



**Family Assistance, Social Security and
Veterans' Affairs Legislation
Amendment (2005 Budget and Other
Measures) Act 2006**

No. 36, 2006

**An Act to amend the law relating to family
assistance, social security 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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Family Assistance, Social Security and Veterans' Affairs Legislation Amendment (2005 Budget and Other Measures) Act 2006

No. 36, 2006

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

[Assented to 3 May 2006]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Family Assistance, Social Security and Veterans' Affairs Legislation Amendment (2005 Budget and Other Measures) Act 2006*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	3 May 2006
2. Schedule 1	1 July 2006.	1 July 2006
3. Schedule 2	The day after this Act receives the Royal Assent.	4 May 2006
4. Schedule 3	1 July 2005.	1 July 2005
5. Schedule 4	1 July 2006.	1 July 2006
6. Schedule 5	The day after this Act receives the Royal Assent.	4 May 2006
7. Schedule 6	1 July 2006.	1 July 2006
8. Schedule 7	The day after this Act receives the Royal Assent.	4 May 2006
9. Schedule 8, Part 1	1 January 2006.	1 January 2006
10. Schedule 8, Part 2	The day after this Act receives the Royal Assent.	4 May 2006
11. Schedule 9	1 January 2006.	1 January 2006
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.	

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—FTB Part A income free area

A New Tax System (Family Assistance) Act 1999

1 Clause 19 of Schedule 1

Omit “\$28,200”, substitute “\$37,500”.

2 Subclause 3(1) of Schedule 4 (cell at table item 13, column 4)

Omit “1999”, substitute “2005”.

3 Application

- (1) The amendment made by item 1 applies in relation to family tax benefit for the 2006-2007 income year and later income years.
- (2) The amendment made by item 2 applies in relation to family tax benefit for the 2007-2008 income year and later income years.

4 Transitional

The amount referred to in column 1 of item 13 of the table in subclause 3(1) of Schedule 4 to the *A New Tax System (Family Assistance) Act 1999* as amended by this Schedule is not to be indexed on 1 July 2006.

Schedule 2—Indexing estimates of adjusted taxable income for family tax benefit and child care benefit purposes

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

1 Subsection 3(1)

Insert:

indexed actual income:

- (a) for an individual in relation to family tax benefit—means the amount stated for the individual in a notice under subsection 20B(2); and
- (b) for an individual in relation to child care benefit—means the amount stated for the individual in a notice under subsection 55AB(2).

2 Subsection 3(1)

Insert:

indexed estimate:

- (a) for an individual in relation to family tax benefit—means the amount stated for the individual in a notice under subsection 20A(2); and
- (b) for an individual in relation to child care benefit—means the amount stated for the individual in a notice under subsection 55AA(2).

3 At the end of paragraph 20(1)(d)

Add “and”.

4 After paragraph 20(1)(d)

Insert:

- (e) since the estimate was given, the Secretary has not given the individual a notice under subsection 20A(2) or 20B(2) with a start day that has arrived or passed;

Schedule 2 Indexing estimates of adjusted taxable income for family tax benefit and child care benefit purposes

Note: The heading to section 20 is altered by adding at the end “, **indexed estimate or indexed actual income**”.

5 After subsection 20(2)

Insert:

(2A) If:

- (a) an individual’s eligibility for, or rate of, family tax benefit is required to be determined for the purposes of this Division or Division 3; and
- (b) information about the amount of adjusted taxable income needed for the determination of the eligibility or rate is not available (for example, because the taxable income of the individual or another individual cannot be known until after the end of the relevant income year); and
- (c) the Secretary has given the individual a notice under subsection 20A(2) or 20B(2) with a start day that has arrived or passed; and
- (d) since the notice was given, the individual has not given the Secretary an estimate of the individual’s adjusted taxable income that the Secretary considers to be reasonable;

the Secretary may determine the individual’s eligibility for, or rate of, family tax benefit on the basis of the indexed estimate or indexed actual income stated in the notice (or, if the Secretary has given the individual more than one such notice—the notice with the most recent start day).

Note: Section 20C affects the meaning of this provision for members of couples.

6 After section 20

Insert:

20A Indexed estimates

- (1) The Secretary may calculate an indexed estimate for an individual under subsection (5), with a start day chosen by the Secretary, if:
 - (a) the individual is a claimant, or the partner of a claimant, for family tax benefit; and
 - (b) a determination is in force under which the claimant is entitled to be paid family tax benefit by instalment; and

- (c) the determination includes a determination of the claimant's rate of family tax benefit worked out on the basis of a reasonable estimate of the claimant's adjusted taxable income, an indexed estimate for the claimant or an indexed actual income for the claimant.

Note: Section 20C affects the meaning of paragraph (c) for members of couples.

- (2) If the Secretary calculates an indexed estimate for the individual, the Secretary may give the claimant a notice:
- (a) stating the indexed estimate for the individual; and
 - (b) specifying the start day used in the Secretary's calculation (which must be at least 14 days after the day on which the notice is given).
- (3) The Secretary must not give a notice under subsection (2) stating an indexed estimate for the individual with a start day in an income year if the Secretary has already given a notice under subsection (2) stating an indexed estimate for that individual with a start day in the same income year.
- (4) A notice given to a claimant under subsection (2) stating an indexed estimate for an individual has no effect if, before the start day specified in the notice for the indexed estimate, the Secretary gives the claimant a notice under subsection 20B(2) stating an indexed actual income for the same individual. Any such notice under subsection 20B(2) must specify a start day that is no earlier than the start day specified in the superseded notice.
- (5) Calculate an indexed estimate (which may be nil) for the individual by multiplying the individual's current ATI number (see subsection (6)) by the indexation factor, rounding the result to the nearest dollar and rounding 50 cents upwards. The indexation factor is the greater of 1 and the factor worked out to 3 decimal places as follows (increasing the factor by 0.001 if it would, if worked out to 4 decimal places, end in a number greater than 4):

$$\frac{\text{AWE for the reference period in the most recent November}}{\text{AWE for the reference period in the highest previous November}}$$

where:

AWE means the amount published by the Australian Statistician in a document titled “Average Weekly Earnings” under the headings “Average Weekly Earnings, Australia—Original—Persons—All employees total earnings” (or, if any of those change, in a replacement document or under replacement headings).

highest previous November means the November in which, of all the Novembers from November 2004 to the November before the most recent November (inclusive), AWE was the highest.

most recent November means the November of the income year before the income year in which the start day occurs.

reference period, in a particular November, means the period described by the Australian Statistician as the last pay period ending on or before a specified day that is the third Friday of that November.

- (6) For the purposes of subsection (5), the individual’s **current ATI number** is:
- (a) if, at the time of calculation, the Secretary has given the claimant a notice under subsection 20B(2) stating an indexed actual income for the individual with a start day that has not arrived—the indexed actual income stated in the notice; or
 - (b) if paragraph (a) does not apply and the individual is the claimant—the amount the Secretary is permitted to use for the individual under section 20 (disregarding the effect for couples of section 20C of this Act and clause 3 of Schedule 3 to the Family Assistance Act); or
 - (c) if paragraph (a) does not apply and the individual is the claimant’s partner—the amount the Secretary would be permitted to use for the individual under section 20 if the individual were the claimant (disregarding the effect for couples of section 20C of this Act and clause 3 of Schedule 3 to the Family Assistance Act).
- (7) A notice under subsection (2) is not a legislative instrument.

