



**Families, Housing, Community Services  
and Indigenous Affairs and Other  
Legislation Amendment (Further 2008  
Budget and Other Measures) Act 2008**

**No. 143, 2008**

**An Act to amend the law relating to family  
assistance, child support and veterans' affairs, and  
for related 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 family  
assistance, child support and veterans' affairs, and  
for related purposes**

*[Assented to 9 December 2008]*

The Parliament of Australia enacts:

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## 1 Short title

This Act may be cited as the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further 2008 Budget and Other Measures) Act 2008*.

## 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.	9 December 2008
2. Schedule 1, items 1 and 2	1 January 2009.	1 January 2009
3. Schedule 1, item 3	Immediately after the commencement of Part 1 of Schedule 2 to the <i>Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2008 Budget and Other Measures) Act 2008</i> .	1 January 2009
4. Schedule 1, items 4 to 14	1 January 2009.	1 January 2009
5. Schedule 2, Part 1	The day on which this Act receives the Royal Assent.	9 December 2008
6. Schedule 2, Part 2	1 July 2009.	1 July 2009
8. Schedule 3, Part 1	The 28th day after the day on which this Act receives the Royal Assent.	6 January 2009
9. Schedule 3, Part 2	The day after this Act receives the Royal Assent.	10 December 2008

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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>
10. Schedule 3, Parts 3 to 5	The 28th day after the day on which this Act receives the Royal Assent.	6 January 2009
11. Schedule 3, Part 6	The day after this Act receives the Royal Assent.	10 December 2008
12. Schedule 3, Part 7	The 28th day after the day on which this Act receives the Royal Assent.	6 January 2009

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

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

### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Maternity immunisation allowance

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

#### **1 Subsection 39(1)**

Omit “3”, substitute “7”.

Note: The heading to subsection 39(2) is replaced by the heading “*Usual case*”.

#### **2 After subsection 39(2)**

Insert:

- (2A) Second, an individual is eligible for maternity immunisation allowance in respect of a child who is alive at the end of 4 years after the date of the child’s birth if:
- (a) the Secretary is satisfied that the child meets the immunisation requirements set out in section 6 on any day before the child turns 5; and
  - (b) the child is an FTB child of the individual; and
  - (c) on the later of the following days:
    - (i) the day the child turned 4;
    - (ii) the earliest day to which paragraph (a) applies;the individual either:
    - (iii) is eligible for family tax benefit in respect of the FTB 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.

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

Omit “Second”, substitute “Third”.

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

Omit “Third”, substitute “Fourth”.

Note: The heading to subsection 39(4) is altered by omitting “2” and substituting “5”.

#### **5 Subsection 39(4)**

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Omit “2”, substitute “5”.

## **6 At the end of section 39**

Add:

### *Adoption of children born outside Australia*

- (5) Fifth, an individual is eligible for maternity immunisation allowance in respect of a child if:
- (a) the child is born outside Australia; and
  - (b) either:
    - (i) while the child is outside Australia, the child is adopted under the law of any place (whether in Australia or not) relating to the adoption of children (whether or not the child is adopted by the individual); or
    - (ii) the child is in the process of being adopted under the law of any place (whether in Australia or not) relating to the adoption of children (whether or not the child is to be adopted by the individual); and
  - (c) as part of the process for the adoption of the child, the child is entrusted to the care of a person adopting the child by an authorised party; and
  - (d) either:
    - (i) if subparagraph (b)(i) applies—the child arrives in Australia from overseas after the adoption takes place and the child so arrives on the day the child turns 3 or an earlier day; or
    - (ii) if subparagraph (b)(ii) applies—the child arrives in Australia from overseas as part of the process for the adoption of the child and the child so arrives on the day the child turns 3 or an earlier day; and
  - (e) the Secretary is satisfied that the child meets the immunisation requirements set out in section 6 on or after the day the child turns 18 months and before the day the child turns 4; and
  - (f) on the earliest day to which paragraph (e) applies:
    - (i) the child is an FTB child of the individual; and
    - (ii) the individual is eligible for family tax benefit in respect of the FTB child or would be so eligible except that the

individual's rate of family tax benefit, worked out under Division 1 of Part 4, is nil.

- (6) Sixth, an individual is eligible for maternity immunisation allowance in respect of a child if:
- (a) the child is born outside Australia; and
  - (b) either:
    - (i) while the child is outside Australia, the child is adopted under the law of any place (whether in Australia or not) relating to the adoption of children (whether or not the child is adopted by the individual); or
    - (ii) the child is in the process of being adopted under the law of any place (whether in Australia or not) relating to the adoption of children (whether or not the child is to be adopted by the individual); and
  - (c) as part of the process for the adoption of the child, the child is entrusted to the care of a person adopting the child by an authorised party; and
  - (d) either:
    - (i) if subparagraph (b)(i) applies—the child arrives in Australia from overseas after the adoption takes place and the child so arrives on a day that is after the child turns 3 and before the child turns 16; or
    - (ii) if subparagraph (b)(ii) applies—the child arrives in Australia from overseas as part of the process for the adoption of the child and the child so arrives on a day that is after the child turns 3 and before the child turns 16; and
  - (e) either subsection (7) or (8) is satisfied.
- (7) This subsection is satisfied if:
- (a) the Secretary is satisfied that the child meets the immunisation requirements set out in section 6 on any day within the last 6 months of the period of 2 years beginning on the day of the arrival mentioned in paragraph (6)(d); and
  - (b) on the earliest day to which paragraph (a) applies:
    - (i) the child is an FTB child of the individual; and
    - (ii) the individual is eligible for family tax benefit in respect of the FTB child or would be so eligible except that the

individual's rate of family tax benefit, worked out under Division 1 of Part 4, is nil.

