





# **Family Assistance Amendment (Further 2008 Budget Measures) Act 2009**

**No. 49, 2009**

**An Act to amend the law relating to family  
assistance, 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 Amendment (Further 2008 Budget Measures) Act 2009**

**No. 49, 2009**

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

[Assented to 24 June 2009]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Family Assistance Amendment  
(Further 2008 Budget Measures) Act 2009*.

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## 2 Commencement

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

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	24 June 2009
2. Schedule 1	1 July 2009.	1 July 2009
3. Schedule 2, items 1 to 3	1 July 2009.	1 July 2009
4. Schedule 2, items 4 to 6	1 July 2010.	1 July 2010
5. Schedule 2, item 7	1 July 2009.	1 July 2009
6. Schedule 2, item 8	1 July 2010.	1 July 2010
7. Schedule 3	1 July 2009.	1 July 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Continuous adjustment of rate of family tax benefit by instalment**

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

#### **1 After section 31D**

Insert:

#### **31E Continuous adjustment of daily rate of family tax benefit payable by instalment**

- (1) This section applies if:
- (a) a determination is in force in an income year under which a claimant is entitled to be paid family tax benefit by instalment; and
  - (b) one of the following applies:
    - (i) a variation of the determination under subsection 31A(1) has effect on a day in the income year that is after 1 July;
    - (ii) a variation of the determination under subsection 31B(1) has effect on a day in the income year that is after 1 July;
    - (iii) a variation of the determination under subsection 31C(1) has effect on a day in the income year that is after 1 July;
    - (iv) a variation of the determination under subsection 31D(1) has effect on a day in the income year that is after 1 July;
    - (v) on a day in the income year, the claimant provides the Secretary with a revised estimate of the claimant's adjusted taxable income for the income year that does not result in a variation of the determination under subsection 31A(1);
    - (vi) on a day in the income year that is after 1 July, the Secretary makes a revised estimate of the claimant's

maintenance income that does not result in a variation of the determination under subsection 31B(1).

- (2) The Secretary must apply the following method statement to work out if there is a daily overpayment rate:

*Method statement*

- Step 1. Work out the total amount of family tax benefit the claimant is or was entitled to be paid during the period beginning at the start of the income year and ending at the end of the day before the applicable day.
- Step 2. Work out the total amount of family tax benefit the claimant would have been entitled to be paid during that period if the claimant's rate of family tax benefit were calculated using:
- (a) if subparagraph (1)(b)(i) applies—the revised estimate concerned; or
  - (b) if subparagraph (1)(b)(ii) applies—the revised estimate concerned; or
  - (c) if subparagraph (1)(b)(iii) applies—the indexed estimate concerned; or
  - (d) if subparagraph (1)(b)(iv) applies—the indexed actual income concerned; or
  - (e) if subparagraph (1)(b)(v) applies—the revised estimate concerned; or
  - (f) if subparagraph (1)(b)(vi) applies—the revised estimate concerned.
- Step 3. Take the amount worked out at step 2 away from the amount worked out at step 1.
- Step 4. If the amount worked out at step 3 is greater than zero, work out the number of days during the period beginning

on the applicable day and ending at the end of the last day in the income year.

Step 5. Work out the **daily overpayment rate** by dividing the amount worked out at step 3 by the number of days worked out at step 4.

- (3) If there is a daily overpayment rate, the Secretary must vary the determination so that the claimant's daily rate of family tax benefit for the period beginning on the applicable day and ending at the end of the last day in the income year is reduced (but not below nil) by that daily overpayment rate.
- (4) This section may have more than one application in relation to the claimant during the income year.
- (5) In this section:

**applicable day** means:

- (a) if subparagraph (1)(b)(i), (ii), (iii) or (iv) applies—the day on which the variation concerned has effect; and
- (b) if subparagraph (1)(b)(v) or (vi) applies—the first day of the instalment period in which the Secretary applies the method statement because of that subparagraph applying.