20B Indexed actual incomes

- (1) The Secretary may calculate an indexed actual income for an individual under subsection (4), with a start day chosen by the Secretary, if:
-

- (a) the individual is a claimant for, or the partner of a claimant for, family tax benefit; and
- (b) a determination is in force under which the claimant is entitled to be paid family tax benefit by instalment; and
- (c) the determination includes a determination of the claimant's rate of family tax benefit worked out on the basis of an indexed estimate for the claimant or an indexed actual income for the claimant; and
- (d) since the claimant was last given a notice under subsection 20A(2) or subsection (2) of this section stating an indexed estimate or indexed actual income for an individual, the claimant has not given the Secretary an estimate of the claimant's adjusted taxable income that the Secretary considers to be reasonable; and
- (e) the adjusted taxable income for an income year (***actual income***) of the individual (disregarding the effect for couples of clause 3 of Schedule 3 to the Family Assistance Act) becomes known to the Secretary and it is the most recent income year for which the individual's actual income is known to the Secretary.

Note: Section 20C affects the meaning of paragraph (1)(c) for members of couples.

- (2) If:
 - (a) the Secretary calculates an indexed actual income for the individual; and
 - (b) the indexed actual income is greater than the individual's current ATI number (see subsection (5));the Secretary may give the claimant a notice:
 - (c) stating the indexed actual income for the individual; and
 - (d) specifying the start day used in the Secretary's calculation (which must be at least 14 days after the day on which the notice is given).
- (3) A notice given to a claimant under subsection (2) stating an indexed actual income for an individual has no effect if, before the start day specified in the notice, the Secretary gives the claimant another notice under that subsection or a notice under subsection 20A(2) stating an indexed estimate or indexed actual income for the same individual. Any other such notice must specify a start day

Schedule 2 Indexing estimates of adjusted taxable income for family tax benefit and child care benefit purposes

that is no earlier than the start day specified in the superseded notice.

- (4) Calculate an indexed actual income (which may be nil) for the individual by multiplying the actual income of the individual which became known to the Secretary by the indexation factor, rounding the result to the nearest dollar and rounding 50 cents upwards. The indexation factor is the greater of 1 and the factor worked out to 3 decimal places as follows (increasing the factor by 0.001 if it would, if worked out to 4 decimal places, end in a number greater than 4):

$$\frac{\text{AWE for the reference period in the most recent November}}{\text{AWE for the reference period in the highest previous November}}$$

where:

AWE means the amount published by the Australian Statistician in a document titled “Average Weekly Earnings” under the headings “Average Weekly Earnings, Australia—Original—Persons—All employees total earnings” (or, if any of those change, in a replacement document or under replacement headings).

highest previous November means the November in which, of all the Novembers from November 2004 to the November before the most recent November (inclusive), AWE was the highest.

most recent November means the November of the income year before the income year in which the start day occurs.

reference period, in a particular November, means the period described by the Australian Statistician as the last pay period ending on or before a specified day that is the third Friday of that November.

- (5) For the purposes of paragraph (2)(b), the individual’s **current ATI number** is:
- (a) if, at the time of calculation, the Secretary has given the claimant a notice under subsection 20A(2) or subsection (2) of this section stating an indexed estimate or indexed actual income for the individual with a start day that has not arrived—the indexed estimate or indexed actual income stated in the notice; or

- (b) if paragraph (a) does not apply and the individual is the claimant—the amount the Secretary is permitted to use for the individual under section 20 (disregarding the effect for couples of section 20C of this Act and clause 3 of Schedule 3 to the Family Assistance Act); or
- (c) if paragraph (a) does not apply and the individual is the claimant's partner—the amount the Secretary would be permitted to use for the individual under section 20 if the individual were the claimant (disregarding the effect for couples of section 20C of this Act and clause 3 of Schedule 3 to the Family Assistance Act).

(6) A notice under subsection (2) is not a legislative instrument.

20C Indexed estimates and indexed actual incomes of members of couples

Section applies to couples

- (1) This section applies in relation to any individual who is a member of a couple.

Family tax benefit Part A

- (2) For the purposes of the Family Assistance Act other than Part 4 of Schedule 1, any reference in this Act to eligibility for, or rate of, family tax benefit being determined or worked out on the basis of an indexed estimate, or an indexed actual income, for an individual or stated in a notice, is affected by subsection (3).
- (3) The reference is taken to be a reference to eligibility for, or rate of, family tax benefit being determined or worked out on the basis of the indexed estimate, or the indexed actual income, for that individual or stated in that notice, combined with the most recent indexed estimate or indexed actual income for the individual's partner (see subsection (6)).

Family tax benefit Part B

- (4) For the purposes of Part 4 of Schedule 1 to the Family Assistance Act, any reference in this Act to eligibility for, or rate of, family tax benefit being determined or worked out on the basis of an

indexed estimate, or an indexed actual income, for an individual or stated in a notice, is affected by subsection (5).

- (5) The reference is taken to be a reference to eligibility for, or rate of, family tax benefit being determined or worked out on the basis of the lower of these:
- (a) the indexed estimate or indexed actual income for that individual or stated in that notice;
 - (b) the most recent indexed estimate or indexed actual income for the individual's partner (see subsection (6)).

If the amounts in paragraphs (a) and (b) are equal, the reference is taken to be a reference to:

- (c) if the individual is the claimant for family tax benefit—the amount in paragraph (a); or
- (d) if the individual is the partner of the claimant for family tax benefit—the amount in paragraph (b).

Most recent indexed estimate or indexed actual income for individual's partner

- (6) In subsections (3) and (5), the ***most recent indexed estimate or indexed actual income for the individual's partner*** is the indexed estimate or indexed actual income for the individual's partner stated in a notice given to:
- (a) if the individual is the claimant for family tax benefit—the individual; or
 - (b) if the individual is the partner of the claimant for family tax benefit—the individual's partner;
- under subsection 20A(2) or 20B(2) with a start day that has arrived or passed (or, if the Secretary has given more than one such notice—the notice with the most recent start day).

7 Subsection 28A(2)

Omit “must”, substitute “may”.

8 Paragraphs 31A(1)(b) and (c)

Repeal the paragraphs, substitute:

- (b) the determination includes a determination of the claimant's rate of family tax benefit worked out on the basis of a reasonable estimate of the claimant's adjusted taxable

income, an indexed estimate for the claimant or an indexed actual income for the claimant; and

- (c) the claimant provides the Secretary with a revised estimate of the claimant's adjusted taxable income for the current income year or the next income year that is not attributable to an event mentioned in paragraph 31(1B)(c) or (d); and

9 At the end of subsection 31A(1)

Add:

Note: Section 20C affects the meaning of paragraph (1)(b) for couples.

10 After section 31B

Insert:

31C Variation of instalment entitlement determination to reflect indexation of estimate of adjusted taxable income

(1) If:

- (a) a determination is in force under which a claimant is entitled to be paid family tax benefit by instalment; and
- (b) the Secretary gives the claimant a notice under subsection 20A(2); and
- (c) the claimant does not, before the start day specified in the notice, give the Secretary an estimate of the claimant's adjusted taxable income that the Secretary considers to be reasonable; and
- (d) if the claimant's rate of family tax benefit were calculated using the indexed estimate stated in the notice—a new rate of family tax benefit would be required;

the Secretary may vary the determination so that the claimant's rate of family tax benefit is determined on the basis of the indexed estimate stated in the notice.

Note: Section 20C affects the meaning of this provision for members of couples.

(2) The variation has effect:

- (a) from the start day specified in the notice for the indexed estimate; or

- (b) if the variation is made after that start day—from the later of the start day and the first day of the instalment period in which the variation is made.

31D Variation of instalment entitlement determination to reflect indexation of adjusted taxable income

(1) If:

- (a) a determination is in force under which a claimant is entitled to be paid family tax benefit by instalment; and
- (b) the Secretary gives the claimant a notice under subsection 20B(2); and
- (c) the claimant does not, before the start day specified in the notice, give the Secretary an estimate of the claimant's adjusted taxable income that the Secretary considers to be reasonable; and
- (d) if the claimant's rate of family tax benefit were calculated using the indexed actual income stated in the notice—a new rate of family tax benefit would be required;

the Secretary may vary the determination so that the claimant's rate of family tax benefit is determined on the basis of the indexed actual income stated in the notice.