- (8) This subsection is satisfied if the child dies within the period of 2 years beginning on the day of the arrival mentioned in paragraph (6)(d), and on the day of the child's death:
- (a) the child is an FTB child of the individual; and
  - (b) the individual is eligible for family tax benefit in respect of the FTB child or would be so eligible except that the individual's rate of family tax benefit, worked out under Division 1 of Part 4, is nil.
- (9) Seventh, an individual is eligible for maternity immunisation allowance in respect of a child if:
- (a) the child is born outside Australia; and
  - (b) either:
    - (i) while the child is outside Australia, the child is adopted under the law of any place (whether in Australia or not) relating to the adoption of children (whether or not the child is adopted by the individual); or
    - (ii) the child is in the process of being adopted under the law of any place (whether in Australia or not) relating to the adoption of children (whether or not the child is to be adopted by the individual); and
  - (c) as part of the process for the adoption of the child and while the child is outside Australia, the child is entrusted to the care of a person adopting the child by an authorised party; and
  - (d) the child dies before turning 16; and
  - (e) the child has not arrived in Australia from overseas after the child is entrusted to care as mentioned in paragraph (c); and
  - (f) on the day of the child's death:
    - (i) the child is an FTB child of the individual; and
    - (ii) the individual is eligible for family tax benefit in respect of the FTB child or would be so eligible except that the individual's rate of family tax benefit, worked out under Division 1 of Part 4, is nil.
- (10) For the purposes of paragraphs (7)(b), (8)(a) and (b) and (9)(f), the following provisions are to be disregarded:
- (a) paragraph (a) of item 1 of the table in subsection 22A(1);
  - (b) paragraphs (a) and (c) of item 2 of that table;
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(c) item 3 of that table.

Note: Section 22A sets out exceptions to when an individual can be an FTB child of another individual. This subsection removes some of those exceptions.

## 7 Section 67

Omit “The”, substitute “(1) Subject to this section, the”.

## 8 At the end of section 67

Add:

### *Half-amount*

- (2) Subject to this section, the amount of maternity immunisation allowance in respect of a child is half of the amount under subsection (1) if:
- (a) the Secretary determines that an individual is entitled to be paid the allowance for the child based on eligibility for the allowance under subsection 39(2), (2A) or (5) or section 40 (so far as it relates to that subsection); or
  - (b) both of the following apply:
    - (i) the Secretary determines that an individual is entitled to be paid the allowance for the child based on eligibility for the allowance under subsection 39(4) or section 40 (so far as it relates to that subsection);
    - (ii) before that determination, the Secretary had determined that an amount of the allowance under this subsection was to be paid in respect of the child based on eligibility for the allowance under subsection 39(2) or (5) or section 40 (so far as it relates to subsection 39(2) or (5)).

### *Exception*

- (3) Subsection (2) does not apply if:
- (a) the Secretary determines that an individual is entitled to be paid maternity immunisation allowance for a child based on eligibility for the allowance under subsection 39(2A) or section 40 (so far as it relates to that subsection); and
  - (b) before that determination:
    - (i) the Secretary had not determined that maternity immunisation allowance, based on eligibility for the

allowance under subsection 39(2) or section 40 (so far as it relates to that subsection), was to be paid in respect of the child; and

- (ii) the Secretary had not determined that maternity immunisation allowance, based on eligibility for the allowance under subsection 39(5) or section 40 (so far as it relates to that subsection), was to be paid in respect of the child.

*Maximum amount of maternity immunisation allowance*

(4) If:

- (a) one amount of maternity immunisation allowance under subsection (1) has been paid in respect of a child; or
- (b) 2 amounts of maternity immunisation allowance under subsection (2) have been paid in respect of a child;

no further amount of maternity immunisation allowance is to be paid in respect of the child.

(5) If the Secretary determines that an individual is entitled to be paid maternity immunisation allowance for a child based on eligibility for the allowance:

- (a) under either of subsections 39(2) and (5); or
- (b) under section 40 (so far as it relates to either of those subsections);

no amount of the allowance is to be paid for the child based on eligibility for the allowance under the other of those subsections or under section 40 (so far as it relates to the other of those subsections).

**9 Paragraph 68(a)**

Omit “subsection 39(2) or (4)”, substitute “subsection 39(2), (2A), (4), (5), (6) or (9)”.

