





# **Family and Community Services Legislation Amendment (Family Assistance and Related Measures) Act 2005**

**No. 61, 2005**

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

Note: An electronic version of this Act is available in SCALEplus  
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**An Act to amend the law relating to family  
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*[Assented to 26 June 2005]*

**The Parliament of Australia enacts:**

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## 1 Short title

This Act may be cited as the *Family and Community Services Legislation Amendment (Family Assistance and Related Measures) Act 2005*.

## 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 June 2005
2. Schedule 1	1 July 2005.	1 July 2005
3. Schedule 2, items 1 to 6	1 July 2005.	1 July 2005
4. Schedule 2, item 7	The day on which this Act receives the Royal Assent.	26 June 2005
5. Schedule 3, item 1	The day on which this Act receives the Royal Assent.	26 June 2005
6. Schedule 3, items 2 and 3	1 July 2005.	1 July 2005
7. Schedule 3, item 4	1 January 2005.	1 January 2005
8. Schedule 3, items 5 to 10	1 January 2006.	1 January 2006
9. Schedule 3, items 11 to 13	The day on which this Act receives the Royal Assent.	26 June 2005
10. Schedule 3, items 14 to 17	1 January 2006.	1 January 2006

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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>
11. Schedule 4, Part 1	The later of: (a) the day on which this Act receives the Royal Assent; and (b) 1 July 2005.	
12. Schedule 4, Part 2	The day on which this Act receives the Royal Assent.	26 June 2005

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—Method of calculating Part B rate for those who return to paid work after the birth of a child etc.**

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

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

Insert:

*paid work* (other than in paragraph 15(1)(a)) has the meaning given by section 3B.

#### **2 Subsection 3(1)**

Insert:

*passive employment income* of an individual, in respect of a period, means:

- (a) income that is earned by the individual in respect of the period as a result of the individual being on paid leave for the period; or
- (b) a payment of compensation, or a payment under an insurance scheme, in respect of the individual's inability to earn, derive or receive income from paid work during the period; or
- (c) if the individual stops paid work as a self-employed individual—income that is derived by the individual in respect of the period from an interest, or from investments, held in connection with the individual's previous self-employment.

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

Insert:

*returns to paid work* has the meaning given by section 3B.

#### **4 Subsection 3(1)**

Insert:

*secondary earner* of a couple, in respect of an income year, means:

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- (a) unless paragraph (b) applies:
  - (i) the member of the couple who has the lower adjusted taxable income for the year; or
  - (ii) if both members of the couple have the same adjusted taxable income for the year—the member of the couple who returns to paid work first during the year; or
- (b) if the rate of family tax benefit for a member of the couple is determined on the basis of an estimate of adjusted taxable income for the year, and only one member of the couple returns to paid work during the year—the member of the couple whose original estimate of adjusted taxable income is the lower estimate for the couple for the year (disregarding subclause 3(2) of Schedule 3).

## **5 At the end of Division 1 of Part 2**

Add:

### **3B Meaning of *paid work* and *returns to paid work***

#### *Meaning of paid work*

- (1) ***Paid work*** (other than in paragraph 15(1)(a)) means any work for financial gain or any other reward (whether as an employee, a self-employed individual or otherwise) that involves a substantial degree of personal exertion on the part of the individual concerned.

Note: The ordinary meaning of ***paid work*** applies to paragraph 15(1)(a).

#### *Meaning of returns to paid work*

- (2) An individual ***returns to paid work*** during an income year if:
  - (a) the individual is neither engaging in paid work, nor receiving passive employment income, during that year; and
  - (b) the individual later engages in paid work for an average of at least 10 hours per week for 4 consecutive weeks that start during that year.
- (3) An individual ***returns to paid work*** during an income year if:
  - (a) the individual is neither engaging in paid work, nor receiving passive employment income, during that year; and

- (b) the individual later engages in paid work during that year, but not for an average of at least 10 hours per week for 4 consecutive weeks that start during that year; and
  - (c) during the income year following that year, the Secretary is notified in writing in accordance with subsection (4) that the individual returned to paid work during that year.
- (4) For the purposes of subsection (3), if the individual is a member of a couple at any time, during the income year, before the individual engages in paid work as mentioned in paragraph (3)(b), the Secretary is notified in accordance with this subsection if the Secretary is notified by:
- (a) if:
    - (i) both members of the couple are eligible for family tax benefit at any time, during that income year, before the individual engages in paid work (whether the members of the couple are eligible at the same time or at different times); and
    - (ii) the individual is a member of the same couple at the time of the notification;both members of the couple; and
  - (b) if:
    - (i) both members of the couple are eligible for family tax benefit at any time, during that income year, before the individual engages in paid work (whether the members of the couple are eligible at the same time or at different times); and
    - (ii) the individual is no longer a member of the same couple at the time of the notification;the individual who engages in the paid work; and
  - (c) if at all times, during that income year, before the individual engages in paid work, only one member of the couple is eligible for family tax benefit—the member of the couple who is eligible for family tax benefit.

## **6 Before clause 29 of Schedule 1**

Insert:

## **Subdivision A—General method of calculating Part B rate**

### **7 At the end of subclause 29(2) of Schedule 1**

Add:

Note: An individual who is a member of a couple works out his or her Part B rate under Subdivision B if the secondary earner of the couple returns to paid work after the birth of a child etc.

Note: The heading to clause 29 of Schedule 1 is altered by omitting “**Method**” and substituting “**General method**”.