Note: Section 20C affects the meaning of this provision for members of couples.

(2) The variation has effect:

- (a) from the start day specified in the notice for the indexed actual income; or
- (b) if the variation is made after that start day—from the later of the start day and the first day of the instalment period in which the variation is made.

11 At the end of paragraph 55(1)(e)

Add “and”.

12 After paragraph 55(1)(e)

Insert:

- (f) since the estimate was given, the Secretary has not given the individual a notice under subsection 55AA(2) or 55AB(2) with a start day that has arrived or passed;

13 At the end of section 55

Add:

(3) If:

- (a) a CCB % applicable to a claimant who is an individual is required to be calculated under Schedule 2 to the Family Assistance Act for the purpose of varying a determination of CCB % under Subdivision M, N, P, R, S or V of Division 4 of this Part; and
- (b) the information about an amount needed by the Secretary to calculate the CCB % applicable to the claimant is not available; and
- (c) the Secretary has given the claimant a notice under subsection 55AA(2) or 55AB(2) with a start day that has arrived or passed; and
- (d) since the notice was given, the claimant has not given the Secretary an estimate of the claimant's adjusted taxable income that the Secretary considers to be reasonable;

the Secretary may determine the CCB % applicable to the claimant on the basis of the indexed estimate or indexed actual income stated in the notice (or, if the Secretary has given the claimant more than one notice with a start day that has arrived or passed—the notice with the most recent start day).

Note: Section 55AC affects the meaning of this provision for members of couples.

Note: The heading to section 55 is altered by adding at the end “, **indexed estimate or indexed actual income**”.

14 After section 55

Insert:

55AA Indexed estimates

- (1) The Secretary may calculate an indexed estimate for an individual under subsection (5), with a start day chosen by the Secretary, if:
 - (a) the individual is a claimant, or the partner of a claimant, for child care benefit; and
 - (b) determinations of conditional eligibility under section 50F and of CCB % under section 50J are in force in respect of the claimant and the effect of the former determination is that the

Schedule 2 Indexing estimates of adjusted taxable income for family tax benefit and child care benefit purposes

claimant is conditionally eligible for child care benefit by fee reduction; and

- (c) the CCB % is worked out on the basis of an estimate of the claimant's adjusted taxable income, an indexed estimate for the claimant or an indexed actual income for the claimant.

Note: Section 55AC affects the meaning of paragraph (1)(c) for members of couples.

- (2) If the Secretary calculates an indexed estimate for the individual, the Secretary may give the claimant a notice:
- (a) stating the indexed estimate for the individual; and
 - (b) specifying the start day used in the Secretary's calculation (which must be a Monday at least 14 days after the day on which the notice is given).
- (3) The Secretary must not give a notice under subsection (2) stating an indexed estimate for the individual with a start day in an income year if the Secretary has already given a notice under subsection (2) stating an indexed estimate for that individual with a start day in the same income year.
- (4) A notice given to a claimant under subsection (2) stating an indexed estimate for an individual has no effect if, before the start day specified in the notice for the indexed estimate, the Secretary gives the claimant a notice under subsection 55AB(2) stating an indexed actual income for the same individual. Any such notice under subsection 55AB(2) must specify a start day that is no earlier than the start day specified in the superseded notice.
- (5) Calculate an indexed estimate (which may be nil) for the individual by multiplying the individual's current ATI number (see subsection (6)) by the indexation factor, rounding the result to the nearest dollar and rounding 50 cents upwards. The indexation factor is the greater of 1 and the factor worked out to 3 decimal places as follows (increasing the factor by 0.001 if it would, if worked out to 4 decimal places, end in a number greater than 4):

$$\frac{\text{AWE for the reference period in the most recent November}}{\text{AWE for the reference period in the highest previous November}}$$

where:

AWE means the amount published by the Australian Statistician in a document titled “Average Weekly Earnings” under the headings “Average Weekly Earnings, Australia—Original—Persons—All employees total earnings” (or, if any of those change, in a replacement document or under replacement headings).

highest previous November means the November in which, of all the Novembers from November 2004 to the November before the most recent November (inclusive), AWE was the highest.

most recent November means the November of the income year before the income year in which the start day occurs.

reference period, in a particular November, means the period described by the Australian Statistician as the last pay period ending on or before a specified day that is the third Friday of that November.

- (6) For the purposes of subsection (5), the individual’s **current ATI number** is:
- (a) if, at the time of calculation, the Secretary has given the claimant a notice under subsection 55AB(2) stating an indexed actual income for the individual with a start day that has not arrived—the indexed actual income stated in the notice; or
 - (b) if paragraph (a) does not apply and the individual is the claimant—the amount the Secretary is permitted to use for the individual under section 55 (disregarding the effect for couples of section 55AC of this Act and clause 3 of Schedule 3 to the Family Assistance Act); or
 - (c) if paragraph (a) does not apply and the individual is the claimant’s partner—the amount the Secretary would be permitted to use for the individual under section 55 if the individual were the claimant (disregarding the effect for couples of section 55AC of this Act and clause 3 of Schedule 3 to the Family Assistance Act).
- (7) A notice under subsection (2) is not a legislative instrument.

55AB Indexed actual incomes

- (1) The Secretary may calculate an indexed actual income for an individual under subsection (4), with a start day chosen by the Secretary, if:
- (a) the individual is a claimant for, or the partner of a claimant for, child care benefit; and
 - (b) determinations of conditional eligibility under section 50F and of CCB % under section 50J are in force in respect of the claimant and the effect of the former determination is that the claimant is conditionally eligible for child care benefit by fee reduction; and
 - (c) the CCB % is worked out on the basis of an indexed estimate for the claimant or an indexed actual income for the claimant; and
 - (d) since the claimant was last given a notice under subsection 55AA(2) or subsection (2) of this section stating an indexed estimate or indexed actual income for an individual, the claimant has not given the Secretary an estimate of the claimant's adjusted taxable income that the Secretary considers to be reasonable; and
 - (e) the adjusted taxable income for an income year (*actual income*) of the individual (disregarding the effect for couples of clause 3 of Schedule 3 to the Family Assistance Act) becomes known to the Secretary and it is the most recent income year for which the individual's actual income is known to the Secretary.

Note: Section 55AC affects the meaning of paragraph (1)(c) for members of couples.

- (2) If:
- (a) the Secretary calculates an indexed actual income for the individual; and
 - (b) the indexed actual income is greater than the individual's current ATI number (see subsection (5));
- the Secretary may give the claimant a notice:
- (c) stating the indexed actual income for the individual; and
 - (d) specifying the start day used in the Secretary's calculation (which must be a Monday at least 14 days after the day on which the notice is given).

- (3) A notice given to a claimant under subsection (2) stating an indexed actual income for an individual has no effect if, before the start day specified in the notice, the Secretary gives the claimant another notice under that subsection or a notice under subsection 55AA(2) stating an indexed estimate or indexed actual income for the same individual. Any other such notice must specify a start day that is no earlier than the start day specified in the superseded notice.
- (4) Calculate an indexed actual income (which may be nil) for the individual by multiplying the actual income of the individual which became known to the Secretary by the indexation factor, rounding the result to the nearest dollar and rounding 50 cents upwards. The indexation factor is the greater of 1 and the factor worked out to 3 decimal places as follows (increasing the factor by 0.001 if it would, if worked out to 4 decimal places, end in a number greater than 4):

$$\frac{\text{AWE for the reference period in the most recent November}}{\text{AWE for the reference period in the highest previous November}}$$

where:

AWE means the amount published by the Australian Statistician in a document titled “Average Weekly Earnings” under the headings “Average Weekly Earnings, Australia—Original—Persons—All employees total earnings” (or, if any of those change, in a replacement document or under replacement headings).

highest previous November means the November in which, of all the Novembers from November 2004 to the November before the most recent November (inclusive), AWE was the highest.

most recent November means the November of the income year before the income year in which the start day occurs.

reference period, in a particular November, means the period described by the Australian Statistician as the last pay period ending on or before a specified day that is the third Friday of that November.