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

**10 Subsection 39(4)**

Repeal the subsection, substitute:

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## Schedule 1 Maternity immunisation allowance

### *“Normal circumstances” maternity immunisation allowance claim*

- (4) A claim for payment of maternity immunisation allowance in normal circumstances is not effective if it is made after the time specified in the following table:

<b>Normal circumstances maternity immunisation allowance claim</b>		
<b>Item</b>	<b>If the claim is based on eligibility for the allowance under:</b>	<b>the claim is not effective if it is made after:</b>
1	Subsection 39(2) of the Family Assistance Act	2 years after the birth of the child
2	Subsection 39(2A) of the Family Assistance Act	5 years after the birth of the child
3	Subsection 39(3) of the Family Assistance Act	5 years after the delivery of the child
4	Subsection 39(4) of the Family Assistance Act	the later of: (a) 2 years after the death of the child; and (b) 5 years after the birth of the child
5	Subsection 39(5) of the Family Assistance Act	4 years after the birth of the child
6	Subsection 39(6) of the Family Assistance Act	(a) if subsection 39(7) of that Act applies—2 years beginning on the day of the arrival mentioned in paragraph 39(6)(d) of that Act; or (b) if subsection 39(8) of that Act applies—2 years after the death of the child
7	Subsection 39(9) of the Family Assistance Act	the later of: (a) 2 years after the death of the child; and (b) 5 years after the birth of the child

## **11 Subsections 41(5) and (6)**

Repeal the subsections, substitute:

### *Deferral of “normal circumstances” maternity immunisation allowance determination because of ineligibility*

- (5) If:

- (a) the claim is one for payment of maternity immunisation allowance in normal circumstances, based on eligibility for the allowance under subsection 39(2), (2A) or (5) of the Family Assistance Act, or subsection 39(6) of that Act (where subsection 39(7) of that Act applies), in respect of a child; and
  - (b) at the time the determination would otherwise be made on the claim:
    - (i) the claimant is not eligible for maternity immunisation allowance under subsection 39(2), (2A), (5) or (6) of that Act in respect of the child; and
    - (ii) the child is an FTB child of the claimant; and
    - (iii) the claimant is eligible for family tax benefit in respect of the child or would be so eligible except that the claimant's rate of family tax benefit, worked out under Division 1 of Part 4 of the Family Assistance Act, is nil;the Secretary must not determine the claim until after the time mentioned in subsection (6).
- (6) The time for the purposes of subsection (5) is:
- (a) if the claim is based on eligibility for the allowance under subsection 39(2) of the Family Assistance Act:
    - (i) if the claimant becomes eligible for maternity immunisation allowance under subsection 39(2) of that Act in respect of the child before the end of 2 years after the child was born—the time when the claimant becomes so eligible; or
    - (ii) in any other case—2 years after the child was born; or
  - (b) if the claim is based on eligibility for the allowance under subsection 39(2A) of the Family Assistance Act:
    - (i) if the claimant becomes eligible for maternity immunisation allowance under subsection 39(2A) of that Act in respect of the child before the end of 5 years after the child was born—the time when the claimant becomes so eligible; or
    - (ii) in any other case—5 years after the child was born; or
  - (c) if the claim is based on eligibility for the allowance under subsection 39(5) of the Family Assistance Act:
    - (i) if the claimant becomes eligible for maternity immunisation allowance under subsection 39(5) of that
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- Act in respect of the child before the end of 4 years after the child was born—the time when the claimant becomes so eligible; or
- (ii) in any other case—4 years after the child was born; or
- (d) if the claim is based on eligibility for the allowance under subsection 39(6) of the Family Assistance Act (where subsection 39(7) of that Act applies):
- (i) if the claimant becomes eligible for maternity immunisation allowance under subsection 39(6) of that Act (where subsection 39(7) of that Act applies) in respect of the child before the end of 2 years beginning on the day of the arrival mentioned in paragraph 39(6)(d) of that Act—the time when the claimant becomes so eligible; or
- (ii) in any other case—2 years beginning on the day of the arrival mentioned in paragraph 39(6)(d) of that Act.
- (7) If the claim is one for payment of maternity immunisation allowance in normal circumstances, based on eligibility for the allowance under subsection 39(6) of the Family Assistance Act (where subsection 39(7) of that Act applies), then, for the purposes of subparagraphs (5)(b)(ii) and (iii) of this section, the following provisions are to be disregarded:
- (a) paragraph (a) of item 1 of the table in subsection 22A(1) of the Family Assistance Act;
- (b) paragraphs (a) and (c) of item 2 of that table;
- (c) item 3 of that table.

Note: Section 22A of the Family Assistance Act sets out exceptions to when an individual can be an FTB child of another individual. This subsection removes some of those exceptions.

## 12 Application and transitional—eligibility for maternity immunisation allowance

### *Usual case*

- (1) Subsection 39(2A) of the *A New Tax System (Family Assistance) Act 1999* applies in relation to:
- (a) children born on or after the commencement of this item; and
- (b) children born before the commencement of this item, other than children in respect of whom the Secretary had



determined, before that commencement, maternity immunisation allowance was to be paid, based on eligibility for the allowance under subsection 39(2) of that Act or section 40 of that Act (so far as it relates to that subsection).

*Child dies within 5 years of birth*

- (2) The amendment made by item 5 applies in relation to deaths occurring on or after the commencement of that item.