## 2 Application

- (1) Subparagraphs 31E(1)(b)(i) to (iv) of the *A New Tax System (Family Assistance) (Administration) Act 1999*, as inserted by this Act, apply in relation to variations made under subsection 31A(1), 31B(1), 31C(1) or 31D(1) of that Act on or after the commencement of this item (regardless of whether the determination referred to in paragraph 31E(1)(a) of that Act was made before, on or after that commencement).
- (2) Subparagraphs 31E(1)(b)(v) and (vi) of the *A New Tax System (Family Assistance) (Administration) Act 1999*, as inserted by this Act, apply in relation to revised estimates provided or made on or after the commencement of this item (regardless of whether the determination referred to in paragraph 31E(1)(a) of that Act was made before, on or after that commencement).

## **Schedule 2—Non-payment of family tax benefit for non-lodgment of tax returns**

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

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

After “subject to”, insert “Subdivision CA of this Division,”.

#### **2 Subsection 24(4)**

After “subject to”, insert “Subdivision CA of this Division,”.

#### **3 After Subdivision C of Division 1 of Part 3**

Insert:

### **Subdivision CA—Non-payment of family tax benefit for non-lodgment of tax returns**

#### **32AA Non-payment of family tax benefit for non-lodgment of tax returns**

If the Secretary varies a determination under subsection 28(2) in relation to a claimant, the Secretary must not make a payment of family tax benefit (worked out on the basis referred to in subsection 20(1), (2A) or (3)) to:

- (a) the claimant during a prohibited period for the claimant (see section 32AB); and
- (b) the claimant’s partner (if any) (the *relevant partner*) mentioned in subparagraph 28(1)(b)(iii) during a prohibited period for that partner (see section 32AC).

#### **32AB Prohibited periods for claimant**

*First kind of prohibited period*

- (1) There is a prohibited period for the claimant if:

- (a) the claimant was required to lodge an income tax return for the cancellation income year concerned but the claimant has not done so by the end of the grace period; or
- (b) the claimant and the relevant partner are members of the same couple at the end of the grace period, and that partner was required to lodge an income tax return for the cancellation income year concerned but has not done so by the end of the grace period.

Note: For *relevant partner* see section 32AA. For *grace period* see subsection (8).

- (2) The prohibited period referred to in subsection (1):
  - (a) begins on the day after the end of the grace period; and
  - (b) ends when subsection (3), (4) or (7) applies (whichever occurs first).
- (3) This subsection applies if:
  - (a) if the claimant was required to lodge an income tax return for the cancellation income year concerned—the claimant lodges or has lodged the return; and
  - (b) if the relevant partner was required to lodge an income tax return for the cancellation income year concerned—that partner lodges or has lodged the return.
- (4) This subsection applies if:
  - (a) the claimant and the relevant partner cease to be members of the same couple at any time after the end of the grace period; and
  - (b) if the claimant was required to lodge an income tax return for the cancellation income year concerned—the claimant lodges or has lodged the return.

*Second kind of prohibited period*

- (5) There is a prohibited period for the claimant if:
    - (a) the claimant and the relevant partner cease to be members of the same couple on or after the day the variation mentioned in section 32AA is made; and
    - (b) the claimant and that partner become members of the same couple again on a day (the *applicable day*) that is after the end of the period applicable under paragraph (a) of the definition of *grace period* in subsection (8); and
-

- (c) that partner was required to lodge an income tax return for the cancellation income year concerned but has not done so by the applicable day.
- (6) The prohibited period referred to in subsection (5):
  - (a) begins on the day determined by the Secretary (which must not be earlier than the applicable day); and
  - (b) ends when:
    - (i) the relevant partner lodges an income tax return for the cancellation income year concerned; or
    - (ii) the claimant and the relevant partner cease to be members of the same couple again; or
    - (iii) subsection (7) applies;whichever occurs first.

*Prohibited period may end in special circumstances*

- (7) This subsection applies if the Secretary, by writing, determines that the prohibited period concerned ends. The Secretary may make the determination only if the Secretary is satisfied that there are special circumstances that justify the Secretary doing so.

*Grace period*

- (8) In this section:

***grace period*** means:

- (a) the period of 75 days, or such longer period as the Secretary determines under subsection (9), beginning on the day the variation mentioned in section 32AA is made; or
- (b) if subsection (7) has applied in relation to a previous prohibited period—the period of 14 days, or such longer period as the Secretary determines under subsection (9), beginning on the day the determination mentioned in subsection (7) is made.

Note: The effect of paragraph (b) of the definition is that there may be another prohibited period for the claimant under subsection (1).