- (5) For the purposes of paragraph (2)(b), the individual’s *current ATI number* is:
-

- (a) if, at the time of calculation, the Secretary has given the claimant a notice under subsection 55AA(2) or subsection (2) of this section stating an indexed estimate or indexed actual income for the individual with a start day that has not arrived—the indexed estimate or indexed actual income stated in the notice; or
 - (b) if paragraph (a) does not apply and the individual is the claimant—the amount the Secretary is permitted to use for the individual under section 55 (disregarding the effect for couples of section 55AC of this Act and clause 3 of Schedule 3 to the Family Assistance Act); or
 - (c) if paragraph (a) does not apply and the individual is the claimant's partner—the amount the Secretary would be permitted to use for the individual under section 55 if the individual were the claimant (disregarding the effect for couples of section 55AC of this Act and clause 3 of Schedule 3 to the Family Assistance Act).
- (6) A notice under subsection (2) is not a legislative instrument.

55AC Indexed estimates and indexed actual incomes for members of couples

- (1) This section applies in relation to any individual who is a member of a couple.
- (2) For the purposes of the Family Assistance Act, any reference in this Act to CCB % being determined or worked out on the basis of an indexed estimate, or an indexed actual income, for an individual or stated in a notice, is affected by subsection (3).
- (3) The reference is taken to be a reference to CCB % being determined or worked out on the basis of the indexed estimate, or the indexed actual income, for that individual or stated in that notice, combined with the indexed estimate or indexed actual income for the individual's partner stated in a notice given to:
 - (a) if the individual is the claimant for child care benefit—the individual; or
 - (b) if the individual is the partner of the claimant for child care benefit—the individual's partner;

under subsection 55AA(2) or 55AB(2) with a start day that has arrived or passed (or, if the Secretary has given more than one such notice—the notice with the most recent start day).

15 Subsection 60E(1)

Omit “must”, substitute “may”.

16 Paragraphs 65B(1)(b) and (c)

Repeal the paragraphs, substitute:

- (b) the CCB %:
 - (i) is worked out on the basis of an estimate of the claimant’s adjusted taxable income, an indexed estimate for the claimant or an indexed actual income for the claimant; or
 - (ii) is varied under section 60E; and
- (c) the claimant provides the Secretary with a revised estimate of the claimant’s adjusted taxable income for the current income year or the next income year that is not attributable to an event mentioned in paragraph 65A(3)(a) or (b); and

17 At the end of subsection 65B(1)

Add:

Note: Section 55AC affects the meaning of subparagraph (1)(b)(i) for members of couples.

18 After section 65B

Insert:

65BA Variation of determination of CCB % to reflect indexing of estimate of adjusted taxable income

- (1) If:
 - (a) determinations of conditional eligibility under section 50F and of CCB % under section 50J are in force in respect of a claimant who is an individual and the effect of the former determination is that the individual is conditionally eligible for child care benefit by fee reduction; and
 - (b) the Secretary gives the claimant a notice under subsection 55AA(2); and

- (c) the claimant does not, before the start day specified in the notice, give the Secretary an estimate of the claimant's adjusted taxable income that the Secretary considers to be reasonable; and
- (d) if the claimant's CCB % were calculated using the indexed estimate stated in the notice—a new CCB % would be required;

the Secretary must vary the determination of CCB % so that it is determined on the basis of the indexed estimate stated in the notice.

Note: Section 55AC affects the meaning of this provision for members of couples.

- (2) The variation has effect:
 - (a) from the start day specified in the notice; or
 - (b) if the variation is made after that start day—from the Monday after the variation is made.

65BB Variation of determination of CCB % to reflect indexation of adjusted taxable income

- (1) If:
 - (a) determinations of conditional eligibility under section 50F and of CCB % under section 50J are in force in respect of a claimant who is an individual and the effect of the former determination is that the individual is conditionally eligible for child care benefit by fee reduction; and
 - (b) the Secretary gives the claimant a notice under subsection 55AB(2); and
 - (c) the claimant does not, before the start day specified in the notice, give the Secretary an estimate of the claimant's adjusted taxable income that the Secretary considers to be reasonable; and
 - (d) if the claimant's CCB % were calculated using the indexed actual income stated in the notice—a new CCB % would be required;

the Secretary must vary the determination of CCB % so that it is determined on the basis of the indexed actual income stated in the notice.

Note: Section 55AC affects the meaning of this provision for members of couples.

(2) The variation has effect:

- (a) from the start day specified in the notice; or
- (b) if the variation is made after that start day—from the Monday after the variation is made.

19 Subsection 219A(2) (table item 8, column 1)

Omit “or 65B”, substitute “, 65B, 65BA or 65BB”.

20 Application of amendments

The amendments made by this Schedule apply in relation to:

- (a) family tax benefit for the 2006-2007 income year and later income years; and
- (b) child care benefit for the 2006-2007 income year and later income years.

Schedule 3—Returns to paid work

A New Tax System (Family Assistance) Act 1999

1 Paragraph 3B(2)(a)

Omit “neither engaging in paid work, nor receiving passive employment income,”, substitute “not engaging in paid work”.

2 Paragraph 3B(3)(a)

Omit “neither engaging in paid work, nor receiving passive employment income,”, substitute “not engaging in paid work”.

3 Application of amendments

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

Schedule 4—Recovery of child care benefit debts

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

1 Subsection 82(1)

Omit “However, a debt owed in relation to child care benefit is not recoverable by means of the application of an income tax refund under paragraph (f) or (g).”.

2 Application of amendment

The amendment made by this Schedule applies in relation to a debt against which an income tax refund is to be applied if both:

- (a) the debt is determined on or after 1 July 2006; and
- (b) the income tax refund is determined on or after 1 July 2007 (irrespective of the income year to which the refund relates).

Schedule 5—Reducing allocation of child care places

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

1 At the end of subsection 111(2)

Add:

- ; (g) a decision under section 219NA (Secretary requiring service to provide information about number of child care places).

2 After paragraph 144(1)(i)

Insert:

- (ia) a decision under section 207A to reduce the number of child care places allocated to an approved child care service;

3 At the end of section 206

Add:

- ; (e) procedures relating to the reduction under section 207A of the number of child care places allocated to approved child care services;
- (f) matters to be taken into account in working out the number of child care places by which the number of child care places allocated to approved child care services may be reduced under section 207A;
- (g) any other matters to be taken into account in reducing, or deciding whether to reduce, under section 207A the number of child care places allocated to approved child care services.

4 After section 207

Insert:

207A Reduction of allocation of child care places by unused or unusable places

- (1) The Secretary may, in accordance with a determination under section 206, reduce the number of child care places allocated to an approved child care service if:
- (a) that number exceeds the number of child care places provided by the service; or
 - (b) that number exceeds the number of child care places that the service is, under a law of a State or Territory, licensed to provide.

The reduction must not be greater than the excess.

- (2) Before the reduction, the Secretary must (unless subsection (3) applies) give a notice to the service that:
- (a) states that the Secretary proposes to make the reduction; and
 - (b) states the number of places by which the Secretary proposes to reduce the number of places allocated to the service; and
 - (c) invites the service to make written submissions to the Secretary about the proposed reduction; and
 - (d) is not inconsistent with a determination under section 206.
- (3) If the service has informed the Secretary in writing that the number of child care places allocated to the service may be reduced, the Secretary may give the service a notice under subsection (2) before making the reduction.
- (4) The Secretary must have regard to any submissions made by the service in deciding whether to make the reduction.
- (5) If the Secretary reduces under this section the number of child care places allocated to an approved child care service, the Secretary must give the service a notice that states:
- (a) the number of places by which the number of places allocated to the service is reduced; and
 - (b) the day on which the reduction takes effect, which must not be earlier than the day on which the notice is given; and
 - (c) the number of places allocated to the service, taking account of the reduction.