*Adoption of children born outside Australia*

- (3) Subsections 39(5) and (6) of the *A New Tax System (Family Assistance) Act 1999* apply in relation to:
- (a) processes for adoptions beginning before, on or after the commencement of this item; and
  - (b) arrivals in Australia occurring on or after 1 July 2006.
- (4) Paragraph 39(5)(e) of the *A New Tax System (Family Assistance) Act 1999* applies in relation to a child arriving in Australia on or after 1 July 2006 and before 1 January 2009 as if the reference in that paragraph to “the day the child turns 4” were a reference to “1 January 2011”.
- (5) Subsection 39(6) of the *A New Tax System (Family Assistance) Act 1999*, insofar as it relates to subsection 39(8) of that Act, applies as if a reference in subparagraphs 39(6)(d)(i) and (ii) of that Act to “the child so arrives on a day that is after the child turns 3 and before the child turns 16” included a reference to “the child so arrives on or after 1 July 2006 and before 1 January 2009 and so arrives on the day the child turns 3 or an earlier day”.
- (6) Paragraph 39(7)(a) of the *A New Tax System (Family Assistance) Act 1999* applies in relation to a child arriving in Australia on or after 1 July 2006 and before 1 January 2009 as if the reference in that paragraph to “within the last 6 months of the period of 2 years beginning on the day of the arrival mentioned in paragraph (6)(d)” were a reference to “that is at least 18 months after the day of the arrival mentioned in paragraph (6)(d) and is before 1 January 2011”.
- (7) Subsection 39(8) of the *A New Tax System (Family Assistance) Act 1999* applies in relation to a child arriving in Australia on or after 1 July 2006 and before 1 January 2009 as if the reference in that subsection to “within the period of 2 years beginning on the day of the arrival
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mentioned in paragraph (6)(d)” were a reference to “before 1 January 2011”.

- (8) Subsection 39(9) of the *A New Tax System (Family Assistance) Act 1999* applies in relation to:
- (a) processes for adoptions beginning before, on or after the commencement of this item; and
  - (b) deaths occurring on or after 1 July 2006.

### **13 Application and transitional—amount of maternity immunisation allowance**

- (1) Paragraph 67(2)(a) of the *A New Tax System (Family Assistance) Act 1999*, to the extent it relates to subsection 39(2) of that Act or section 40 of that Act (so far as it relates to subsection 39(2) of that Act) applies in relation to:
- (a) claims for payment of maternity immunisation allowance made on or after the commencement of this item; and
  - (b) claims for payment of maternity immunisation allowance made before that commencement that had not been determined by the Secretary before that commencement.
- (2) If:
- (a) the Secretary determines that an individual is entitled to be paid maternity immunisation allowance for a child based on eligibility for the allowance under subsection 39(5) of the *A New Tax System (Family Assistance) Act 1999* or section 40 of that Act (so far as it relates to that subsection); and
  - (b) the day of the arrival mentioned in paragraph 39(5)(d) of that Act was before 1 January 2009;
- then:
- (c) the amount of the allowance in respect of the child is the amount under subsection 67(1) of that Act; and
  - (d) paragraph 67(4)(a) of that Act is taken to be satisfied in relation to that amount.
- (3) If, before the commencement of this item, the Secretary determined that an amount of maternity immunisation allowance under section 67 of the *A New Tax System (Family Assistance) Act 1999* was to be paid in respect of a child, no further amount of maternity immunisation allowance is to be paid in respect of the child after that commencement.

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**14 Application and transitional—claims for maternity immunisation allowance**

(1) If:

- (a) an individual made a claim for maternity immunisation allowance before the commencement of this item based on eligibility for the allowance under subsection 39(2) of the *A New Tax System (Family Assistance) Act 1999*; and
- (b) the claim had not been determined by the Secretary before that commencement;

the individual is also taken to have made a claim for maternity immunisation allowance, based on eligibility for the allowance under subsection 39(2A) of the *A New Tax System (Family Assistance) Act 1999*, on 1 January 2009.

(2) If:

- (a) an individual:
  - (i) is eligible for maternity immunisation allowance under subsection 39(5) or (6) of the *A New Tax System (Family Assistance) Act 1999* in respect of an arrival in Australia that occurred before 1 January 2009; or
  - (ii) is eligible for maternity immunisation allowance under subsection 39(9) of the *A New Tax System (Family Assistance) Act 1999* in respect of a death that occurred before 1 January 2009; and
- (b) the individual makes a claim for the allowance before 1 January 2011; and
- (c) apart from this subitem, subsection 39(4) of the *A New Tax System (Family Assistance) (Administration) Act 1999* would apply to make the claim not effective;

then subsection 39(4) of the *A New Tax System (Family Assistance) (Administration) Act 1999* does not apply in relation to the claim.

(3) The amendment made by item 10 applies in relation to claims for payment of maternity immunisation allowance made on or after the commencement of that item.

(4) The amendment made by item 11 applies in relation to:

- (a) claims for payment of maternity immunisation allowance made on or after the commencement of that item; and

**Schedule 1** Maternity immunisation allowance

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- (b) claims for payment of maternity immunisation allowance made before that commencement that had not been determined by the Secretary before that commencement.

## **Schedule 2—Partner service pension**

### **Part 1—Amendments commencing on Royal Assent**

#### *Veterans' Entitlements Act 1986*

#### **1 Paragraphs 38(1B)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) has a dependent child when he or she makes a claim for the pension; or
- (b) if subsection (1BA) applies in relation to the person—has reached 50 years of age; or
- (c) has reached qualifying age.

#### **2 After subsection 38(1B)**

Insert:

(1BA) This subsection applies in relation to a person if:

- (a) paragraph (1)(a) or (f) applies in relation to the person; and
- (b) one of the following applies:
  - (i) the veteran concerned is a veteran to whom subsection 22(4) or section 23 or 25 applies;
  - (ii) the veteran concerned is a veteran to whom section 22 applies who is in receipt of a pension the rate of which has been increased because the pension is in respect of an incapacity described in item 1, 2, 3, 4, 5 or 6 of the table in subsection 27(1);
  - (iii) the veteran concerned suffers an impairment (within the meaning of the MRCA) and the Military Rehabilitation and Compensation Commission has determined under Part 2 of Chapter 4 of the MRCA that the impairment constitutes at least 80 impairment points (within the meaning of the MRCA).