- (9) The Secretary may, by writing, determine a period for the purposes of paragraph (a) or (b) of the definition of ***grace period*** in subsection (8) if the Secretary is satisfied that there are special circumstances that justify the Secretary doing so.

*Determinations are not legislative instruments*

- (10) A determination made under paragraph (6)(a) or subsection (7) or (9) is not a legislative instrument.

**32AC Prohibited periods for relevant partner**

*First kind of prohibited period*

- (1) There is a prohibited period for the relevant partner if:
- (a) the claimant and that partner are members of the same couple at the end of the grace period; and
  - (b) either or both of the following apply:
    - (i) the claimant was required to lodge an income tax return for the cancellation income year concerned but has not done so by the end of the grace period;
    - (ii) that partner was required to lodge an income tax return for the cancellation income year concerned but has not done so by the end of the grace period.

Note: For **relevant partner** see section 32AA. For **grace period** see subsection (10).

- (2) The prohibited period referred to in subsection (1):
- (a) begins on the day after the end of the grace period; and
  - (b) ends when subsection (3), (4) or (9) applies (whichever occurs first).
- (3) This subsection applies if:
- (a) if that partner was required to lodge an income tax return for the cancellation income year concerned—that partner lodges or has lodged the return; and
  - (b) if the claimant was required to lodge an income tax return for the cancellation income year concerned—the claimant lodges or has lodged the return.
- (4) This subsection applies if the claimant and that partner cease to be members of the same couple at any time after the end of the grace period.

*Second kind of prohibited period*

- (5) There is a prohibited period for the relevant partner if:
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- (a) the claimant and that partner cease to be members of the same couple on or after the day the variation mentioned in section 32AA is made; and
  - (b) the claimant and that partner become members of the same couple again on a day (the *applicable day*) that is after the end of the period applicable under paragraph (a) of the definition of *grace period* in subsection (10); and
  - (c) either or both of the following apply:
    - (i) the claimant was required to lodge an income tax return for the cancellation income year concerned but has not done so by the applicable day;
    - (ii) that partner was required to lodge an income tax return for the cancellation income year concerned but has not done so by the applicable day.
- (6) The prohibited period referred to in subsection (5):
- (a) begins on the day determined by the Secretary (which must not be earlier than the applicable day); and
  - (b) ends when subsection (7), (8) or (9) applies (whichever occurs first).
- (7) This subsection applies if:
- (a) if that partner was required to lodge an income tax return for the cancellation income year concerned—that partner lodges or has lodged the return; and
  - (b) if the claimant was required to lodge an income tax return for the cancellation income year concerned—the claimant lodges or has lodged the return.
- (8) This subsection applies if the claimant and that partner cease to be members of the same couple again.

*Prohibited period may end in special circumstances*

- (9) This subsection applies if the Secretary, by writing, determines that the prohibited period concerned ends. The Secretary may make the determination only if the Secretary is satisfied that there are special circumstances that justify the Secretary doing so.

*Grace period*

- (10) In this section:
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**grace period** means:

- (a) the period of 75 days, or such longer period as the Secretary determines under subsection (11), beginning on the day the variation mentioned in section 32AA is made; or
- (b) if subsection (9) has applied in relation to a previous prohibited period—the period of 14 days, or such longer period as the Secretary determines under subsection (11), beginning on the day the determination mentioned in subsection (9) is made.

Note: The effect of paragraph (b) of the definition is that there may be another prohibited period for the relevant partner under subsection (1).

- (11) The Secretary may, by writing, determine a period for the purposes of paragraph (a) or (b) of the definition of **grace period** in subsection (10) if the Secretary is satisfied that there are special circumstances that justify the Secretary doing so.

*Determinations are not legislative instruments*

- (12) A determination made under paragraph (6)(a) or subsection (9) or (11) is not a legislative instrument.

### **32AD Prohibited periods for new partner**

If:

- (a) on or after the day the variation mentioned in section 32AA is made, the claimant becomes a member of a couple and the claimant's partner (the **new partner**) is not the relevant partner; and
- (b) the claimant was required to lodge an income tax return for the cancellation income year concerned but has not done so when the claimant becomes a member of that couple;

then, during a prohibited period for the claimant and while the claimant and the new partner are members of the same couple, the Secretary must not make a payment of family tax benefit (worked out on the basis referred to in subsection 20(1), (2A) or (3)) to the new partner.