207B Effect of reduction in allocation of child care places

- (1) This section explains the effect of a reduction under this Division of the number of child care places allocated to an approved child care service.

Note: A reduction may be made under section 200 or section 207A.

- (2) This Division has effect after the reduction as if there had not been allocated to the service the number of places by which the number of places allocated to the service was reduced.

Note: This affects the operation of paragraph 197(b) for the service. It could also affect the making of allocations of child care places to other approved child care services after the reduction.

5 After section 219N

Insert:

219NA Obligation to provide information to Secretary about number of child care places

- (1) The Secretary may give an approved child care service a written notice requiring the service to provide information required in order for the Secretary to determine whether to reduce the number of child care places allocated to the service.
- (2) The notice must specify all of these:
- (a) the information required by the Secretary;
 - (b) the period, or each of the periods, in relation to which the information is required;
 - (c) when the information in relation to the period, or each of the periods, is required.
- (3) The notice may specify either or both of these:
- (a) the form and manner in which the information is to be provided to the Secretary;
 - (b) the length of time for which the service must continue to comply with the notice.
- (4) The service must provide the required information to the Secretary, in relation to the period, or each of the periods, specified in the notice, at the time specified in the notice and in the form and manner (if any) specified in the notice.

- (5) The Secretary may give the service a written notice terminating the effect of the notice under subsection (1).

6 Application and saving

- (1) The amendments made by this Schedule apply in relation to the reduction of the number of places allocated to an approved child care service whether the allocation was made before, on or after the commencement of this Schedule.
- (2) The amendment of section 206 of the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Schedule does not affect the validity after the commencement of this Schedule of a determination that was in force under that section immediately before that commencement.

7 Effect of earlier voluntary relinquishment of places

- (1) This item applies if, before the commencement of this Schedule:
- (a) an approved child care service and an officer agreed that the service would voluntarily relinquish a number of child care places that had been allocated to the service; and
 - (b) the agreement was acknowledged in writing by an officer.
- (2) Division 1 of Part 8 of the *A New Tax System (Family Assistance) (Administration) Act 1999* has effect on and after the commencement of this Schedule as if the number of places that the service agreed to relinquish had not been allocated to the service.

Schedule 6—Carer allowance backdating provisions

Social Security (Administration) Act 1999

1 Clause 16 of Schedule 2

Omit “52 weeks” (wherever occurring), substitute “12 weeks”.

2 Clause 17 of Schedule 2

Omit “26 weeks” (wherever occurring), substitute “12 weeks”.

Schedule 7—Portability and Medical Treatment Overseas Program

A New Tax System (Family Assistance) Act 1999

1 At the end of section 63A

Add:

- (3) The Secretary may extend the 13 week period referred to in subsection 62(2) or 63(2) if the Secretary is satisfied that, under the Medical Treatment Overseas Program administered by the Minister who administers the *National Health Act 1953*, financial assistance is payable in respect of the absence from Australia of the individual mentioned in subsection 62(2) or of the FTB child mentioned in subsection 63(2).

Note: The heading to section 63A is altered by omitting “**26 week**” and substituting “**13 week**”.

Social Security Act 1991

2 After section 1218C

Insert:

1218D Extension of person’s portability period—life-saving medical treatment overseas

- (1) The Secretary may extend the person’s portability period for the payment if the Secretary is satisfied that, under the Medical Treatment Overseas Program administered by the Minister who administers the *National Health Act 1953*, financial assistance is payable in respect of the person’s absence from Australia.
- (2) If the Secretary extends a person’s portability period under subsection (1), the person’s portability period for the payment, for the purposes of this Part, is the extended period.

Note: The heading to section 1218C is altered by adding at the end “—**general**”.

3 At the end of paragraph 1220(1)(e)

Add “and”.

4 After paragraph 1220(1)(e)

Insert:

- (f) financial assistance is not payable in respect of the person's absence from Australia under the Medical Treatment Overseas Program administered by the Minister who administers the *National Health Act 1953*;

5 At the end of paragraph 1220(2)(e)

Add "and".

6 After paragraph 1220(2)(e)

Insert:

- (f) financial assistance is not payable in respect of the person's absence from Australia under the Medical Treatment Overseas Program administered by the Minister who administers the *National Health Act 1953*;

7 Application of items 1 and 2

- (1) The amendments made by items 1 and 2 of this Schedule apply to financial assistance payable in respect of absences from Australia that begin after the commencement of this Schedule.
- (2) The amendments made by items 1 and 2 of this Schedule apply to financial assistance payable in respect of an absence from Australia that began before the commencement of this Schedule, if, at the time this Schedule commences:
 - (a) the absence has not ended; and
 - (b) the maximum portability period for the payment, determined as if the amendments made by items 1 and 2 did not apply, has not expired.

8 Application of items 3, 4, 5 and 6

The amendments made by items 3, 4, 5 and 6 of this Schedule apply to persons who leave Australia as mentioned in paragraphs 1220(1)(e) and (2)(e) after the commencement of this Schedule.

Schedule 8—Income streams (social security)

Part 1—Amendments commencing on 1 January 2006

Social Security Act 1991

1 Subsection 9(1C) (note 4)

Omit “1099A”, substitute “1099AA”.

2 Paragraph 9B(2B)(c)

Repeal the paragraph, substitute:

- (c) is at most as long as the greater of:
- (i) what would be the primary beneficiary’s life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day if the primary beneficiary were 5 years younger; and
 - (ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary reaches age 100 (assuming that the primary beneficiary lives until then).

3 Paragraph 9B(2C)(c)

Repeal the paragraph, substitute:

- (c) is at most as long as the period worked out under subsection (2D).

4 After subsection 9B(2C)

Insert:

- (2D) For the purposes of paragraph (2C)(c), the period is the greater of:
- (a) the greater of what would be the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
 - (i) the primary beneficiary, if the primary beneficiary were 5 years younger; and

- (ii) the primary beneficiary's reversionary partner on that day, if the partner were 5 years younger; and
- (b) the greater of:
 - (i) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary reaches age 100 (assuming that the primary beneficiary lives until then); and
 - (ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary's reversionary partner on the commencement day reaches age 100 (assuming that the partner lives until then).

5 Paragraph 9BA(3)(c)

Repeal the paragraph, substitute:

- (c) is at most as long as the greater of:
 - (i) what would be the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day if the primary beneficiary were 5 years younger; and
 - (ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary reaches age 100 (assuming that the primary beneficiary lives until then).

6 Paragraph 9BA(4)(c)

Repeal the paragraph, substitute:

- (c) is at most as long as the period worked out under subsection (4A).

7 After subsection 9BA(4)

Insert:

- (4A) For the purposes of paragraph (4)(c), the period is the greater of:

- (a) the greater of what would be the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
 - (i) the primary beneficiary, if the primary beneficiary were 5 years younger; and
 - (ii) the primary beneficiary's reversionary partner on that day, if the partner were 5 years younger; and
- (b) the greater of:
 - (i) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary reaches age 100 (assuming that the primary beneficiary lives until then); and
 - (ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary's reversionary partner on the commencement day reaches age 100 (assuming that the partner lives until then).

8 Subsection 9BA(5)

Omit "equal", substitute "not be less than 90%, nor greater than 110%, of".

9 Subsection 9BA(6)

Omit "the total amount", substitute "a total amount".

10 Paragraph 9BA(8)(a)

Omit "the total amount", substitute "a total amount".