### **8 At the end of Division 1 of Part 4 of Schedule 1**

Add:

## **Subdivision B—Method of calculating Part B rate for those who return to paid work after the birth of a child etc.**

### **29A Method of calculating Part B rate for those who return to paid work after the birth of a child etc.**

#### *Application of clause*

- (1) The Part B rate that an individual is eligible for in respect of a day in an income year is worked out under subclause (2) if:
  - (a) the individual is a member of a couple on the day; and
  - (b) the conditions in subclauses (3) to (7) of this clause are met; and
  - (c) the conditions in clause 29C are met in respect of the day.

#### *Method of calculating Part B rate*

- (2) The Part B rate that the individual is eligible for in respect of the day is the amount worked out by adding the following amounts:
  - (a) the individual’s standard rate under Division 2 in respect of the day (clauses 30 and 31);
  - (b) the individual’s FTB Part B supplement under Division 2A in respect of the day (clause 31A).

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*Conditions*

- (3) During a period during the income year in which the day occurs, the secondary earner of the couple (who might be the individual mentioned in subclause (1)):
  - (a) is not engaging in paid work; and
  - (b) is not receiving passive employment income in respect of that period.
- (4) Later during that income year, the secondary earner returns to paid work for the first time since a child became an FTB child of the secondary earner.
- (5) The conditions in clause 29B are met in respect of that child.
- (6) The individual mentioned in subclause (1) has satisfied the FTB reconciliation conditions under section 32B of the Family Assistance Administration Act for all of the same-rate benefit periods in that income year.
- (7) Either or both of the following apply:
  - (a) the individual notifies the Secretary of the secondary earner's return to paid work before the end of the income year following the income year in which the secondary earner returns to paid work;
  - (b) the Secretary becomes aware of the secondary earner's return to paid work before the end of the income year following the income year in which the secondary earner returns to paid work.

**29B Conditions to be met in respect of an FTB child**

- (1) For the purpose of subclause 29A(5), the conditions in this clause are met in respect of a child if the conditions in subclauses (2) and (3) of this clause are met in respect of the child on any single day that meets the conditions in clause 29C.

*Conditions in respect of FTB child*

- (2) Of all the FTB children of the secondary earner, either:
  - (a) the child most recently became an FTB child of the secondary earner; or

- (b) if all of the children became FTB children of the secondary earner at the same time—the child is the youngest FTB child of the secondary earner.

*Generally, only one individual calculates Part B rate under clause 29A*

- (3) No other individual's Part B rate has been calculated under clause 29A as a result of the conditions in this clause being met in respect of the child.

*Exception—section 59 determination (shared care)*

- (4) If another individual's Part B rate has been calculated as mentioned in subclause (3), the condition in that subclause is taken to be met in respect of the child if:
  - (a) on the day on which the other individual or his or her partner returns to paid work, the child is covered by a determination under subsection 59(1); and
  - (b) the secondary earner is not a member of the same couple as the other individual on either:
    - (i) the day mentioned in paragraph (a); or
    - (ii) the day on which the secondary earner returns to paid work.

*Exception—section 28 and 29 determinations (members of a couple in a blended family or members of a separated couple) etc.*

- (5) If another individual's Part B rate has been calculated as mentioned in subclause (3), the condition in that subclause is taken to be met in respect of the child if:
  - (a) at some time during the income year, the other individual is the partner of:
    - (i) the secondary earner; or
    - (ii) the individual mentioned in subclause 29A(1) (if he or she is not the secondary earner); and
  - (b) the other individual's Part B rate has been calculated under clause 29A in respect of the same return to paid work, and the same FTB child, of the secondary earner.

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## **29C Conditions to be met in respect of a day**

- (1) For the purposes of paragraph 29A(1)(c) and clause 29B, the conditions in this clause are met in respect of a day in an income year if:
  - (a) the day falls in the period that starts on the latest of the following days:
    - (i) 1 July of the income year;
    - (ii) the day after the secondary earner stops paid work;
    - (iii) the day after the secondary earner stops receiving passive employment income in respect of a period; and ends immediately before the day on which the secondary earner returns to paid work; and
  - (b) the secondary earner is not receiving passive employment income in respect of the day.
- (2) For the purpose of subclause (1), the day on which an individual returns to paid work is:
  - (a) if the individual returns to paid work because of subsection 3B(2)—the first day of the 4 week period mentioned in that subsection on which the individual is engaging in paid work; and
  - (b) if the individual returns to paid work because of subsection 3B(3)—the first day on which the individual is engaging in paid work.
- (3) To avoid doubt, the first and last days of the period mentioned in paragraph (1)(a) fall in that period.

## **9 Subclauses 31A(1) and (3) of Schedule 1**

After “clause 29”, insert “or 29A”.

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

### **10 After paragraph 32A(2)(bb)**

Insert:

- (bba) paragraph 29A(2)(b) of Schedule 1 to the Family Assistance Act;

## **11 After subparagraph 105A(2)(a)(iib)**

Insert:

(iiba) paragraph 29A(2)(b) of Schedule 1 to the Family  
Assistance Act;

## **12 Application of amendments**

The amendments made by this Schedule apply in respect of the  
2005-2006 income year and later income years.

## **Schedule 2—Maternity payment**

### **Part 1—Amendments**

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

##### **1 Paragraph 36(5)(b)**

Omit “not more than 26 weeks of age”, substitute “aged under 2”.

##### **2 After paragraph 36(5)(b)**

Insert:

- (ba) if the child arrives in Australia from overseas as part of the process for the adoption of the child—the child is aged under 2 when the child arrives in Australia; and

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

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

Repeal the paragraph, substitute:

- (b) if the circumstances covered by the claim involve eligibility under subsection 36(5) of the Family Assistance Act and the child mentioned in that subsection arrives in Australia from overseas as part of the process for the adoption of the child—the time the child arrives in Australia; or
- (c) if the circumstances covered by the claim involve eligibility under subsection 36(5) of the Family Assistance Act and the child mentioned in that subsection does not arrive in Australia from overseas as part of the process for the adoption of the child—the time the child is entrusted to the care of the claimant.

