternity allowance claims etc.**

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- (1) Despite the amendments of Division 3 of Part 3 of the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Division, that Division applies in relation to the following as if the amendments had not been made:
- (a) claims for maternity allowance;
  - (b) determinations of claims for maternity allowance;
  - (c) payments of maternity allowance.
- (2) It does not matter whether the claims were or are made before, on or after the commencement of this Division.

## **26 Paragraph 66(1)(c)**

Repeal the paragraph, substitute:

- (c) maternity payment;

## **27 Saving provision for maternity allowance payments**

Despite the amendment of section 66 of the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Division, that section applies to a payment of maternity allowance made before, on or after the commencement of this Division as if the amendment had not been made.

## **28 Paragraph 71(1)(a)**

Omit “maternity allowance”, substitute “maternity payment”.

## **29 Saving provision for maternity allowance payments**

Despite the amendment of section 71 of the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Division, that section applies to an amount paid by way of maternity allowance before, on or after the commencement of this Division as if the amendment had not been made.

## **30 Section 72**

Repeal the section.

## **31 Saving provision for certain payments**

- (1) Despite the repeal of section 72 of the *A New Tax System (Family Assistance) (Administration) Act 1999* by this Division, that section applies to the payment of an amount by way of:
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- (a) maternity allowance; or
- (b) maternity immunisation allowance for a child born before 1 January 2003;

as if the repeal had not occurred.

- (2) It does not matter whether the payment was made before, on or after the commencement of this Division.

**32 Section 219TA (paragraph (d) of the definition of *relevant benefit*)**

Omit “maternity allowance”, substitute “maternity payment”.

**33 Saving provision for maternity allowance payments**

Despite the amendment of section 219TA of the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Division, Part 8B of that Act (which includes that section) applies in relation to payments of maternity allowance made before, on or after the commencement of this Division as if the amendment had not been made.

***Income Tax Assessment Act 1936***

**34 Subsection 159J(6) (paragraph (ac) of the definition of *separate net income*)**

After “maternity allowance”, insert “, maternity payment”.

**35 Application**

The amendment of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for the 2004-05 year of income and later years of income.

***Income Tax Assessment Act 1997***

**36 Section 11-15 (table item headed “family assistance”)**

Omit:

maternity immunisation allowance ..... 52-150

substitute:

maternity immunisation allowance ..... 52-150

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maternity payment ..... 52-150

**37 Section 52-150**

After “maternity allowance”, insert “, maternity payment”.

**38 Application of amendment of section 52-150**

The amendment of section 52-150 of the *Income Tax Assessment Act 1997* made by this Division applies to assessments for the 2004-05 income year and later income years.

**39 Paragraph 61-360(b)**

After “2001”, insert “and before 1 July 2004”.

**40 Paragraph 61-405(a)**

Omit “for that income year”, substitute “, before 1 July 2014, for the income year for which you are entitled to the offset”.

**41 At the end of paragraph 61-405(b)**

Add “given to the Commissioner before 1 July 2014”.

**42 Application of amendments of Division 61**

The amendments of Division 61 of the *Income Tax Assessment Act 1997* made by this Division apply to assessments for the 2001-02 income year and later income years.

## **Part 2—Maternity immunisation allowance amendments commencing on 1 July 2004**

### ***A New Tax System (Family Assistance) Act 1999***

#### **43 Paragraph 39(2)(b)**

Repeal the paragraph, substitute:

(b) on the later of the following days:

- (i) the day the child turned 18 months;
- (ii) the earliest day to which paragraph (a) applies;

the individual either:

- (iii) is eligible for family tax benefit in respect of the child;  
or
- (iv) would be so eligible except that the individual's rate of family tax benefit, worked out under Division 1 of Part 4, is nil.

#### **44 Application of amendment of subsection 39(2)**

The amendment of subsection 39(2) of the *A New Tax System (Family Assistance) Act 1999* made by this Part applies in relation to children who turn 18 months, and are alive, on a day that is on or after 1 July 2004 (whether they are born before, on or after 1 July 2004).