Note: For **relevant partner** see section 32AA.

## **4 Section 32AA**

Before "If", insert "(1)".

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**5 At the end of section 32AA**

Add:

- (2) This section is subject to section 32AE.

**6 At the end of Subdivision CA of Division 1 of Part 3**

Add:

**32AE Non-entitlement to payment of family tax benefit after 3 variations under subsection 28(2)**

- (1) This section applies if 3 variations under subsection 28(2) have been made in relation to a claimant.

*Claimant*

- (2) The claimant is not entitled to be paid family tax benefit (worked out on the basis referred to in subsection 20(1), (2A) or (3)) in respect of a period in which either or both of the following apply:
- (a) if the claimant was required to lodge an income tax return for one or more of the cancellation income years concerned—the claimant has not lodged each of those returns;
  - (b) if the claimant is a member of a couple and the claimant's partner is a relevant partner in relation to one or more of the cancellation income years concerned and that partner was required to lodge an income tax return for one or more of those years—that partner has not lodged each of those returns.

Note: For *relevant partner* see section 32AA.

*Partner*

- (3) If the claimant is a member of a couple, the claimant's partner is not entitled to be paid family tax benefit (worked out on the basis referred to in subsection 20(1), (2A) or (3)) in respect of a period in which either or both of the following apply:
- (a) if the claimant was required to lodge an income tax return for one or more of the cancellation income years concerned—the claimant has not lodged each of those returns;
  - (b) if the claimant's partner is a relevant partner in relation to one or more of the cancellation income years concerned and

that partner was required to lodge an income tax return for one or more of those years—that partner has not lodged each of those returns.

### **7 Application—amendment commencing on 1 July 2009**

- (1) The amendment made by item 3 applies in relation to a variation made under subsection 28(2) of the *A New Tax System (Family Assistance) (Administration) Act 1999* before, on or after the commencement of that item (regardless of whether the determination being varied was made before, on or after that commencement).
- (2) However, subitem (1) does not apply in relation to a variation made before the commencement of this item if each person mentioned in subparagraph 28(1)(b)(iii) of the *A New Tax System (Family Assistance) (Administration) Act 1999* and required to lodge an income tax return for the cancellation income year concerned had lodged the return before that commencement.
- (3) In relation to a variation made before the commencement of this item to which subitem (1) applies, the period referred to in paragraph (a) of the definition of **grace period** in subsection 32AB(8) or 32AC(10) of the *A New Tax System (Family Assistance) (Administration) Act 1999* is taken to begin on 1 July 2009 (instead of the day the variation is made).

### **8 Application—amendment commencing on 1 July 2010**

- (1) The amendment made by item 6 applies in relation to a variation made under subsection 28(2) of the *A New Tax System (Family Assistance) (Administration) Act 1999* before, on or after the commencement of that item (regardless of whether the determination being varied was made before, on or after that commencement).
- (2) However, subitem (1) does not affect a person's entitlement to be paid family tax benefit before that commencement.
- (3) If more than 3 variations had been made before the commencement of this item in relation to a claimant, section 32AE of the *A New Tax System (Family Assistance) (Administration) Act 1999*, as inserted by this Act, applies in relation to all of those variations (instead of 3 of those variations).
- (4) Subitems (1) and (3) do not apply in relation to a variation made before the commencement of this item if each person mentioned in

**Schedule 2** Non-payment of family tax benefit for non-lodgment of tax returns

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subparagraph 28(1)(b)(iii) of the *A New Tax System (Family Assistance) (Administration) Act 1999* and required to lodge an income tax return for the cancellation income year concerned had lodged the return before that commencement.

## **Schedule 3—Information sharing**

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

#### **1 Subsections 154A(2), (3) and (4)**

Repeal the subsections, substitute:

- (2) The Secretary may provide to the Commissioner of Taxation a record (the *designated TFN record*) of an individual's tax file number for the purpose of being informed by the Commissioner of amounts included in the individual's adjusted taxable income for a specified income year.

Note: The tax file number must first have been provided to the Secretary as described in subsection (1).