## Part 2—Application, transitional and other provisions

### 4 Definition of *commencement*

In this Part:

*commencement* means the commencement of the amendments made by Part 1 of this Schedule.

### 5 Application of amendments made by Part 1

The amendments made by Part 1 of this Schedule apply in relation to any child:

- (a) who is, as part of the process for the adoption of the child by an individual, entrusted to the care of the individual on or after 1 July 2004; and
- (b) in respect of whom maternity payment has not already been paid.

### 6 Transitional extension of claim deadline

- (1) This item applies to a claim for payment of maternity payment in normal circumstances if:
  - (a) before commencement, a child is entrusted to the care of the claimant, as part of the process for the adoption of the child by the claimant; and
  - (b) if the child arrives in Australia from overseas as part of the process for the adoption—the child arrives in Australia before commencement.
- (2) Paragraphs 39(2)(b) and (c) of the *A New Tax System (Family Assistance) (Administration) Act 1999* do not apply in relation to the claim.
- (3) The claim is not effective if made later than 26 weeks after commencement.
- (4) The reference in subsection 39(3) of the *A New Tax System (Family Assistance) (Administration) Act 1999* to the period of 26 weeks mentioned in subsection (2) is taken to be a reference to the period of 26 weeks mentioned in subitem (3).

## **7 No maternity payment if maternity allowance already paid in respect of child**

- (1) An individual is not eligible for maternity payment in respect of a child if:
- (a) after this item commences, the child is entrusted to the individual's care, as part of the process for the adoption of the child by the individual; and
  - (b) maternity allowance has been paid to any person in respect of the child.
- (2) In this item:
- maternity allowance* means maternity allowance under Division 2 of Part 3 of the *A New Tax System (Family Assistance) Act 1999*, as in force before item 1 of Schedule 2 to the *Family Assistance Legislation Amendment (More Help for Families—Increased Payments) Act 2004* commenced.

## Schedule 3—Family assistance amendments

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

#### 1 Subsection 3(1)

Insert:

*member of the same couple* has the same meaning as *member of a couple* has.

#### 2 Paragraph 13(2)(a) of Schedule 1

Omit “the income year”, substitute “the first or second income year”.

#### 3 Application of item 2

The amendment made by item 2 applies in respect of a past period that occurs in the 2003-2004 income year or a later income year.

#### 4 Subclause 29(2) of Schedule 1 (at the end of step 3 of the method statement)

Add “(taking away so much of the individual’s standard rate, and then so much (if any) of the individual’s FTB Part B supplement, as equals the reduction)”.

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

#### 5 Paragraph 28(3)(a)

After “subsection (2)”, insert “or (6)”.

#### 6 After paragraph 28(3)(b)

Insert:

and (ba) subsection (4) (which is about when the claimant and the claimant’s partner separate after the determination is varied) does not apply;

#### 7 Paragraph 28(3)(c)

Omit “cancellation year”, substitute “cancellation income year”.

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## 8 At the end of section 28

Add:

*Consequence where claimant and partner separate after determination varied*

- (4) After the Secretary varies the determination under subsection (2) or (6), the Secretary must again vary the determination if the following conditions are met:
- (a) the claimant and the partner mentioned in subparagraph (1)(b)(iii) (the *ex-partner*) ceased to be members of the same couple during the income year (the *later income year*) that began 2 years after the beginning of the cancellation income year;
  - (b) at the time when the Secretary would vary the determination under this subsection, the claimant and the ex-partner are not members of the same couple;
  - (c) if the claimant was required to lodge an income tax return for the cancellation income year—an assessment is or has been made under the *Income Tax Assessment Act 1936* of the claimant's taxable income for the cancellation income year;
  - (d) in any case—the ex-partner was required to lodge an income tax return for the cancellation income year but still had not done so by:
    - (i) if paragraph (c) applies—the later of the time when the claimant and the ex-partner last ceased to be members of the same couple and the time when the assessment of the claimant's taxable income is made; or
    - (ii) otherwise—the time when the claimant and the ex-partner last ceased to be members of the same couple;
  - (e) the Secretary is satisfied that the claimant was eligible for an amount (the *recalculated amount*) of family tax benefit for the cancellation days.
- (5) The Secretary must vary the determination under subsection (4) so that it has the effect that, for the cancellation days, the claimant is entitled to be paid:
- (a) if:
    - (i) the claimant was required to lodge an income tax return for the cancellation income year and the claimant

- lodged the return with the Commissioner of Taxation before the end of the later income year; or
  - (ii) the claimant was not required to lodge an income tax return for the cancellation income year;
- the recalculated amount; or
- (b) in any other case—the lesser of:
    - (i) the recalculated amount; and
    - (ii) the amount that the claimant was entitled to be paid before the variation under subsection (2) or (6) was made.

*Consequence where claimant and ex-partner reconcile after separation*

- (6) If:
  - (a) after the Secretary varies the determination under subsection (4), the claimant and the ex-partner become members of the same couple again; and
  - (b) the ex-partner has still not lodged an income tax return for the cancellation income year by the time when the claimant and the ex-partner become members of the same couple;the Secretary must vary the determination so that it has the effect that the claimant is not, and never was, entitled to family tax benefit for the cancellation days.

**9 Application and transitional provisions relating to items 5, 6 and 8**

*Application of items 5, 6 and 8*

- (1) The amendments made by items 5, 6 and 8 apply in respect of a cancellation income year that is the 2001-2002 income year or a later income year.