#### **3 Application**

The amendments made by items 1 and 2 apply in relation to claims for partner service pension made on or after the commencement of those items.

## Part 2—Amendments commencing on 1 July 2009

### *Veterans' Entitlements Act 1986*

#### 4 Subsection 38(1)

Omit “subsections (1B) and (4)”, substitute “this section”.

#### 5 After subsection 38(2A)

Insert:

(2AB) A person's eligibility under paragraph (1)(b) or (g) ceases at the end of the period of 12 months beginning on the first day on which the person was living separately and apart from the veteran concerned on a permanent basis.

(2AC) A person's eligibility under paragraph (1)(b) or (g) does not cease under subsection (2AB) if:

- (a) the person has reached pension age; or
- (b) the circumstances specified under subsection (2AD) exist in relation to the person.

Note: For *pension age* see section 5Q.

(2AD) The Commission may, by legislative instrument, specify circumstances for the purposes of paragraph (2AC)(b).

#### 6 Paragraph 38(2B)(c)

After “(2A)”, insert “or (2AB)”.

#### 7 Application

- (1) Subsection 38(2AB) of the *Veterans' Entitlements Act 1986*, as inserted by this Act, applies in relation to a person living separately and apart from a veteran before, on or after the commencement of this item.
- (2) However, if the period of 12 months referred to in that subsection ended before the commencement of this item, the person's eligibility under paragraph 38(1)(b) or (g) of that Act does not cease under that subsection until the commencement of this item (despite that subsection).

Note: The person's eligibility does not cease under that subsection in certain circumstances:  
see subsection 38(2AC) of that Act.

## Schedule 3—Child support

### Part 1—Percentage of care

#### *Child Support (Assessment) Act 1989*

##### 1 Paragraph 48(1)(b)

Repeal the paragraph, substitute:

(b) if one of the following events occurs:

- (i) there is a change of less than 7.1% in the percentage of care for the child that the person has because of an agreement, plan or order mentioned in paragraph 49(a) or (b) (including a variation of such an agreement, plan or order);
  - (ii) there is a change of at least 7.1% in the percentage of care for the child that the person has, and the change alters the person's cost percentage for the child;
  - (iii) the person's percentage of care for the child falls below 14%;
  - (iv) the person's percentage of care for the child increases to 14%, or above 14%;
  - (v) the person's percentage of care for the child falls below 35%;
  - (vi) the person's percentage of care for the child increases to 35%, or above 35%;
- whichever of the following days is applicable:
- (vii) if the Registrar is notified, or otherwise becomes aware, of the event within 28 days after the day on which the event occurs—the day on which the event occurs;
  - (viii) in any other case—the day on which the Registrar is notified, or otherwise becomes aware, of the event; or

##### 2 At the end of section 52

Add:

- (5) However, the Registrar is not required to review a determination as mentioned in subsection (4) if the Registrar is satisfied that there are special circumstances that justify the Registrar in not doing so.



**3 Before subparagraph 74A(b)(i)**

Insert:

- (ia) a person's percentage of care for the child has changed by less than 7.1%, and the change is because of an agreement, plan or order mentioned in paragraph 49(a) or (b) (including a variation of such an agreement, plan or order); or

**4 Subparagraph 74A(b)(i)**

Omit "affects the annual rate of child support payable for the child", substitute "alters the person's cost percentage for the child".

**5 Subparagraph 74A(b)(iii)**

Omit "14%; and", substitute "14%; or".

**6 At the end of paragraph 74A(b)**

Add:

- (iv) a person's percentage of care for the child has fallen below 35%; or
- (v) a person's percentage of care for the child has increased to 35%, or above 35%; and

**7 Section 74A**

Omit "on and from the day the Registrar was notified, or otherwise became aware, of the change of percentage referred to in paragraph (b).", substitute:

on and from whichever of the following days is applicable:

- (e) if the Registrar is notified, or otherwise becomes aware, of the change of percentage referred to in paragraph (b) within 28 days after the day on which the change occurs—the day on which the change occurs;
- (f) in any other case—the day on which the Registrar is notified, or otherwise becomes aware, of the change of percentage referred to in paragraph (b).

**8 Before paragraph 75(2)(a)**

Insert:

- (aa) the change to the person's percentage of care is less than 7.1%, and the change is because of an agreement, plan or

order mentioned in paragraph 49(a) or (b) (including a variation of such an agreement, plan or order); or

**9 Paragraph 75(2)(a)**

Omit “affects the annual rate of child support payable for the child”, substitute “alters the person’s cost percentage for the child”.