#### **45 Subsection 39(4)**

Repeal the subsection, substitute:

- (4) Third, an individual is eligible for maternity immunisation allowance in respect of a child who is born alive but dies within 2 years if, on the day of the child's death, the individual either:
  - (a) is eligible for family tax benefit in respect of the child; or
  - (b) would be so eligible except that the individual's rate of family tax benefit, worked out under Division 1 of Part 4, is nil.

#### **46 Application of subsection 39(4)**

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Subsection 39(4) of the *A New Tax System (Family Assistance) Act 1999*, as amended by this Part, applies in relation to children who die on or after 1 July 2004 (whether they were born before, on or after 1 July 2004).

#### **47 Section 67**

Repeal the section, substitute:

#### **67 Amount of maternity immunisation allowance**

The amount of maternity immunisation allowance in respect of a child is \$210.66.

#### **48 Application of section 67**

Section 67 of the *A New Tax System (Family Assistance) Act 1999*, as amended by this Part, applies in relation to:

- (a) children who turn 18 months, and are alive, on a day that is on or after 1 July 2004 (whether they are born before, on or after 1 July 2004); and
- (b) children who die on or after 1 July 2004 after their birth and before turning 2 (whether they were born before, on or after 1 July 2004); and
- (c) stillborn children delivered on or after 1 July 2004.

**TSchedule 2T** Amendments relating to maternity payment and maternity immunisation allowanceT

**TPart 3T** Maternity payment amendment that may commence on 1 July 2006T

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### **Part 3—Maternity payment amendment that may commence on 1 July 2006**

#### *A New Tax System (Family Assistance) Act 1999*

##### **49 Subsection 66(1)**

Omit “\$3,000”, substitute “\$4,000”.

##### **50 Application of amendment made by this Part**

The amendment made by this Part applies in relation to children born or delivered on or after 1 July 2006.

**Part 4—Maternity payment amendment that may  
commence on 1 July 2008 if Part 3  
commences**

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

**51 Subsection 66(1)**

Omit “\$4,000”, substitute “\$5,000”.

**52 Application of amendment made by this Part**

The amendment made by this Part applies in relation to children born or delivered on or after 1 July 2008.

**TSchedule 2T** Amendments relating to maternity payment and maternity immunisation allowanceT

**TPart 5T** Maternity payment amendment that may commence on 1 July 2008 if Part 3 does not commenceT

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## **Part 5—Maternity payment amendment that may commence on 1 July 2008 if Part 3 does not commence**

### **53 Subsection 66(1)**

Omit “\$3,000”, substitute “\$5,000”.

### **54 Application of amendment made by this Part**

The amendment made by this Part applies in relation to children born or delivered on or after 1 July 2008.

## **Schedule 3—Income taper**

### ***A New Tax System (Family Assistance) Act 1999***

#### **1 Clause 18 of Schedule 1 (step 5 of the method statement)**

Omit “30%”, substitute “20%”.

#### **2 Clause 32 of Schedule 1 (step 5 of the method statement)**

Omit “30%”, substitute “20%”.

#### **3 Application of amendments**

The amendments made by this Schedule apply in relation to family tax benefit for the 2004-2005 income year or a later income year.

## Schedule 4—Income free area

### *A New Tax System (Family Assistance) Act 1999*

#### **1 Clause 33 of Schedule 1**

Repeal the clause, substitute:

#### **33 Income free area**

An individual's income free area is \$4,000.

#### **2 Subclause 3(1) of Schedule 4 (table item 14, column 4)**

Omit "1999", substitute "2003".

#### **3 Application of amendments**

- (1) The amendment made by item 1 applies in relation to family tax benefit for the 2004-2005 income year or a later income year.
- (2) The amendment made by item 2 applies in relation to family tax benefit for the 2005-2006 income year or a later income year.

#### **4 Transitional**

The amount referred to in column 1 of item 14 of the table in subclause 3(1) of Schedule 4 to the *A New Tax System (Family Assistance) Act 1999* as amended by this Schedule is not to be indexed on 1 July 2004.

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*[Minister's second reading speech made in—  
House of Representatives on 11 May 2004  
Senate on 13 May 2004]*

(69/04)