





# **First Home Saver Accounts (Further Provisions) Amendment Act 2008**

**No. 92, 2008**

**An Act to amend the law relating to first home saver accounts, and for other purposes**

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



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## **An Act to amend the law relating to first home saver accounts, and for other purposes**

[Assented to 30 September 2008]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *First Home Saver Accounts (Further Provisions) Amendment Act 2008*.

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## 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.

<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.	30 September 2008
2. Schedules 1 and 2	The day after this Act receives the Royal Assent.	1 October 2008
3. Schedule 3	1 July 2009.	1 July 2009
4. Schedule 4	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) the commencement of Schedule 1 to the <i>Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	

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

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

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Amendments applying from 1 October 2008

### *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

#### **1 Section 5 (definition of *contribution*)**

Repeal the definition, substitute:

*contribution:*

- (a) in relation to an FHSA—has the same meaning as in the *First Home Saver Accounts Act 2008*; or
- (b) in relation to an RSA—has the same meaning as in the *Retirement Savings Accounts Act 1997*.

### *First Home Saver Accounts Act 2008*

#### **2 At the end of subsection 31(1)**

Add:

- ; or (h) the payment is to enable the provider to make a payment of an amount of tax.

#### **3 Before section 127**

Insert:

#### **126C Protection for FHSA provider**

An FHSA provider is not liable for loss or damage suffered by any person because of things done (or not done) by the provider in good faith in reliance on:

- (a) an application made to the provider in accordance with section 126A; or
- (b) a family law obligation.

### *Fringe Benefits Tax Assessment Act 1986*

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**4 Subsection 136(1) (after paragraph (hc) of the definition of fringe benefit)**

Insert:

(hd) a benefit:

- (i) constituted by the making of a contribution to an FHSA (within the meaning of the *First Home Saver Accounts Act 2008*); or
- (ii) that is an expense payment benefit in relation to a contribution to an FHSA (within the meaning of the *First Home Saver Accounts Act 2008*); or

***Income Tax Assessment Act 1936***

**5 Subsection 6(1)**

Insert:

*FHSA* has the meaning given by the *First Home Saver Accounts Act 2008*.

**6 Subsection 159J(6) (after paragraph (aad) of the definition of separate net income)**

Insert:

- (aae) does not include an amount of earnings or other return credited to an FHSA; and
- (aaf) does not include a Government FHSA contribution (within the meaning of the *First Home Saver Accounts Act 2008*); and

**7 Section 202A (definition of interest-bearing account)**

After “an RSA”, insert “or FHSA”.

**8 Section 202A (definition of interest-bearing deposit)**

After “an RSA”, insert “or FHSA”.

**9 Section 202A (definition of unit trust)**

After “but does not include”, insert “an FHSA trust or”.

***Income Tax Assessment Act 1997***

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**10 Section 10-5 (after table item headed “films”)**

Insert:

**first home saver accounts**

employer FHSA contributions etc. .... 15-80

**11 Section 10-5 (table item headed “reimbursements”)**

After “elections,”, insert “first home saver accounts,”.

**12 Section 11-55 (table item headed “first home saver accounts”)**

After:

credits to and payments from..... 345-50

insert:

tax paid by providers ..... 345-30

**13 At the end of Division 15 of Part 2-1 of Chapter 2**

Add:

**15-80 Employer FHSA contributions etc.**

Your assessable income includes a contribution or expense payment benefit of a kind mentioned in paragraph (hd) of the definition of *fringe benefit* in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986* that, but for that paragraph, would be a \*fringe benefit\* provided to you.

**14 At the end of section 205-15**

Add:

- (3) Despite item 1 or 2 of the table in subsection (1), no credit arises on that part of the payment that is attributable to a payment of income tax in relation to either or both of the following:
  - (a) an \*FHSA component;
  - (b) an \*RSA component.

**15 Section 205-30**

Before “The following”, insert “(1)”.