*Transitional provisions*

- (2) If a claimant has received an act of grace payment under section 33 of the *Financial Management and Accountability Act 1997* of the difference between:
  - (a) the recalculated amount; and

- (b) the amount that the claimant was entitled to be paid before a variation under subsection 28(2) of the *A New Tax System (Family Assistance) (Administration) Act 1999* was made for the cancellation income year;

then the claimant is not entitled to be paid that amount again under subsection 28(5) of that Act.

- (3) Sections 107 and 109E of the *A New Tax System (Family Assistance) (Administration) Act 1999* do not limit the date of effect of a review decision that is made on or before 30 June 2006 that results in a decision under subsection 28(4) of that Act, in respect of the 2001-2002, 2002-2003 or 2003-2004 income year.

### **10 Subsection 33(1A)**

Repeal the subsection, substitute:

- (1A) This subsection applies to an individual who, on the advance assessment day, owes a debt to the Commonwealth (whether arising under this Act or not) that is:
  - (a) recoverable under Part 4 by means of deductions from the individual's instalments of family tax benefit under section 84; or
  - (b) being recovered by deductions from the individual's instalments of family tax benefit under section 227.

### **11 Subsection 33(2)**

Omit "An individual's", substitute "Subject to subsection (2A), an individual's".

### **12 After subsection 33(2)**

Insert:

- (2A) If an individual's request to the Secretary for the payment of a family tax benefit advance for a standard advance period is made after the start of that period, the individual's advance assessment day for that period is the day on which the individual made the request.

### **13 Subsection 60D(1)**

Repeal the subsection, substitute:

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(1) If:

- (a) a determination of entitlement under section 51B is in force in respect of a claimant who is an individual and a particular income year; and
  - (b) any of the following people:
    - (i) the claimant;
    - (ii) the claimant's partner at the end of the second income year (the *later income year*) following the particular income year (if he or she was also the claimant's partner in the particular income year);
    - (iii) both the claimant and the claimant's partner (as described in subparagraph (ii));are required to lodge an income tax return for the particular income year but have not done so by the end of the later income year; and
  - (c) by the end of the later income year, an assessment has not been made under the *Income Tax Assessment Act 1936* of the taxable income for the particular income year for everyone to whom paragraph (b) applies;
- the Secretary may vary the determination.

#### **14 Subsection 95(1)**

Repeal the subsection, substitute:

- (1) The Secretary may, on behalf of the Commonwealth, decide to write off a debt for a stated period or otherwise, but only if subsection (2), (4A) or (4B) applies.

#### **15 Subsection 95(2)**

Omit “, and only if”.

Note: The following heading to subsection 95(2) is inserted “*Secretary may write off debt if debt irrecoverable or debt will not be repaid etc.*”.

#### **16 After subsection 95(4)**

Insert:

*Secretary may write off subsection 28(2) or (6) debt if claimant and partner separate*

- (4A) The Secretary may, under subsection (1), decide to write off a debt arising because of subsection 28(2) or (6) (which deal with when income tax returns have not been lodged) if the following conditions are met:
- (a) the claimant and the partner mentioned in subparagraph 28(1)(b)(iii) (the *ex-partner*) ceased to be members of the same couple after the end of the income year (the *later income year*) that began 2 years after the beginning of the cancellation income year mentioned in subsection 28(1);
  - (b) if the claimant was required to lodge an income tax return for the cancellation income year—an assessment is or has been made under the *Income Tax Assessment Act 1936* of the claimant's taxable income for the cancellation income year;
  - (c) in any case—the ex-partner was required to lodge an income tax return for the cancellation income year but still had not done so by the time when the claimant and the ex-partner ceased to be members of the same couple.

*Secretary may write off subsection 60D(2) debt if claimant and partner separate*

- (4B) The Secretary may, under subsection (1), decide to write off a debt arising because of subsection 60D(2) (which deals with when income tax returns have not been lodged) if the following conditions are met:
- (a) the claimant and the partner mentioned in paragraph 60D(1)(b) (the *ex-partner*) ceased to be members of the same couple after the end of the second income year following the particular income year mentioned in paragraph 60D(1)(a);
  - (b) if the claimant was required to lodge an income tax return for the particular income year—an assessment is or has been made under the *Income Tax Assessment Act 1936* of the claimant's taxable income for the particular income year;
  - (c) in any case—the ex-partner was required to lodge an income tax return for the particular income year but still had not done so by the time when the claimant and the ex-partner ceased to be members of the same couple.

Note 1: The following heading to subsection 95(5) is inserted “*When decision under subsection (1) takes effect*”.

Note 2: The following heading to subsection 95(6) is inserted “*Debt that has been written off may be recovered*”.

## **17 Application of items 14 to 16**

- (1) The amendments made by items 14 to 16 apply in respect of a cancellation income year or a particular income year (as the case requires), that is the 2000-2001 income year or a later income year.
- (2) However, the amendments made by those items apply in respect of the 2000-2001 income year as if paragraphs 95(4A)(a) and (c) of the *A New Tax System (Family Assistance) (Administration) Act 1999* referred to the income year that began immediately after the cancellation income year mentioned in subsection 28(1) of that Act (instead of the income year that began 2 years after the beginning of the cancellation income year).

## Schedule 4—Rent assistance

### Part 1—Duplicate rent assistance payments

#### Division 1—Amendments

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

##### 1 Subsection 3(1)

Insert:

*income support supplement* has the same meaning as in the *Social Security Act 1991*.

##### 2 Clause 3 of Schedule 1

Omit “clause 5”, substitute “clauses 4A, 4B and 5”.