11 Section 1098

Before "For the purpose", insert "(1)".

12 At the end of section 1098

Add:

- (2) Sections 1099 and 1099A do not apply if:
 - (a) the income stream is covered by subsection 9BA(1); or
 - (b) on the income stream's commencement day, there was a reasonable likelihood that the income stream would have
-

been covered by subsection 9BA(1), but the income stream is no longer covered by that subsection.

Note: See section 1099AA.

13 After section 1099A

Insert:

1099AA Income from market-linked asset-test exempt income stream

- (1) If either of the following conditions is satisfied in relation to the asset-test exempt income stream to which this Subdivision applies:
- (a) the income stream is covered by subsection 9BA(1);
 - (b) on the income stream's commencement day, there was a reasonable likelihood that the income stream would have been covered by subsection 9BA(1), but the income stream is no longer covered by that subsection;

the annual rate of ordinary income of a person from the income stream is worked out under whichever of subsections (2) and (3) is applicable.

Recipient makes election

- (2) If:
- (a) the person has elected that a particular amount is to be the payment, or the total of the payments, to be made under the income stream in respect of a period (the *payment period*) that:
 - (i) consists of the whole or a part of a particular financial year; and
 - (ii) begins on or after the income stream's commencement day; and
 - (b) the election is in force on a particular day in the payment period;

the annual rate of ordinary income of the person from the income stream on that day is worked out using the following formula:

$$\left[\frac{\text{Total payments}}{\text{Days in payment period}} - \frac{\text{Purchase price}}{\text{Relevant number} \times 365} \right] \times 365$$

where:

purchase price has the meaning given by subsection 9(1).

relevant number has the meaning given by subsection 9(1).

total payments means the payment, or the total of the payments, to be made under the income stream in respect of the payment period.

Recipient does not make election

- (3) If the person has not elected that a particular amount is to be the payment, or the total of the payments, to be made under the income stream in respect of a period (the ***payment period***) that:

(a) consists of the whole or a part of a particular financial year;
and

(b) begins on or after the income stream's commencement day;
the annual rate of ordinary income of the person from the income stream on each day during the payment period is worked out using the following formula:

$$\left[\frac{\text{Default amount}}{\text{Days in payment period}} - \frac{\text{Purchase price}}{\text{Relevant number} \times 365} \right] \times 365$$

where:

default amount means 100% of the amount worked out for the financial year using the formula in subsection 9BA(5) (for pro-rating, see subsection (4)).

purchase price has the meaning given by subsection 9(1).

relevant number has the meaning given by subsection 9(1).

- (4) If the income stream's commencement day is not a 1 July, the default amount (within the meaning of subsection (3)) for the financial year starting on the preceding 1 July must be reduced on a pro-rata basis by reference to the number of days in the financial year that are on and after the commencement day.

Exception—income stream's commencement day happens in June

- (5) If:
- (a) the income stream's commencement day happens in June;
and

(b) no payment is made under the income stream for the financial year in which the commencement day happens; subsections (2), (3) and (4) do not apply in working out the annual rate of ordinary income of the person from the income stream on a day in that financial year.

14 Application of amendments

- (1) The amendments made by items 2, 3 and 4 apply to income streams purchased, or acquired, by or for the primary beneficiary or primary beneficiaries on or after 1 January 2006.
- (2) The amendments made by items 5, 6 and 7 apply to income streams purchased, or acquired, by or for the primary beneficiary on or after 1 January 2006.
- (3) The amendments made by items 1 and 11 to 13 apply in working out the annual rate of ordinary income of a person from an income stream on or after 1 January 2006, whether the income stream was purchased, or acquired, by or for the primary beneficiary before, at or after the commencement of this item.
- (4) The amendments made by items 8, 9 and 10 apply in working out if obligations for the making of payments under an income stream satisfied the requirements of subsections 9BA(5) to (9) of the *Social Security Act 1991* on or after 1 January 2006, whether the income stream was purchased, or acquired, by or for the primary beneficiary before, at or after the commencement of this item.

Part 2—Amendments commencing on the day after Royal Assent

Social Security Act 1991

15 Subsection 8(1) (note 1 to the definition of *income*)

Omit “1099D”, substitute “1099DAA”.

16 Subsection 8(1) (note 3 to the definition of *ordinary income*)

Omit “1099D”, substitute “1099DAA”.

17 Subsection 9(1) (definition of *family law affected income stream*)

Omit “subsection 9C(1)”, substitute “section 9C”.

18 Subsection 9(1) (definition of *original family law affected income stream*)

Omit “subsection 9C(1)”, substitute “section 9C”.

19 Subsection 9(1) (definition of *primary FLA income stream*)

Omit “subsection 9C(1)”, substitute “section 9C”.

20 Subsection 9(1) (definition of *secondary FLA income stream*)

Omit “subsection 9C(1)”, substitute “section 9C”.

21 Subsection 9(1C) (note 5)

Omit “1099D”, substitute “1099DAA”.

22 Subsection 9(1F)

Repeal the subsection, substitute:

(1F) An income stream is a *defined benefit income stream* if:

(a) under the *Superannuation Industry (Supervision) Regulations 1994*, the income stream is taken to be a pension for the

purposes of the *Superannuation Industry (Supervision) Act 1993*; and

- (b) the income stream is provided under rules that meet the standards of subregulation 1.06(2) of the *Superannuation Industry (Supervision) Regulations 1994*; and
- (c) the income stream is attributable to a defined benefit interest within the meaning of the *Superannuation Industry (Supervision) Regulations 1994* (for this purpose, disregard subparagraph 1.03AA(1)(b)(ii) of those regulations).

23 After subparagraph 9A(2)(h)(iva)

Insert:

- (ivb) to the extent necessary to give effect to an order under Part VIII AA of the *Family Law Act 1975*; or

24 Subsection 9A(7) (definition of *life expectancy period*)

Repeal the definition, substitute:

life expectancy period, for an income stream, means:

- (a) in a case where:
 - (i) there was only one primary beneficiary on the commencement day; and
 - (ii) the primary beneficiary has decided not to round up his or her life expectancy for the purposes of this definition; the period starting on the income stream's commencement day, and equal to the shorter of:
 - (iii) the primary beneficiary's life expectancy on the commencement day; and
 - (iv) 20 years; or
- (b) in a case where:
 - (i) there was only one primary beneficiary on the commencement day; and
 - (ii) paragraph (a) does not apply; the period starting on the income stream's commencement day, and equal to the shorter of:
 - (iii) the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day; and
 - (iv) 20 years; or

- (c) in a case where:
- (i) there were 2 primary beneficiaries on the commencement day; and
 - (ii) those primary beneficiaries have decided not to round up their life expectancies for the purposes of this definition;
- the period starting on the income stream's commencement day, and equal to the shorter of:
- (iii) the greater of the life expectancies, on the commencement day, of the primary beneficiaries; and
 - (iv) 20 years; or
- (d) in a case where:
- (i) there were 2 primary beneficiaries on the commencement day; and
 - (ii) paragraph (c) does not apply;
- the period starting on the income stream's commencement day, and equal to the shorter of:
- (iii) the greater of the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of the primary beneficiaries; and
 - (iv) 20 years.

25 Paragraph 9B(2)(a)

Omit "(2B) or (2C)", substitute "(2B), (2C) or (2E)".

26 After subparagraph 9B(2)(h)(iva)

Insert:

- (ivb) to the extent necessary to give effect to an order under Part VIII A A of the *Family Law Act 1975*; or

27 Subsection 9B(2B)

Omit "An income stream's", substitute "If, on an income stream's commencement day, there is only one primary beneficiary, the income stream's".

28 Subsection 9B(2C)

Omit “An income stream’s”, substitute “If, on an income stream’s commencement day, there is only one primary beneficiary, the income stream’s”.