**16 At the end of section 205-30**

Add:

- (2) Despite item 2 of the table in subsection (1), no debit arises on that part of the refund that is attributable to a payment of income tax in relation to either or both of the following:
- (a) an \*FHSA component;
  - (b) an \*RSA component.

**17 Paragraph 290-5(d)**

Omit “section 22 or 34 of”.

**18 Paragraph 295-171(a)**

Omit “section 22 or 34 of”.

**19 Section 295-495 (after table item 4)**

Insert:

- 4A      \*RSA provider      Amounts credited to \*FHSAs  
            that is also an  
            \*FHSA provider

**20 Paragraph 295-615(1)(b)**

After “Act 1997”, insert “, the *First Home Saver Accounts Act 2008*”.

**21 At the end of subsection 295-615(1)**

Add:

; (e) the *First Home Saver Accounts Act 2008*.

**22 At the end of Subdivision 345-A of Division 345 of Part 3-45**

Add:

**345-25 FHSA provider that is an ADI (other than an RSA provider)—amounts that cannot be deducted**

An \*FHSA provider that is an \*ADI (other than an \*RSA provider) cannot deduct anything for amounts credited to \*FHSAs.

**345-30 Amounts of tax paid by FHSA providers that are ADIs**

An amount is not assessable income and is not \*exempt income of an \*FHSA provider if:

- (a) the amount is paid from an \*FHSA to the FHSA provider to enable the provider to make a payment of a kind mentioned in paragraph 31(1)(h) of the *First Home Saver Accounts Act 2008*; and
- (b) the provider is an ADI.

***Superannuation (Government Co-contribution for Low Income Earners) Act 2003***

**23 Subparagraph 7(1)(c)(v)**

Omit “section 22 or 34 of”.

***Taxation Administration Act 1953***

**24 Paragraph 12-1(3)(b) in Schedule 1**

Repeal the paragraph, substitute:

- (b) is not any of the following:
  - (i) an exempt benefit under section 22 of that Act (about reimbursement of car expenses on the basis of distance travelled);
  - (ii) an expense payment benefit in relation to a contribution to an \*FHSA.

**25 Paragraph 391-5(1)(e) in Schedule 1**

Omit “or (g)”, substitute “, (g) or (h)”.

**26 Application**

The amendments made by this Schedule apply from 1 October 2008.

## **Schedule 2—Amendments commencing the day after Royal Assent**

### ***Australian Securities and Investments Commission Act 2001***

#### **1 After subsection 127(1)**

Insert:

(1AA) Subsection (1) does not apply to information given or produced in accordance with section 70 of the *First Home Saver Accounts Act 2008*.

Note: Section 70 of the *First Home Saver Accounts Act 2008* provides for restrictions on the disclosure of this information.

### ***Banking Act 1959***

#### **2 Subsection 69(3)**

After “*Retirement Savings Accounts Act 1997*”, insert “or FHSAs (within the meaning of the *First Home Saver Accounts Act 2008*)”.

#### **3 At the end of subsection 69(3)**

Add:

Note: The *First Home Saver Accounts Act 2008* deals with unclaimed money held in FHSAs.

### ***First Home Saver Accounts Act 2008***

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

Repeal the subsection, substitute:

- (3) ASIC has the general administration of the following provisions of this Act:
- (a) Division 2 of Part 7, to the extent that section 6 of the *Superannuation Industry (Supervision) Act 1993* (as that section applies under subsection 114(2) of this Act) confers powers and duties on ASIC;
  - (b) Part 4A.

**5 Subparagraph 11(3)(c)(ii)**

Omit “(recontribution of FHSA home acquisition payment after failure to occupy a dwelling)”.

**6 Subparagraph 11(3)(c)(iii)**

After “recontribution of”, insert “all or part of”.

**7 At the end of subsection 11(3)**

Add:

; or (e) the contribution is of a kind mentioned in subparagraph 51C(2)(b)(i) (recontribution of unclaimed money).

**8 Paragraph 15(2)(a)**

Omit “(recontribution to an FHSA after failure to occupy a dwelling)”.