##### 3 After clause 4 of Schedule 1

Insert:

#### **4A Offsetting for duplicate rent assistance under family assistance and social security law**

*When this clause applies*

(1) This clause applies if:

- (a) a decision (the *social security decision*) was made that rent assistance was to be included when calculating an individual’s, or an individual’s eligible partner’s, rate of social security payment for a day; and
- (b) when the social security decision was made, no decision (the *family assistance decision*) to make a determination that includes, or to vary a determination to include, rent assistance when calculating the individual’s Part A rate of family tax benefit for that day had been made; and
- (c) after the social security decision was made, the family assistance decision was made; and
- (d) the day mentioned in paragraphs (a) and (b) comes before the day on which the family assistance decision was made.

Note: For the definition of *eligible partner* see subclause (5).

*Part A rate to be reduced*

- (2) The individual's Part A rate for that day (as calculated or recalculated because of the making of the family assistance decision) is to be reduced:
- (a) first, by the individual's annual social security RA amount for that day (see subclause (3)); and
  - (b) then, by the individual's eligible partner's annual social security RA amount for that day (see subclause (4)).
- However, it is not to be reduced to less than:
- (c) if it has been calculated for the first time under clause 3 because of the making of the family assistance decision—nil; and
  - (d) if it has been recalculated under clause 3 because of the making of the family assistance decision—the Part A rate as it was immediately before the recalculation.
- (3) The *individual's annual social security RA amount* for that day is the amount worked out as follows:

*Method statement*

- Step 1.* Work out the rate (if any) of social security payment (the *actual payment*) that was payable to the individual for that day.
- Step 2.* Work out the rate (if any) of social security payment (the *notional payment*) that would have been payable to the individual for that day if rent assistance were not included when calculating the rate of the individual's social security payment for that day.
- Step 3.* Subtract the notional payment from the actual payment. The difference is the *individual's daily social security RA amount* for that day.
- Step 4.* Multiply the individual's daily social security RA amount for that day by 365. The result is the *individual's annual social security RA amount* for that day.

- (4) The *individual's eligible partner's annual social security RA amount* for that day is the amount worked out as follows:

*Method statement*

- Step 1.* Work out the rate (if any) of social security payment (the *actual payment*) that was payable to the individual's eligible partner for that day.
- Step 2.* Work out the rate (if any) of social security payment (the *notional payment*) that would have been payable to the eligible partner for that day if rent assistance were not included when calculating the rate of the eligible partner's social security payment for that day.
- Step 3.* Subtract the notional payment from the actual payment. The difference is the *eligible partner's daily social security RA amount* for that day.
- Step 4.* Multiply the eligible partner's daily social security RA amount for that day by 365. The result is the *individual's eligible partner's annual social security RA amount* for that day.

- (5) For the purposes of this clause, an individual is the *eligible partner* of another individual if both individuals are members of a couple (other than an illness separated couple, a respite care couple or a temporarily separated couple).

#### **4B Offsetting for duplicate rent assistance under family assistance and veterans' entitlements law**

*When this clause applies*

- (1) This clause applies if:
- a decision (the *veterans' entitlements decision*) was made that rent assistance was to be included when calculating an individual's, or an individual's eligible partner's, rate of service pension or income support supplement for a day; and
  - when the veterans' entitlements decision was made, no decision (the *family assistance decision*) to make a

- determination that includes, or to vary a determination to include, rent assistance when calculating the individual's Part A rate of family tax benefit for that day had been made; and
- (c) after the veterans' entitlements decision was made, the family assistance decision was made; and
  - (d) the day mentioned in paragraphs (a) and (b) comes before the day on which the family assistance decision was made.

Note: For the definition of *eligible partner* see subclause (5).

*Part A rate to be reduced*

- (2) The individual's Part A rate for that day (as calculated or recalculated because of the making of the family assistance decision and as reduced (if at all) under clause 4A) is to be reduced:
  - (a) first, by the individual's annual veterans' entitlements RA amount for that day (see subclause (3)); and
  - (b) then, by the individual's eligible partner's annual veterans' entitlements RA amount for that day (see subclause (4)).

However, it is not to be reduced to less than:

- (c) if it has been calculated for the first time under clause 3 because of the making of the family assistance decision—nil; and
  - (d) if it has been recalculated under clause 3 because of the making of the family assistance decision—the Part A rate as it was immediately before the recalculation.
- (3) The *individual's annual veterans' entitlements RA amount* for that day is the amount worked out as follows:

*Method statement*

- Step 1.* Work out the rate (if any) of service pension or income support supplement (the *actual payment*) that was payable to the individual for that day.
- Step 2.* Work out the rate (if any) of service pension or income support supplement (the *notional payment*) that would have been payable to the individual for that day if rent assistance were not included when calculating the rate of

the individual's service pension or income support supplement for that day.

*Step 3.* Subtract the notional payment from the actual payment. The difference is the ***individual's provisional veterans' entitlements RA amount*** for that day.

*Step 4.* Divide the individual's provisional veterans' entitlements RA amount for that day by 364, then multiply it by 365. The result is the ***individual's annual veterans' entitlements RA amount*** for that day.

- (4) The ***individual's eligible partner's annual veterans' entitlements RA amount*** for that day is the amount worked out as follows:

*Method statement*

*Step 1.* Work out the rate (if any) of service pension or income support supplement (the ***actual payment***) that was payable to the individual's eligible partner for that day.

*Step 2.* Work out the rate (if any) of service pension or income support supplement (the ***notional payment***) that would have been payable to the eligible partner for that day if rent assistance were not included when calculating the amount of the eligible partner's service pension or income support supplement for that day.

*Step 3.* Subtract the notional payment from the actual payment. The difference is the ***eligible partner's provisional veterans' entitlements RA amount*** for that day.

*Step 4.* Divide the eligible partner's provisional veterans' entitlements RA amount for that day by 364, then multiply it by 365. The result is the ***individual's eligible partner's annual veterans' entitlements RA amount*** for that day.