**10 After paragraph 75(2)(c)**

Insert:

- (ca) the person’s percentage of care falls below 35%; or
- (cb) the person’s percentage of care increases to 35%, or above 35%; or

**11 Application and transitional**

- (1) The amendments made by items 1 and 3 to 10 apply in relation to changes in percentages of care that occur on or after 1 July 2008.
- (2) Subparagraphs 48(1)(b)(i) and 74A(b)(ia) and paragraph 75(2)(aa) of the *Child Support (Assessment) Act 1989*, as inserted by this Act, apply in relation to:
  - (a) agreements, plans or orders made on or after 1 July 2008; and
  - (b) variations, occurring on or after 1 July 2008, of agreements, plans or orders made on or after 1 July 2008.
- (3) If:
  - (a) a change in percentage of care mentioned in subitem (1) occurred before the commencement of this item; and
  - (b) as a result of that change, an assessment is amended under section 75 of the *Child Support (Assessment) Act 1989*;the amendment cannot take effect earlier than the commencement of this item.
- (4) The amendment made by item 2 applies in relation to determinations made on or after the commencement of that item.

## **Part 2—Publication of reasons for decisions of the Social Security Appeals Tribunal**

### ***Child Support (Registration and Collection) Act 1988***

#### **12 After subsection 16(2A)**

Insert:

(2AA) Subsection (2) does not prevent:

- (a) the SSAT from communicating the reasons for a decision of the SSAT under Part VIIA to the Secretary or a person authorised by the Secretary; or
- (b) the Secretary from communicating the reasons for a decision of the SSAT under Part VIIA to a person authorised by the Secretary.

(2AB) Subsection (2) does not prevent the Secretary, or a person authorised by the Secretary, from publishing in written or electronic form the reasons for a decision of the SSAT under Part VIIA if the publication does not identify:

- (a) a party to the proceedings concerned (other than the Registrar); or
- (b) a person (other than the Registrar) who is related to, or associated with, a party to the proceedings concerned or is, or is alleged to be, in any other way concerned in the matter to which the proceedings concerned relate; or
- (c) a witness in the proceedings concerned.

(2AC) Without limiting subsection (2AB), a publication of reasons for a decision of the SSAT under Part VIIA is taken to identify a person if it contains any particulars of:

- (a) the name, title, pseudonym or alias of the person; or
- (b) the address of any premises at which the person resides or works, or the locality in which any such premises are situated; or
- (c) the physical description or the style of dress of the person; or
- (d) any employment or occupation engaged in, profession practised or calling pursued, by the person or any official or honorary position held by the person; or

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**Part 2** Publication of reasons for decisions of the Social Security Appeals Tribunal

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- (e) the relationship of the person to identified relatives of the person or the association of the person with identified friends or identified business, official or professional acquaintances of the person; or
  - (f) the recreational interests, or the political, philosophical or religious beliefs or interests, of the person; or
  - (g) any real or personal property in which the person has an interest or with which the person is otherwise associated;
- and the particulars are sufficient to identify that person to a member of the public, or to a member of the section of the public to which the publication is disseminated, as the case requires.

**13 Application**

The amendment made by item 12 applies in relation to decisions of the SSAT made before, on or after the commencement of that item.

## **Part 3—Departure from assessments**

### ***Child Support (Assessment) Act 1989***

#### **14 Paragraph 80E(1)(d)**

Repeal the paragraph, substitute:

(d) either:

- (i) it meets the conditions in subsection (2), (3) or (4), as the case requires, (assuming the agreement is accepted by the Registrar); or
- (ii) it has been accepted by the Registrar under section 98U.

#### **15 Paragraph 98C(2)(b)**

Omit “and (3B)”, substitute “to (3C)”.

#### **16 After subsection 98U(1)**

Insert:

- (1A) In working out whether an agreement is a limited child support agreement for the purposes of subsection (1), disregard:
- (a) paragraph 80E(1)(d); and
  - (b) subsections 80E(2) to (5).

#### **17 Subsection 98U(2)**

Repeal the subsection, substitute:

- (2) For an agreement (other than a binding child support agreement), the Registrar must not accept the agreement unless he or she is also satisfied that it would be just and equitable, as regards the child, the liable parent and the carer entitled to child support, to accept the agreement.

#### **18 Paragraph 117(3A)(a)**

Omit “the carer entitled to child support”, substitute “a parent or a non-parent carer”.

#### **19 Paragraph 117(3A)(b)**

Omit “period; and”, substitute “period.”.

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**20 Paragraph 117(3A)(c)**

Repeal the paragraph.

**21 Subsection 117(3B)**

After “care costs”, insert “for a parent”.

**22 Paragraph 117(3B)(a)**

Omit “carer’s”, substitute “parent’s”.

**23 After subsection 117(3B)**

Insert:

- (3C) Child care costs for a non-parent carer can only be high for the purposes of subparagraph (2)(b)(ib) if, during a child support period, they total at least 25% of the costs of the child for that period.

**24 Paragraph 136(1)(a)**

After “section 92”, insert “or 98U”.

**25 At the end of section 146D**

Add:

- (3) If:
- (a) an application (the *original application*) is made under section 98B in relation to an administrative assessment; and
  - (b) before the Registrar decides the application, the Registrar accepts an agreement under section 98U that is entered into by the parties to the proceedings concerned; and
  - (c) a provisional notional assessment is made because of section 34B applying as mentioned in paragraph 98U(4)(a);
- then the original application is taken to be an application made under subsection (1) of this section.

**26 Application**

- (1) The amendment made by item 15 applies in relation to applications to the Registrar made on or after the commencement of that item.
  - (2) The amendments made by items 16 and 17 apply in relation to requests made, after the commencement of those items, to the Registrar for
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acceptance of agreements (regardless of whether the agreements are made before, on or after the commencement of those items).