29 After subsection 9B(2D)

Insert:

- (2E) If, on an income stream’s commencement day, there are 2 primary beneficiaries (the *first primary beneficiary* and the *second primary beneficiary*), the income stream’s *term* complies with this subsection if it is a period of whole years that:
- (a) starts on the income stream’s commencement day; and
 - (b) is at least as long as the lesser of the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
 - (i) the first primary beneficiary; and
 - (ii) the second primary beneficiary; and
 - (c) is at most as long as the period worked out under subsection (2F).
- (2F) For the purposes of paragraph (2E)(c), the period is the greater of:
- (a) the greater of what would be the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
 - (i) the first primary beneficiary, if the first primary beneficiary were 5 years younger; and
 - (ii) the second primary beneficiary, if the second primary beneficiary were 5 years younger; and
 - (b) the greater of:
 - (i) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the first primary beneficiary reaches age 100 (assuming that the first primary beneficiary lives until then); and
 - (ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the second primary beneficiary reaches age 100 (assuming that the second primary beneficiary lives until then).
-

30 Subsection 9C(1)

Omit “(1)”.

31 Paragraphs 9C(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) an income stream is acquired or purchased (the *original family law affected income stream*) by a person (the *member*); and
- (b) the member’s spouse or former spouse (the *non-member*) becomes entitled to be paid some or all of that income stream under:
 - (i) a payment split under Part VIII B of the *Family Law Act 1975*; or
 - (ii) an order under Part VIII A A of the *Family Law Act 1975*;

32 Subsection 9C(2)

Repeal the subsection.

33 Point 1064-E1 (note 2)

Omit “1099D”, substitute “1099DAA”.

34 Point 1066-E1 (note 2)

Omit “1099D”, substitute “1099DAA”.

35 Point 1066A-F1 (note 2)

Omit “1099D”, substitute “1099DAA”.

36 Point 1067G-H1 (paragraph (d) of note 2)

Omit “1099D”, substitute “1099DAA”.

37 Point 1067L-D1 (paragraph (d) of note 2)

Omit “1099D”, substitute “1099DAA”.

38 Point 1068-G1 (note 3)

Omit “1099D”, substitute “1099DAA”.

39 Point 1068A-E1 (paragraph (d) of note 2)

Omit “1099D”, substitute “1099DAA”.

40 Point 1068B-D1 (paragraph (d) of note 3)

Omit “1099D”, substitute “1099DAA”.

41 Section 1072 (note 2)

Omit “1099D”, substitute “1099DAA”.

42 Section 1099B

Before “For the purpose”, insert “(1)”.

43 At the end of section 1099B

Add:

- (2) Sections 1099C and 1099D do not apply to an income stream if section 1099DAA applies to the income stream.

44 After section 1099D

Insert:

1099DAA Income from certain low-payment asset-tested income streams

- (1) If:
- (a) an income stream is an asset-tested income stream (long term) to which this Subdivision applies; and
 - (b) either:
 - (i) the income stream is an allocated pension within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*; or
 - (ii) the income stream is an annuity (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) provided under a contract that meets the standards of subregulation 1.05(4) of the *Superannuation Industry (Supervision) Regulations 1994*; and
 - (c) one or more payments have been, or are to be, made under the income stream in respect of a period (the **payment period**) that:
 - (i) consists of the whole or a part of a financial year; and

(ii) begins on or after the income stream's commencement day; and

(d) on a day in the payment period, the amount worked out using the formula in subsection (2) is less than the amount worked out using the formula in subsection (3);

the annual rate of ordinary income of a person from the income stream on that day is worked out under subsection (3).

Annual rate based on total payments

(2) For the purposes of paragraph (1)(d), the formula in this subsection is:

$$\left[\frac{\text{Total payments}}{\text{Days in payment period}} - \frac{\text{Purchase price}}{\text{Relevant number} \times 365} \right] \times 365$$

where:

purchase price has the meaning given by subsection 9(1).

relevant number has the meaning given by subsection 9(1).

total payments means the payment, or the total of the payments, made, or to be made, under the income stream in respect of the payment period.

Annual rate based on minimum limit

(3) For the purposes of paragraph (1)(d), the formula in this subsection is:

$$\left[\frac{\text{Minimum limit}}{\text{Days in payment period}} - \frac{\text{Purchase price}}{\text{Relevant number} \times 365} \right] \times 365$$

where:

minimum limit means the minimum limit calculated under whichever of Schedules 1A and 1AAB to the *Superannuation Industry (Supervision) Regulations 1994* is applicable.

purchase price has the meaning given by subsection 9(1).

relevant number has the meaning given by subsection 9(1).

Exception—income stream’s commencement day happens in June

- (4) If:
- (a) the income stream’s commencement day happens in June;
and
 - (b) no payment is made under the income stream for the financial year in which the commencement day happens;
- subsections (2) and (3) do not apply in working out the annual rate of ordinary income of the person from the income stream on a day in that financial year.

45 Sections 1099DB, 1099DC and 1099DD

Repeal the sections, substitute:

1099DB Income from asset-test exempt income streams

- (1) For the purpose of working out the annual rate of ordinary income of a person from an asset-test exempt income stream to which this Subdivision applies, the person is taken to receive from that income stream each year:
- (a) if the income stream is not a defined benefit income stream—the amount determined by the Secretary under this paragraph;
or
 - (b) if the income stream is a defined benefit income stream—the amount determined by the Secretary under this paragraph.
- (2) In making a determination under paragraph (1)(a) or (b), the Secretary must comply with any relevant decision-making principles in force under section 1099DD.

1099DC Income from asset-tested income stream (long term)

- (1) For the purpose of working out the annual rate of ordinary income of a person from an asset-tested income stream (long term) to which this Subdivision applies, the person is taken to receive from that income stream each year:
- (a) if the income stream is not a defined benefit income stream—the amount determined by the Secretary under this paragraph;
or
 - (b) if the income stream is a defined benefit income stream—the amount determined by the Secretary under this paragraph.
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- (2) In making a determination under paragraph (1)(a) or (b), the Secretary must comply with any relevant decision-making principles in force under section 1099DD.

1099DD Decision-making principles

The Secretary may, by legislative instrument, formulate principles (*decision-making principles*) to be complied with by him or her in making decisions under:

- (a) paragraph 1099DB(1)(a); or
- (b) paragraph 1099DB(1)(b); or
- (c) paragraph 1099DC(1)(a); or
- (d) paragraph 1099DC(1)(b).

46 Subsections 1120A(2), (3) and (4)

Repeal the subsections, substitute:

- (2) The value of an income stream that is not a defined benefit income stream is, for the purposes of the assets test, determined by the Secretary.
- (3) The value of an income stream that is a defined benefit income stream is, for the purposes of the assets test, determined by the Secretary.
- (4) In making a determination under subsection (2) or (3), the Secretary must comply with any relevant decision-making principles in force under subsection (5).
- (5) The Secretary may, by legislative instrument, formulate principles (*decision-making principles*) to be complied with by him or her in making decisions under:
 - (a) subsection (2); or
 - (b) subsection (3).

47 After subsection 1121(3A)

Insert:

- (3B) Subsection (1) does not apply to an asset that is a partially asset-test exempt income stream (within the meaning of section 1118).