**9 At the end of subsection 15(2)**

Add:

; or (d) the FHSA was closed following a payment made in accordance with subsection 51B(1) (unclaimed money).

**10 Paragraph 17(3)(b)**

Repeal the paragraph, substitute:

(b) that failure is reasonable in the circumstances; and

(c) if it is reasonable to require the person to do so, the person has, as soon as is practicable, contributed to an FHSA held by the person an amount equal to the payment or a lesser amount that is reasonable in the circumstances.

**11 Subsection 17(4)**

Omit “subparagraph (3)(b)(ii), in determining whether it is reasonable to pay a lesser amount in the circumstances,”, substitute “paragraph (3)(b), in determining whether a failure is reasonable,”.

**12 At the end of Division 1 of Part 2**

Add:

**17A Meaning of *unclaimed money***

The balance of an FHSA held by a person is *unclaimed money* in relation to the person if:

- (a) no contributions have been made to, and no payments (other than a payment of a kind mentioned in paragraph 31(1)(f), (g) or (h)) have been made from, the FHSA for a period of at least 7 years; and
- (b) after the end of that period the FHSA provider has been unable to contact the person after making reasonable efforts.

**13 Section 18 (paragraph (b) of the definition of *protected information*)**

Repeal the paragraph, substitute:

- (b) is disclosed to, or obtained by, a person to whom section 70 applies, under section 70 or in the course of, or because of, the person's duties under or in relation to this Act or the regulations;

but does not include a protected document or protected information within the meaning of section 56 of the *Australian Prudential Regulation Authority Act 1998* or information that is protected from unauthorised use or disclosure under section 127 of the *Australian Securities and Investments Commission Act 2001*.

**14 Section 18**

Insert:

*unclaimed money* has the meaning given by section 17A.

**15 Subparagraph 19(1)(b)(iii)**

Omit "paragraph 17(3)(b)", substitute "paragraph 17(3)(c)".

**16 At the end of paragraph 19(1)(b)**

Add:

- (iv) if the person held an FHSA that was closed, and nevertheless meets the FHSA eligibility requirements because of paragraph 15(2)(d)—the initial contribution to the FHSA to be opened or issued will be made in accordance with subparagraph 51C(2)(b)(i); and

**17 Paragraph 22(1)(a)**

Omit “subsection 23(1)”, substitute “paragraph 23(1)(a) or (b)”.

**18 Paragraph 22(1)(a)**

Omit “that subsection”, substitute “that paragraph”.

**19 At the end of paragraph 27(1)(b)**

Add:

; or (iv) a contribution mentioned in subparagraph 51C(2)(b)(i) (recontribution of unclaimed money).

**20 Subsection 27(2)**

Repeal the subsection, substitute:

- (2) The FHSA provider (the *first provider*) does not contravene subsection (1) if:
- (a) in the case of a transfer made by another FHSA provider (the *second provider*) in the circumstances mentioned in subparagraph 31(1)(c)(ii) (transfer because of a family law obligation)—the first provider repays the amount from the FHSA to the second provider within 30 days after receiving it; or
  - (b) in any other case—the first provider repays the amount from the FHSA to the FHSA holder within 30 days after receiving it.

**21 Paragraph 28(2)(b)**

Omit “paragraph 17(3)(b) (recontribution of FHSA home acquisition payment after failure to occupy a dwelling)”, substitute “paragraph 17(3)(c)”.

**22 At the end of paragraph 31(1)(b)**

Add:

(iv) subsection 51B(1) (compulsory payment of unclaimed money); or

**23 Paragraph 31(1)(d)**

Repeal the paragraph, substitute:

- (d) the payment is a repayment made in accordance with subsection 25(2), 26(2) or 27(2); or
- (da) the FHSA holder has given a declaration, in the approved form, to the FHSA provider stating that he or she has never held another FHSA and that the payment is a repayment made in accordance with:
  - (i) subsection 992A(4) of the *Corporations Act 2001* (unsolicited offer of financial product); or
  - (ii) section 1016F of that Act (defective product disclosure document); or
  - (iii) section 1019B of that Act (cooling-off period); or

**24 At the end of subsection 34(1)**

Add:

; and (c) either:

- (i) the FHSA provider has not received a notice from the Commissioner in accordance with subsection 67(2); or
- (ii) if the FHSA provider has received such a notice—the provider has received a revocation of that notice.