- (5) For the purposes of this clause, an individual is the ***eligible partner*** of another individual if both individuals are members of a couple (other than an illness separated couple or a respite care couple).

#### **4 Subclause 5(1) of Schedule 1**

After “Part A rate”, insert “(as reduced (if at all) under clauses 4A and 4B)”.

#### **5 Clause 17 of Schedule 1**

Omit “or a service pension or is receiving income support supplement under Part IIIA of the *Veterans’ Entitlements Act 1986*”, substitute “, a service pension or income support supplement”.

### ***Social Security Act 1991***

#### **6 Subsection 23(1)**

Insert:

*Part A rate of family tax benefit* is the Part A rate of family tax benefit worked out under Part 2 or 3 of Schedule 1 to the Family Assistance Act.

#### **7 Subsection 1070D(3)**

Repeal the subsection, substitute:

- (3) The specific requirement is that:
- (a) in a paragraph (2)(a) case, either of the following is satisfied:
    - (i) the person’s maximum Part A rate of family tax benefit does not include rent assistance;
    - (ii) the person’s maximum Part A rate of family tax benefit includes rent assistance and clause 4A of Schedule 1 to the Family Assistance Act applies to reduce the person’s Part A rate of family tax benefit; and
  - (b) in a paragraph (2)(b) case, either of the following is satisfied:
    - (i) the person’s, or the person’s partner’s, maximum Part A rate of family tax benefit does not include rent assistance;
    - (ii) the person’s, or the person’s partner’s, maximum Part A rate of family tax benefit includes rent assistance and clause 4A or 4B of Schedule 1 to the Family Assistance Act applies to reduce the person’s, or the person’s partner’s, Part A rate of family tax benefit.

#### **8 Section 1070E**

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Omit all the words after “is that”, substitute:

either of the following is satisfied:

- (c) the person’s maximum Part A rate of family tax benefit does not include rent assistance;
- (d) the person’s maximum Part A rate of family tax benefit includes rent assistance and clause 4A of Schedule 1 to the Family Assistance Act applies to reduce the person’s Part A rate of family tax benefit.

**9 Paragraph 1070F(2)(c)**

Omit “the person’s maximum Part A rate of family tax benefit does not include rent assistance; and”, substitute:

either of the following is satisfied:

- (iii) the person’s maximum Part A rate of family tax benefit does not include rent assistance;
- (iv) the person’s maximum Part A rate of family tax benefit includes rent assistance and clause 4A of Schedule 1 to the Family Assistance Act applies to reduce the person’s Part A rate of family tax benefit; and

**10 Paragraph 1070F(2)(d)**

Omit “the maximum Part A rate of family tax benefit of the person, or the person’s partner, does not include rent assistance.”, substitute:

either of the following is satisfied:

- (iii) the person’s, or the person’s partner’s, maximum Part A rate of family tax benefit does not include rent assistance;
- (iv) the person’s, or the person’s partner’s, maximum Part A rate of family tax benefit includes rent assistance but clause 4A or 4B of Schedule 1 to the Family Assistance Act applies to reduce the person’s, or the person’s partner’s, Part A rate of family tax benefit.

**11 Paragraph 1070F(3)(c)**

Omit “the person’s maximum Part A rate of family tax benefit does not include rent assistance; and”, substitute:

either of the following is satisfied:

- (iii) the person’s maximum Part A rate of family tax benefit does not include rent assistance;

- (iv) the person's maximum Part A rate of family tax benefit includes rent assistance and clause 4A of Schedule 1 to the Family Assistance Act applies to reduce the person's Part A rate of family tax benefit; and

## **12 Paragraph 1070F(3)(d)**

Omit "the maximum Part A rate of family tax benefit of the person, or the person's partner, does not include rent assistance.", substitute:

either of the following is satisfied:

- (iii) the person's, or the person's partner's, maximum Part A rate of family tax benefit does not include rent assistance;
- (iv) the person's, or the person's partner's, maximum Part A rate of family tax benefit includes rent assistance but clause 4A or 4B of Schedule 1 to the Family Assistance Act applies to reduce the person's, or the person's partner's, Part A rate of family tax benefit.

## **13 Paragraph 1070G(1)(c)**

Omit "the person's maximum Part A rate of family tax benefit does not include rent assistance; and", substitute:

either of the following is satisfied:

- (iii) the person's maximum Part A rate of family tax benefit does not include rent assistance;
- (iv) the person's maximum Part A rate of family tax benefit includes rent assistance and clause 4A of Schedule 1 to the Family Assistance Act applies to reduce the person's Part A rate of family tax benefit; and

## **14 Paragraph 1070G(1)(d)**

Omit "the maximum Part A rate of family tax benefit of the person, or the person's partner, does not include rent assistance.", substitute:

either of the following is satisfied:

- (iii) the person's, or the person's partner's, maximum Part A rate of family tax benefit does not include rent assistance;
- (iv) the person's, or the person's partner's, maximum Part A rate of family tax benefit includes rent assistance but clause 4A or 4B of Schedule 1 to the Family Assistance

Act applies to reduce the person's, or the person's partner's, Part A rate of family tax benefit.

**15 Paragraph 1070H(2)(c)**

Omit “the person's maximum Part A rate of family tax benefit does not include rent assistance; and”, substitute:

either of the following is satisfied:

- (iii) the person's maximum Part A rate of family tax benefit does not include rent assistance;
- (iv) the person's maximum Part A rate of family tax benefit includes rent assistance and clause 4A of Schedule 1 to the Family Assistance Act applies to reduce the person's Part A rate of family tax benefit; and

**16 Paragraph 1070H(2)(d)**

Omit “the maximum Part A rate of family tax benefit of the person, or the person's partner, does not include rent assistance.”, substitute:

either of the following is satisfied:

- (iii) the person's, or the person's partner's, maximum Part A rate of family tax benefit does not include rent assistance;
- (iv) the person's, or the person's partner's, maximum Part A rate of family tax benefit includes rent assistance but clause 4A or 4B of Schedule 1 to the Family Assistance Act applies to reduce the person's, or the person's partner's, Part A rate of family tax benefit.