- (3) The amendments made by items 18 to 23 apply in relation to applications to a court made on or after the commencement of those items.
- (4) The amendment made by item 24 applies in relation to agreements accepted before, on or after the commencement of that item.
- (5) The amendment made by item 25 applies in relation to an agreement accepted on or after the commencement of that item (regardless of whether the agreement was made before, on or after that commencement and regardless of whether the original application was made before, on or after that commencement).

## Part 4—Terminating events

### *Child Support (Assessment) Act 1989*

#### **27 Subsection 12(2)**

Repeal the subsection, substitute:

- (2) A child support terminating event happens in relation to a person who is a carer entitled to child support in relation to a child if the person dies.

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

Insert:

- (2AA) A child support terminating event happens in relation to a child if:
- (a) both of the parents of the child are not eligible carers of the child; and
  - (b) there are no non-parent carers entitled to be paid child support in relation to the child.

#### **29 Application**

The amendments made by items 27 and 28 apply in relation to a child support terminating event that happens on or after the commencement of those items.



## **Part 5—Reducing rate of child support under minimum annual rate assessments**

### ***Child Support (Assessment) Act 1989***

#### **30 Subsections 66A(1) to (3)**

Repeal the subsections, substitute:

- (1) If the Registrar has made an assessment under section 66 in respect of the annual rate of child support payable by a parent for all the children in a child support case for a day in a child support period, the Registrar may, on an application made by the parent that:
- (a) is in accordance with the regulations; and
  - (b) either:
    - (i) nominates the whole (the *nominated period*) of that child support period (if the first day of that child support period is the day referred to in paragraph 66(4)(a)); or
    - (ii) nominates a part (the *nominated period*) of that child support period, being a part that is at least 2 months and that begins on or after the day referred to in paragraph 66(4)(a);

reduce the annual rate of child support payable by the parent for those children for the nominated period to nil. This subsection is subject to subsection (3C).

Note: If the Registrar refuses to grant an application under this section, the Registrar must serve a notice on the applicant under section 66C.

- (2) The Registrar must not grant an application under subsection (1) unless the Registrar is satisfied that the amount worked out under subsection (3) is less than the amount worked out under subsection (3A).
- (3) The amount for the purposes of this subsection is:
- $$\frac{\text{Parent's income for the nominated period}}{\text{Number of days in the nominated period}} \times 365$$

- (3A) The amount for the purposes of this subsection is:

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#### Part 5 Reducing rate of child support under minimum annual rate assessments

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$$\frac{\text{The total of the number of the parent's child support cases}}{\text{The minimum annual rate of child support for the child support period}} \times$$

- (3B) For the purposes of subsection (3A), a parent is taken to have a child support case if the parent is liable to pay child support for one or more children under an administrative assessment under the law of a reciprocating jurisdiction.
- (3C) A reduction under subsection (1) has no effect in relation to a day to which the assessment under section 66 does not apply.

Note: Subsection 66(4) deals with when an assessment under section 66 applies.

### 31 Application and saving

- (1) The amendment made by item 30 applies in relation to applications made on or after the day on which that item commences in respect of:
- (a) the whole of a child support period that begins on or after that day; or
  - (b) a part of a child support period, being a part that begins on or after the day on which that item commences (regardless of whether the child support period begins before, on or after that day);
- regardless of whether the assessment was made before, on or after the day on which that item commences.
- (2) Subsection 66A(1) of the *Child Support (Assessment) Act 1989*, as inserted by this Act, does not apply in relation to a child support period if subsection 66A(1) of that Act (as in force before the commencement of this item) has applied in respect of a day in that period.
- (3) Regulations in force for the purposes of subsection 66A(1) of the *Child Support (Assessment) Act 1989* immediately before the commencement of this item continue in force on and after that commencement as if they were regulations in force for the purposes of paragraph 66A(1)(a) of that Act.
- (4) Subsection 66A(3B) of the *Child Support (Assessment) Act 1989*, as inserted by this Act, applies in relation to administrative assessments made under laws of reciprocating jurisdictions before, on or after the commencement of this item.
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## **Part 6—Overseas liabilities**

### ***Child Support (Assessment) Act 1989***

#### **32 Section 35D**

Before “The annual”, insert “(1)”.

#### **33 At the end of section 35D**

Add:

- (2) Subsection (1) does not apply if at least one of the parents is liable to pay child support for a child under an administrative assessment under the law of a reciprocating jurisdiction.

#### **34 Section 36A**

Before “The annual”, insert “(1)”.

#### **35 At the end of section 36A**

Add:

- (2) For the purposes of paragraph (1)(b), a parent is taken to be assessed in respect of the costs of another child in another child support case if the parent is liable to pay child support for that child under an administrative assessment under the law of a reciprocating jurisdiction.

#### **36 Section 39**

Before “This is”, insert “(1)”.

#### **37 At the end of section 39**

Add:

- (2) For the purposes of steps 4, 6 and 7 of the method statement in subsection (1), a parent is taken to be assessed in respect of the costs of another child who is in another child support case if the parent is liable to pay child support for that child under an administrative assessment under the law of a reciprocating jurisdiction.

### **38 Section 40**

Before “This is”, insert “(1)”.