**25 After Part 4**

Insert:

**Part 4A—Unclaimed money**

**51A Statement of unclaimed money etc.**

- (1) An FHSA provider commits an offence if:
  - (a) at the end of a calendar year, there is unclaimed money held in FHSAs provided by it; and
  - (b) within 3 months after the end of the year, the provider has not given ASIC a statement complying with subsections (2), (3) and (4).

Penalty: 50 penalty units.

- (2) The statement must be in the approved form.

- (3) The approved form may require the statement to contain the following information in relation to each FHSA mentioned in paragraph (1)(a):
- (a) the FHSA holder's name;
  - (b) the FHSA holder's address;
  - (c) the amount of unclaimed money;
  - (d) the FHSA provider;
  - (e) the FHSA account number, policy number or other identifying number.
- (4) If, between the end of the calendar year and the day on which the statement is given to ASIC, the provider has made any payments (other than a payment of a kind mentioned in paragraph 31(1)(f), (g) or (h)) from any FHSA mentioned in paragraph (1)(a) of this section, the statement must contain information relating to the amounts so paid.
- (5) Subsections (3) and (4) do not limit the information the approved form may require the statement to contain.

### **51B Payment of unclaimed money to ASIC on behalf of the Commonwealth**

- (1) An FHSA provider commits an offence if:
- (a) it gives a statement to ASIC under section 51A at a time; and
  - (b) at the same time, it does not pay to ASIC on behalf of the Commonwealth an amount equal to the amount of unclaimed money worked out under subsection (2).

Penalty: 50 penalty units.

- (2) Work out the amount in accordance with the following formula:

Statement amount – Money paid – Remaining partial balances

where:

***money paid*** means the total of any amounts paid as mentioned in subsection 51A(4).

***remaining partial balances*** means the total of the balances (if any) of any FHSAs from which amounts have been paid as mentioned in subsection 51A(4).

**statement amount** means the total of unclaimed money shown in the statement mentioned in subsection 51A(1).

- (3) Subject to section 51C, an FHSA provider is, upon payment to ASIC of an amount as required by this section, discharged from further liability in respect of that amount.

**51C Payment where money later claimed etc.**

- (1) ASIC must pay to an FHSA provider an amount equal to an amount of unclaimed money in relation to a person if:
- (a) unclaimed money in relation to the person has been paid to ASIC on behalf of the Commonwealth under section 51B by the FHSA provider (or another FHSA provider that no longer offers to provide FHSAs); and
  - (b) the person, or the person's legal personal representative, has made an application to the provider in the approved form; and
  - (c) the provider has made an application to ASIC stating that:
    - (i) it has approved the application mentioned in paragraph (b); and
    - (ii) it will contribute or pay the amount in accordance with subsection (2).
- (2) An FHSA provider commits an offence if:
- (a) it receives an amount under subsection (1); and
  - (b) within 30 days after receiving the amount, it does not contribute or pay the amount:
    - (i) if the application states that the person meets the FHSA eligibility requirements and that he or she wants the amount to be contributed to an FHSA—to an FHSA opened or issued for the person; or
    - (ii) if the application states that the person wants the amount to be paid to a particular superannuation interest of the person in a complying superannuation plan—to that plan; or
    - (iii) if the application states that the person is aged 60 or over and that he or she wants the amount to be paid to him or her—to the person; or
    - (iv) if none of subparagraphs (i), (ii) and (iii) apply—to a superannuation interest for the benefit of the person in

the provider's default superannuation plan (see section 24); or

- (v) if the person is deceased—to the person's legal personal representative.

Penalty: 50 penalty units.