48 Application of amendments

- (1) The amendments made by items 15, 16, 21 and 33 to 45 apply in working out the annual rate of ordinary income of a person from an income stream after the commencement of this item, whether the income stream was purchased, or acquired, by or for the primary beneficiary or primary beneficiaries before, at or after the commencement of this item.
 - (2) The amendments made by items 17, 18, 19, 20, 30, 31 and 32 apply in working out if an income stream is:
 - (a) a family law affected income stream; or
 - (b) an original family law affected income stream; or
 - (c) a primary FLA income stream; or
 - (d) a secondary FLA income stream;after the commencement of this item, whether the income stream was purchased, or acquired, by or for the primary beneficiary or primary beneficiaries before, at or after the commencement of this item.
 - (3) The amendment made by item 22 applies to income streams purchased, or acquired, by or for the primary beneficiary or primary beneficiaries after the commencement of this item.
 - (4) The amendments made by items 23 and 24 apply in working out if an income stream is covered by section 9A of the *Social Security Act 1991* after the commencement of this item, whether the income stream was purchased, or acquired, by or for the primary beneficiary or primary beneficiaries before, at or after the commencement of this item.
 - (5) Subject to subitem (6), the amendments made by items 25 to 29 apply in working out if an income stream is covered by section 9B of the *Social Security Act 1991* after the commencement of this item, whether the income stream was purchased, or acquired, by or for the primary beneficiary or primary beneficiaries before, at or after the commencement of this item.
 - (6) Paragraph 9B(2F)(b) of the *Social Security Act 1991* applies to income streams purchased, or acquired, by or for the primary beneficiary or primary beneficiaries on or after 1 January 2006.
 - (7) The amendments made by items 46 and 47 apply in working out the value of an income stream after the commencement of this item, whether the income stream was purchased, or acquired, by or for the
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primary beneficiary or primary beneficiaries before, at or after the commencement of this item.

Schedule 9—Income streams (veterans)

Veterans' Entitlements Act 1986

1 Subsection 5J(1C) (note 4)

Omit “46V”, substitute “46VA”.

2 Paragraph 5JB(2B)(c)

Repeal the paragraph, substitute:

- (c) is at most as long as the greater of:
 - (i) what would be the primary beneficiary’s life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day if the primary beneficiary were 5 years younger; and
 - (ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary reaches age 100 (assuming that the primary beneficiary lives until then).

3 Paragraph 5JB(2C)(c)

Repeal the paragraph, substitute:

- (c) is at most as long as the period worked out under subsection (2D).

4 After subsection 5JB(2C)

Insert:

- (2D) For the purposes of paragraph (2C)(c), the period is the greater of:
 - (a) the greater of what would be the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
 - (i) the primary beneficiary, if the primary beneficiary were 5 years younger; and
 - (ii) the primary beneficiary’s reversionary partner on that day, if the partner were 5 years younger; and
 - (b) the greater of:

- (i) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary reaches age 100 (assuming that the primary beneficiary lives until then); and
- (ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary's reversionary partner on the commencement day reaches age 100 (assuming that the partner lives until then).

5 Paragraph 5JBA(3)(c)

Repeal the paragraph, substitute:

- (c) is at most as long as the greater of:
 - (i) what would be the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day if the primary beneficiary were 5 years younger; and
 - (ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary reaches age 100 (assuming that the primary beneficiary lives until then).

6 Paragraph 5JBA(4)(c)

Repeal the paragraph, substitute:

- (c) is at most as long as the period worked out under subsection (4A).

7 After subsection 5JBA(4)

Insert:

- (4A) For the purposes of paragraph (4)(c), the period is the greater of:
 - (a) the greater of what would be the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
 - (i) the primary beneficiary, if the primary beneficiary were 5 years younger; and

- (ii) the primary beneficiary's reversionary partner on that day, if the partner were 5 years younger; and
- (b) the greater of:
 - (i) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary reaches age 100 (assuming that the primary beneficiary lives until then); and
 - (ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary's reversionary partner on the commencement day reaches age 100 (assuming that the partner lives until then).

8 Subsection 5JBA(5)

Omit "equal", substitute "not be less than 90%, nor greater than 110%, of".

9 Subsection 5JBA(6)

Omit "the total amount", substitute "a total amount".

10 Paragraph 5JBA(8)(a)

Omit "the total amount", substitute "a total amount".

11 Section 46T

Before "For the purpose", insert "(1)".

12 At the end of section 46T

Add:

- (2) Sections 46U and 46V do not apply if:
 - (a) the income stream is covered by subsection 5JBA(1); or
 - (b) on the income stream's commencement day, there was a reasonable likelihood that the income stream would have been covered by subsection 5JBA(1), but the income stream is no longer covered by that subsection.

Note: See section 46VA.

13 After section 46V

Insert:

46VA Income from market-linked asset-test exempt income stream

- (1) If either of the following conditions is satisfied in relation to the asset-test exempt income stream to which this Subdivision applies:
- (a) the income stream is covered by subsection 5JBA(1);
 - (b) on the income stream's commencement day, there was a reasonable likelihood that the income stream would have been covered by subsection 5JBA(1), but the income stream is no longer covered by that subsection;

the annual rate of ordinary income of a person from the income stream is worked out under whichever of subsections (2) and (3) is applicable.

Recipient makes election

- (2) If:
- (a) the person has elected that a particular amount is to be the payment, or the total of the payments, to be made under the income stream in respect of a period (the *payment period*) that:
 - (i) consists of the whole or a part of a particular financial year; and
 - (ii) begins on or after the income stream's commencement day; and
 - (b) the election is in force on a particular day in the payment period;

the annual rate of ordinary income of the person from the income stream on that day is worked out using the following formula:

$$\left[\frac{\text{Total payments}}{\text{Days in payment period}} - \frac{\text{Purchase price}}{\text{Relevant number} \times 365} \right] \times 365$$

where:

purchase price has the meaning given by subsection 5J(1).

relevant number has the meaning given by subsection 5J(1).

total payments means the payment, or the total of the payments, to be made under the income stream in respect of the payment period.

Recipient does not make election

- (3) If the person has not elected that a particular amount is to be the payment, or the total of the payments, to be made under the income stream in respect of a period (the **payment period**) that:
- (a) consists of the whole or a part of a particular financial year; and
 - (b) begins on or after the income stream's commencement day; the annual rate of ordinary income of the person from the income stream on each day during the payment period is worked out using the following formula:

$$\left[\frac{\text{Default amount}}{\text{Days in payment period}} - \frac{\text{Purchase price}}{\text{Relevant number} \times 365} \right] \times 365$$

where:

default amount means 100% of the amount worked out for the financial year using the formula in subsection 5JBA(5) (for pro-rating, see subsection (4)).

purchase price has the meaning given by subsection 5J(1).

relevant number has the meaning given by subsection 5J(1).

- (4) If the income stream's commencement day is not a 1 July, the default amount (within the meaning of subsection (3)) for the financial year starting on the preceding 1 July must be reduced on a pro-rata basis by reference to the number of days in the financial year that are on and after the commencement day.

Exception—income stream's commencement day happens in June

- (5) If:
- (a) the income stream's commencement day happens in June; and
 - (b) no payment is made under the income stream for the financial year in which the commencement day happens;
- subsections (2), (3) and (4) do not apply in working out the annual rate of ordinary income of the person from the income stream on a day in that financial year.

14 Application of amendments

- (1) The amendments made by items 2, 3 and 4 apply to income streams purchased, or acquired, by or for the primary beneficiary or primary beneficiaries on or after 1 January 2006.
 - (2) The amendments made by items 5, 6 and 7 apply to income streams purchased, or acquired, by or for the primary beneficiary on or after 1 January 2006.
 - (3) The amendments made by items 1 and 11 to 13 apply in working out the annual rate of ordinary income of a person from an income stream on or after 1 January 2006, whether the income stream was purchased, or acquired, by or for the primary beneficiary before, at or after the commencement of this item.
 - (4) The amendments made by items 8, 9 and 10 apply in working out if obligations for the making of payments under an income stream satisfied the requirements of subsections 5JBA(5) to (9) of the *Veterans' Entitlements Act 1986* on or after 1 January 2006, whether the income stream was purchased, or acquired, by or for the primary beneficiary before, at or after the commencement of this item.
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*[Minister's second reading speech made in—
House of Representatives on 16 February 2006
Senate on 29 March 2006]*

(6/06)