### **39 At the end of section 40**

Add:

- (2) For the purposes of steps 4, 6 and 7 of the method statement in subsection (1), a parent is taken to be assessed in respect of the costs of another child who is in another child support case if the parent is liable to pay child support for that child under an administrative assessment under the law of a reciprocating jurisdiction.

### **40 Paragraph 40A(1)(b)**

Omit “section 39 or 40”, substitute “subsection 39(1) or 40(1)”.

### **41 At the end of section 41**

Add:

*Administrative assessments under laws of reciprocating jurisdictions*

- (6) Subsection (1) or (2) does not apply if the parent is liable to pay child support for a child under an administrative assessment under the law of a reciprocating jurisdiction.
- (7) For the purposes of paragraphs (3)(b) and (4)(b), a parent is taken to be assessed in respect of the costs of another child in another child support case if the parent is liable to pay child support for that child under an administrative assessment under the law of a reciprocating jurisdiction.

### **42 At the end of section 55E**

Add:

- (3) For the purposes of paragraph (1)(c), a parent is taken to be assessed for a day in respect of the costs of another child who is in another child support case if the parent is liable to pay child support for that child for the day under an administrative assessment under the law of a reciprocating jurisdiction.

### **43 At the end of section 55G**

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Add:

- (7) For the purposes of paragraph (2)(b), a parent is taken to be assessed in respect of the costs of another child who is in another child support case if the parent is liable to pay child support for that child under an administrative assessment under the law of a reciprocating jurisdiction.

#### **44 At the end of section 55HA**

Add:

- (7) For the purposes of paragraph (2)(b), a parent is taken to be assessed in respect of the costs of another child who is in another child support case if the parent is liable to pay child support for that child under an administrative assessment under the law of a reciprocating jurisdiction.

#### **45 After subsection 65A(4)**

Insert:

- (4A) For the purposes of subsection (4), if a parent is liable to pay child support for one or more children under an administrative assessment under the law of a reciprocating jurisdiction, then that child support is taken to be payable by the parent for those children under subsection (1).

#### **46 After subsection 66(6)**

Insert:

- (6A) For the purposes of subsection (6), if a parent is liable to pay child support for one or more children for a day under an administrative assessment under the law of a reciprocating jurisdiction, then the parent is taken to be assessed for the day in respect of the costs of children in a child support case.

#### **47 After subsection 66A(2)**

Insert:

- (2A) For the purposes of subsection (2), a parent is taken to have a child support case if the parent is liable to pay child support for one or more children under an administrative assessment under the law of a reciprocating jurisdiction.

#### **48 After subsection 76(2)**

Insert:

- (2AA) For the purposes of paragraph (2)(d), a parent is taken to have a child support case if the parent is liable to pay child support for one or more children under an administrative assessment under the law of a reciprocating jurisdiction.

#### **49 Application**

The amendments made by items 32 to 39 and 41 to 48 apply in relation to administrative assessments made under laws of reciprocating jurisdictions before, on or after the commencement of those items.

### ***Child Support (Registration and Collection) Act 1988***

#### **50 Subparagraph 72D(1)(c)(ii)**

Omit “section 17A; and”, substitute “section 17A; or”.

#### **51 At the end of paragraph 72D(1)(c)**

Add:

- (iii) one or more child support debts arising from a registrable overseas maintenance liability under subsection 18A(1), paragraph 18A(3)(a) or subsection 18A(4) (insofar as subsection 18A(4) relates to subsection 18A(1) or paragraph 18A(3)(a)); and

#### **52 After paragraph 72D(2)(d)**

Insert:

- (da) if subparagraph (1)(c)(iii) applies:
- (i) the length of time for which the debts mentioned in that subparagraph have remained unpaid after the day on which they became due and payable; and
  - (ii) the number of occasions on which the debts mentioned in that subparagraph had not been paid on or before the day on which they became due and payable;

#### **53 Paragraph 72E(a)**

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After “17A”, insert “, subsection 18A(1), paragraph 18A(3)(a) or subsection 18A(4) (insofar as subsection 18A(4) relates to subsection 18A(1) or paragraph 18A(3)(a))”.

#### **54 Application**

The amendments made by items 51 to 53 apply in relation to registrable overseas maintenance liabilities arising before, on or after the commencement of those items.

## Part 7—Crediting prescribed payments

### *Child Support (Registration and Collection) Act 1988*

#### 55 After paragraph 71C(1)(b)

Insert:

- (ba) at the time the payment is made, the payer does not have at least regular care of any of the children to whom the relevant administrative assessment relates; and

#### 56 After subsection 71C(1)

Insert:

- (2) Subsection (1) does not apply in relation to a payment (the *prescribed payment*) mentioned in paragraph (1)(a) if:
  - (a) before the prescribed payment is made, the payer has provided child support to the payee in the form of a lump sum payment; and
  - (b) the lump sum payment has been credited, or will be credited, under section 69A against all or part of the amount payable under the enforceable maintenance liability in relation to the day the prescribed payment is made.

#### 57 Application

- (1) The amendment made by item 55 applies in relation to payments made on or after the commencement of that item.
- (2) The amendment made by item 56 applies in relation to payments mentioned in paragraph 71C(1)(a) of the *Child Support (Registration and Collection) Act 1988* made on or after the commencement of that item (regardless of whether the lump sum payment is made before, on or after that commencement).



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*[Minister's second reading speech made in—  
House of Representatives on 18 September 2008  
Senate on 25 September 2008]*

(176/08)