- (3) If an FHSA provider satisfies ASIC that an amount paid to ASIC under section 51B exceeds the amount that should have been paid under that section, ASIC must refund to the FHSA provider the amount of the excess.
- (4) The Consolidated Revenue Fund is appropriated for the purposes of this section.
- (5) For the purposes of this Act and any other taxation law, treat an amount paid in accordance with subsection (2) as having been paid from an FHSA.

**51D ASIC may publish information relating to unclaimed money statements**

ASIC may publish any information of a kind mentioned in subsection 51A(3) that is given to ASIC in an unclaimed money statement.

**51E Operation of State and Territory laws in relation to unclaimed money**

Sections 51A, 51B, 51C and 51D are intended to apply to the exclusion of all laws of a State or Territory which require an FHSA provider to:

- (a) pay unclaimed money to, or to an authority of, a State or Territory; or
- (b) lodge a return relating to unclaimed money with, or with an authority of, a State or Territory.

**26 Subparagraph 67(2)(c)(i)**

Repeal the subparagraph.

**27 Subparagraph 67(2)(c)(iii)**

After "32", insert ", 34".

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**28 Paragraph 70(1)(c)**

Repeal the paragraph, substitute:

- (c) a person who, because of his or her employment, or in the course of that employment, has acquired protected information, other than an employee of the body to which the information relates.

**29 Paragraph 70(2)(b)**

After “communicated”, insert “in any of the following ways”.

**30 Subparagraph 70(2)(b)(i)**

Omit “; or”, substitute “;”.

**31 Subparagraph 70(2)(b)(ii)**

Omit “, under or in relation to this Act or the regulations”.

**32 Subsection 70(5)**

Repeal the subsection, substitute:

- (5) A person to whom this section applies is not required to divulge or communicate protected information to a court except where it is necessary to do so for the purpose of carrying into effect the provisions of this Act or the regulations.

**33 After subsection 70(7)**

Insert:

*Information may be divulged for purposes of certain other Acts*

- (7A) Nothing in this section prohibits the Commissioner, a Second Commissioner or a Deputy Commissioner, or a person authorised by any of them, from divulging or communicating any protected information:
  - (a) to APRA for the purpose of APRA performing its functions in relation to FHSAs; or
  - (b) to ASIC for the purpose of ASIC performing its functions in relation to FHSAs.

**34 After subsection 114(2)**

Insert:

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(2A) Subsection (2) also applies for the purposes of section 315 of the *Superannuation Industry (Supervision) Act 1993* as if:

- (a) a reference in that subsection to an FHSA provider included a reference to a trustee who purports to provide an FHSA trust; and
- (b) a reference in that subsection to an FHSA trust included a reference to a trust purported to be an FHSA trust; and
- (c) a reference in that subsection to a holder of an FHSA included a reference to a beneficiary of a trust purported to be an FHSA trust.

**35 Paragraph 123(1)(b)**

Omit “informed”, substitute “notified”.

**36 After section 123**

Insert:

**123A Life insurance companies and ADIs may revoke notice of intention to provide FHSAs**

A life insurance company or ADI may, in writing given to APRA, revoke a notice given in accordance with section 123 if the life insurance company or ADI:

- (a) does not provide FHSAs; and
- (b) does not offer to provide FHSAs.

**37 After section 126**

Insert:

**126A FHSA provider to provide information**

- (1) A spouse of an FHSA holder, or the spouse’s legal personal representative, may make an application to the FHSA provider for information about the balance of the FHSA.
- (2) An application must be in the approved form, and must be accompanied by a declaration stating that the applicant requires the information for either or both of the following purposes:
  - (a) to assist the applicant in entering into a financial agreement under Part VIIIA of the *Family Law Act 1975*;

(b) to assist the applicant in connection with obtaining a court order under that Act.

- (3) An FHSA provider commits an offence if:
- (a) it receives an application under this section by a spouse of an FHSA holder; and
  - (b) it does not comply with the application.

Penalty: 50 penalty units.

- (4) An FHSA provider commits an offence if:
- (a) it receives an application under this section by a spouse of an FHSA holder; and
  - (b) in response to an application, it provides the spouse with any address (including a postal address) of the FHSA holder.