**17 Paragraph 1070J(b)**

Omit “the person's maximum Part A rate of family tax benefit does not include rent assistance; and”, substitute:

either of the following is satisfied:

- (iii) the person's maximum Part A rate of family tax benefit does not include rent assistance;
- (iv) the person's maximum Part A rate of family tax benefit includes rent assistance and clause 4A of Schedule 1 to the Family Assistance Act applies to reduce the person's Part A rate of family tax benefit; and

**18 Paragraph 1070J(c)**

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Omit “the maximum Part A rate of family tax benefit of the person, or the person’s partner, does not include rent assistance.”, substitute:

either of the following is satisfied:

- (iii) the person’s, or the person’s partner’s, maximum Part A rate of family tax benefit does not include rent assistance;
- (iv) the person’s, or the person’s partner’s, maximum Part A rate of family tax benefit includes rent assistance but clause 4A or 4B of Schedule 1 to the Family Assistance Act applies to reduce the person’s, or the person’s partner’s, Part A rate of family tax benefit.

### ***Social Security (Administration) Act 1999***

#### **19 After subsection 118(12)**

Insert:

(12A) If:

- (a) a decision (the *social security decision*) was made that rent assistance (the *social security rent assistance*) was to be included when calculating a person’s rate of social security payment for each day in a period; and
  - (b) the condition in subsection (12B) is met for each day in that period (which is about rent assistance also being included in family tax benefit); and
  - (c) because the inclusion of the social security rent assistance was contrary to Part 3.7 of the 1991 Act, an adverse determination is made to reduce the rate of, or cancel, the person’s social security payment for each day in that period;
- the adverse determination takes effect on the first day of that period.

(12B) The condition in this subsection is met for each day in a period if:

- (a) both of the following apply:
  - (i) the person was a member of a couple (other than an illness separated couple, a respite care couple or a temporarily separated couple) on each day in the period;
  - (ii) when the social security decision was made, a determination under the family assistance law was in force that included rent assistance when calculating the



Add:

*Duplicate payments of rent assistance*

(9) If:

- (a) a decision (the *veterans' entitlements decision*) was made that rent assistance (the *veterans' entitlements rent assistance*) was to be included when calculating a person's rate of service pension or income support supplement for each day in a period; and
- (b) the condition in subsection (10) is met for each day in that period (which is about rent assistance also being included in family tax benefit); and
- (c) because the inclusion of the veterans' entitlements rent assistance was contrary to Module C of the Rate Calculator, an adverse determination is made to reduce the rate of, or cancel, the person's service pension or income support supplement for each day in that period;

the day specified under paragraph (2)(b) must be the first day of that period and may be earlier than the day on which the determination is made.

(10) The condition in this subsection is met for each day in a period if:

- (a) both of the following apply:
  - (i) the person was a member of a couple (other than an illness separated couple or a respite care couple) on each day in the period;
  - (ii) when the veterans' entitlements decision was made, a determination under the family assistance law was in force that included rent assistance when calculating the person's, or the person's partner's, Part A rate of family tax benefit for each day in that period; or
- (b) both of the following apply:
  - (i) the person was not a member of a couple, or was a member of an illness separated couple, or a respite care couple, on each day in the period;
  - (ii) when the veterans' entitlements decision was made, a determination under the family assistance law was in force that included rent assistance when calculating the person's Part A rate of family tax benefit for each day in that period; or

- (c) all of the following apply:
  - (i) when the veterans' entitlements decision was made, no determination of a kind mentioned in subparagraph (a)(ii) or (b)(ii) (as the case requires) was in force;
  - (ii) after the veterans' entitlements decision was made, such a determination was made;
  - (iii) each day in the period either is, or comes after, the day on which the determination was made.

#### **24 Paragraph SCH6-C3(f) of Schedule 6**

Repeal the paragraph, substitute:

- (f) the person satisfies either point SCH6-C3A or SCH6-C3B.

#### **25 After point SCH6-C3 of Schedule 6**

Insert:

SCH6-C3A A person satisfies this point if:

- (a) the person is not a member of a couple, or is a member of an illness separated couple or a respite care couple, and is entitled to be paid a family tax benefit; and
- (b) either:
  - (i) the person's maximum Part A rate of family tax benefit does not include rent assistance; or
  - (ii) the person's maximum Part A rate of family tax benefit includes rent assistance and clause 4B of Schedule 1 to the Family Assistance Act applies to reduce the person's Part A rate of family tax benefit.

SCH6-C3B A person satisfies this point if:

- (a) the person is a member of a couple (other than an illness separated couple or a respite care couple) and the person, or the person's partner, is entitled to be paid family tax benefit; and
- (b) either:
  - (i) the person's, or the person's partner's, maximum Part A rate of family tax benefit does not include rent assistance; or
  - (ii) the person's, or the person's partner's, maximum Part A rate of family tax benefit includes rent assistance and

clause 4A or 4B of Schedule 1 to the Family Assistance Act applies to reduce the person's, or the person's partner's, Part A rate of family tax benefit.

## **Division 2—Application of amendments**

### **26 Application of items 2 to 4**

The amendments made by items 2 to 4 of this Schedule apply in relation to a decision, made after the commencement of this item, to make a determination that includes, or to vary a determination to include, rent assistance when calculating an individual's Part A rate of family tax benefit for a day that occurs before or after that commencement.