- (3) The Secretary may later give written notice to the Commissioner that the Secretary understands that the individual is not required to lodge an income tax return for that income year.
- (4) A notice under subsection (3) may include a record of the individual's tax file number. The Commissioner must destroy that record when it is no longer needed for the purpose of the notice.
- (5) If the Commissioner works out amounts included in the individual's adjusted taxable income for that income year, the Commissioner may disclose to the Secretary:
- (a) particulars of those amounts; and
  - (b) the individual's tax file number.
- (6) The Commissioner must destroy the designated TFN record 3 years after the end of that income year, unless during those 3 years:
- (a) the Commissioner has not disclosed particulars of the individual's adjusted taxable income for that income year under subsection (5); and
  - (b) the Commissioner has not received a notice under subsection (3) that the Secretary understands that the individual is not required to lodge an income tax return for that income year.

- (7) If the Commissioner is not required to destroy the designated TFN record under subsection (6), the Commissioner must do so if and when the Commissioner later:
- (a) discloses particulars of the individual's adjusted taxable income for that income year under subsection (5); or
  - (b) receives a notice under subsection (3) that the Secretary understands that the individual is not required to lodge an income tax return for that income year.

Note: The heading to section 154A is replaced by the heading "**Getting details of adjusted taxable income**".

## **2 After section 154A**

Insert:

### **154B Providing information to assist debt recovery**

- (1) The Secretary may provide to the Commissioner of Taxation:
- (a) a record of an individual's tax file number to which subsection 154A(1) applies; and
  - (b) details relating to an individual's entitlement, or non-entitlement, to family assistance;
- for one of the purposes mentioned in subsection (2).
- (2) The purposes are as follows:
- (a) to assist the Commissioner act under section 87 (applying tax refund to family assistance debt) in relation to a debt owed by an individual;
  - (b) to assist the Commissioner act under section 93 (applying tax refund to another person's family assistance debt) in relation to a debt owed by an individual;
  - (c) to assist the payment of deductions to the Commissioner under section 225;
  - (d) if details relating to an individual's entitlement to an amount of family assistance (other than child care benefit) are provided under paragraph (1)(b)—to assist the Commissioner set off under section 226 the whole or a part of that entitlement.
- (3) The Commissioner must destroy the Commissioner's record of the tax file number provided under subsection (1) when the number is no longer needed for the purpose for which it was provided.
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### 3 Application

- (1) Section 154A of the *A New Tax System (Family Assistance) (Administration) Act 1999* (as amended by this Schedule) applies in relation to a record of a tax file number provided under subsection 154A(2) of that Act:
  - (a) during the period starting on 1 July 2006 and ending immediately before the commencement of this Schedule (the *pre-commencement period*); or
  - (b) on or after the commencement of this Schedule.
- (2) For the purposes of the application of section 154A of the *A New Tax System (Family Assistance) (Administration) Act 1999* (as amended by this Schedule) to a record provided during the pre-commencement period, the record so provided is the *designated TFN record*.

### 4 Transitional—providing TFN record again if income details yet to be provided for past income years

- (1) This item applies if, before the commencement of this Schedule:
  - (a) the Commissioner of Taxation destroyed the Commissioner's record of an individual's tax file number provided under section 154A of the *A New Tax System (Family Assistance) (Administration) Act 1999* for an income year; and
  - (b) the Commissioner did not provide the Secretary with particulars of the individual's taxable income for that income year.

#### *Secretary may provide the TFN record again*

- (2) The Secretary may provide the individual's tax file number to the Commissioner under subsection 154A(2) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (as amended by this Schedule) for that income year.

#### *Modification to normal rules if TFN record provided again*

- (3) Section 154A of the *A New Tax System (Family Assistance) (Administration) Act 1999* (as amended by this Schedule) applies in relation to a tax file number so provided as if subsections 154A(6) and (7) of that Act were replaced with the following:

- “(6) The Commissioner must destroy the designated TFN record if and when the Commissioner later:
- (a) discloses particulars of the individual’s adjusted taxable income for that income year under subsection (5); or
  - (b) receives a notice under subsection (3) that the Secretary understands that the individual is not required to lodge an income tax return for that income year.”.
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*[Minister’s second reading speech made in—  
House of Representatives on 3 June 2009  
Senate on 17 June 2009]*

(114/09)

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