Penalty: 50 penalty units.

- (5) An FHSA provider commits an offence if:
- (a) it receives an application under this section by a spouse of an FHSA holder; and
  - (b) it informs the FHSA holder that the application has been made.

Penalty: 50 penalty units.

### **126B Certain uses of FHSAs prohibited**

- (1) A term of a contract or other agreement providing for a charge (including a mortgage, lien or other encumbrance) over an FHSA has no effect.
- (2) Rights to payments from an FHSA cannot be assigned.
- (3) An FHSA provider must not recognise, or in any way encourage or sanction, a charge over an FHSA or an assignment of rights to payments from an FHSA.
- (4) A person commits an offence if:
  - (a) the person does an act; and
  - (b) the doing of the act results in a contravention of subsection (3).

Penalty: 50 penalty units.

***Income Tax Assessment Act 1936***

**38 After paragraph 16(4)(hca)**

Insert:

(hcaa) the Australian Prudential Regulation Authority, or the Australian Securities and Investments Commission, for the purpose of that body performing its functions in relation to FHSAs;

***Life Insurance Act 1995***

**39 Subsection 216(1)**

After “*Retirement Savings Accounts Act 1997*”, insert “or FHSAs (within the meaning of the *First Home Saver Accounts Act 2008*)”.

**40 At the end of subsection 216(1)**

Add:

Note: The *First Home Saver Accounts Act 2008* deals with unclaimed money held in FHSAs.

***Taxation Administration Act 1953***

**41 Subsection 13J(1)**

Omit “similar information”, substitute “information obtained under the State tax law”.

**42 At the end of section 13J**

Add:

(9) This section applies in relation to the *First Home Saver Accounts Act 2008* as if references in this section to a State tax law included references to the *First Home Owner Grant Act 2000* of New South Wales, and a similar law of a State or Territory.

## **Schedule 3—Amendments commencing 1 July 2009**

### ***Authorised Deposit-taking Institutions Supervisory Levy Imposition Act 1998***

#### **1 After subsection 7(4)**

Insert:

- (4A) An amount determined under paragraph (3)(d) as an ADI's asset value must exclude an amount equal to the total balances of all FHSAs (within the meaning of the *First Home Saver Accounts Act 2008*) provided by the ADI.

### ***Financial Institutions Supervisory Levies Collection Act 1998***

#### **2 Section 7 (at the end of the definition of *leviable body*)**

Add:

- ; (g) a leviable FHSA entity.

#### **3 Section 7**

Insert:

*leviable FHSA entity* has the same meaning as in the *First Home Saver Account Providers Supervisory Levy Imposition Act 2008*.

#### **4 Section 7 (at the end of the definition of *levy*)**

Add:

- ; or (g) in respect of a leviable body that is a leviable FHSA entity—levy imposed by the *First Home Saver Account Providers Supervisory Levy Imposition Act 2008*.

#### **5 At the end of section 8**

Add:

*Leviable FHSA entities*

- (7) A body corporate or trustee that is a leviable FHSA entity at any time during a financial year that ends after the commencement of the *First Home Saver Account Providers Supervisory Levy Imposition Act 2008* is liable to pay a levy imposed in respect of that financial year.

***Life Insurance Supervisory Levy Imposition Act 1998***

**6 After subsection 7(4)**

Insert:

- (4A) An amount determined under paragraph (3)(d) as a life insurance company's asset value must exclude an amount equal to the total balances of all FHSAs (within the meaning of the *First Home Saver Accounts Act 2008*) provided by the life insurance company.

**Schedule 4—Amendment contingent on the  
Family Law Amendment (De Facto  
Financial Matters and Other Measures)  
Act 2008**

*First Home Saver Accounts Act 2008*

**1 Paragraph 126A(2)(a)**

After “Part VIIIA”, insert “or Part VIIIAB”.

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*[Minister’s second reading speech made in—  
House of Representatives on 4 September 2008  
Senate on 17 September 2008]*

(163/08)

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