### **27 Application of items 7 to 18**

The amendments made by items 7 to 18 of this Schedule apply in relation to a decision, made after the commencement of this item, calculating the rate of a social security payment for a day that occurs before or after that commencement.

### **28 Application of item 19**

The amendment made by item 19 applies in relation to an adverse determination, made after the commencement of this item, to reduce the rate of, or cancel, a person's social security payment for a day that occurs after that commencement.

### **29 Application of items 22 and 23**

The amendments made by items 22 and 23 apply in relation to an adverse determination, made after the commencement of this item, to reduce the rate of, or cancel, a person's service pension or income support supplement for a day that occurs after that commencement.

### **30 Application of items 24 and 25**

The amendments made by items 24 and 25 of this Schedule apply in relation to a decision, made after the commencement of this item, calculating the rate of service pension or income support supplement for a day that occurs before or after that commencement.

## Part 2—Rent certificates

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

#### **31 After subsection 29(2)**

Insert:

(2A) Without limiting subsection (2), if the information or documents required relate to:

- (a) the claimant's eligibility for rent assistance; or
- (b) the amount of rent assistance to be added in calculating the claimant's rate of family tax benefit;

the Secretary may vary the determination so as to establish a different rate of family tax benefit that does not have the amount of rent assistance added 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 from a later day determined by the Secretary.

Note: The heading to subsection 29(2) is altered by omitting “*Consequence*” and substituting “*Consequences*”.

#### **32 Subsection 29(3)**

After “subsection (2)” (wherever occurring), insert “or (2A)”.

#### **33 Subsection 31(3)**

Repeal the subsection, substitute:

*Sections 27, 27A, 28, 28A, 28B, 30, 30A and 30B and subsection 29(2) variations prevail*

(3) If:

- (a) when the variation under this section takes place, a variation of the determination is in force under section 27, 27A, 28, 28A, 28B, 30, 30A or 30B or subsection 29(2); and
- (b) the variation under that section or subsection has effect for any period when the variation under this section would have

the effect that the claimant is entitled to be paid family tax benefit;

the variation under that section or subsection prevails over the variation under this section.

### **34 Subsection 31A(3)**

Repeal the subsection, substitute:

(3) If:

- (a) when the variation under this section takes place, a variation of the determination is in force under section 27, 27A, 28, 28A, 28B, 30, 30A or 30B or subsection 29(2); and
- (b) the variation under that section or subsection has effect for any period when the variation under this section would have the effect that the claimant is entitled to be paid family tax benefit;

the variation under that section or subsection prevails over the variation under this section.

### **35 Subsection 31B(3)**

Repeal the subsection, substitute:

(3) If:

- (a) when the variation under this section takes place, a variation of the determination is in force under section 27, 27A, 28, 28A, 28B, 30, 30A or 30B or subsection 29(2); and
- (b) the variation under that section or subsection has effect for any period when the variation under this section would have the effect that the claimant is entitled to be paid family tax benefit;

the variation under that section or subsection prevails over the variation under this section.

## ***Social Security (Administration) Act 1999***

### **36 After section 81**

Insert:

**81A Rate reduction determination for non-compliance with notice relating to rent assistance**

- (1) Without limiting section 81, if:
- (a) an amount of rent assistance is being added to a person's maximum basic rate of social security payment; and
  - (b) the person has been given:
    - (i) a notice under section 67 or 68 that requires the person to give the Department a statement; or
    - (ii) a notice embodying a requirement under Division 1 of Part 5; and
  - (c) any statement, information or document required by the notice relates to:
    - (i) whether the person qualifies for rent assistance; or
    - (ii) the amount of the person's rent assistance; and
  - (d) the person does not comply with the requirement of the notice;

the Secretary may determine that the person's rate of social security payment is to be reduced by not adding the amount of rent assistance to the person's maximum basic rate.

- (2) The determination must also specify the new rate of social security payment.
- (3) Subsection (1) does not authorise the Secretary to make a determination if:
- (a) another provision of the social security law provides that the rate at which the social security payment is payable to the person is to be reduced by not adding the amount of rent assistance to the person's maximum basic rate; and
  - (b) the determination would take effect at or after the time at which the reduction referred to in paragraph (a) would take effect.

**37 At the end of Subdivision A of Division 7 of Part 3**

Add:

**85A Rate increase determination following rate reduction for non-compliance with notice relating to rent assistance**

- (1) If:
-

- (a) the Secretary reduces a person's rate of social security payment under section 81A by not adding an amount of rent assistance to the person's maximum basic rate; and
  - (b) the Secretary reconsiders the decision; and
  - (c) as a result of the reconsideration, the Secretary is satisfied that, because of the decision, the rate at which social security payment is being, or has been, paid is less than the rate provided for by the social security law;
- the Secretary must determine that the rate is to be increased to the rate provided for by the social security law.
- (2) The determination must also specify the new rate of social security payment.
  - (3) The reconsideration referred to in paragraph (1)(b) may be a reconsideration on an application under section 129 or a reconsideration on the Secretary's own initiative.

**38 Subdivision B of Division 9 of Part 3 (heading)**

Repeal the heading, substitute:

**Subdivision B—Determinations under section 78, 81A, 85 or 85A**

**39 Section 108 (definition of *favourable determination*)**

Omit "or 85", substitute ", 85 or 85A".

**40 Section 117 (definition of *adverse determination*)**

After ", 81", insert ", 81A".

**41 Paragraph 123(3)(a)**

Omit "or 79", substitute ", 79, 81A or 85A".

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*[Minister's second reading speech made in—  
House of Representatives on 26 May 2005  
Senate on 15 June 2005]*

(76/05)

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40      *Family and Community Services Legislation Amendment (Family Assistance and  
Related Measures) Act 2005      No. 61, 2005*