





# **Family Assistance and Other Legislation Amendment Act 2012**

**No. 49, 2012**

**An Act to amend the law relating to family  
assistance and social security, 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 and Other Legislation Amendment Act 2012**

**No. 49, 2012**

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

[Assented to 26 May 2012]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Family Assistance and Other  
Legislation Amendment Act 2012*.

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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 this Act receives the Royal Assent.	26 May 2012
2. Schedule 1	1 July 2012.	1 July 2012
3. Schedule 2, item 1	1 September 2012.	1 September 2012
4. Schedule 2, items 2, 3 and 4	The day this Act receives the Royal Assent.	26 May 2012
5. Schedule 2, item 5	1 September 2012.	1 September 2012
6. Schedule 2, item 6	The day this Act receives the Royal Assent.	26 May 2012
7. Schedules 3 and 4	1 July 2012.	1 July 2012
8. Schedule 5	The day this Act receives the Royal Assent.	26 May 2012
9. Schedule 6, items 1 and 2	The day this Act receives the Royal Assent.	26 May 2012
10. Schedule 6, items 3 and 4	Immediately after the commencement of Schedule 1 to the <i>Family Assistance and Other Legislation Amendment Act 2011</i> .	1 January 2012
11. Schedule 6, items 5 and 6	The day this Act receives the Royal Assent.	26 May 2012
12. Schedule 6, items 7 to 10	1 July 2012.	1 July 2012
13. Schedule 6, item 11	1 January 2005.	1 January 2005

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
14. Schedule 6, items 12 and 13	Immediately after the commencement of Schedule 1 to the <i>Family Assistance and Other Legislation Amendment Act 2011</i> .	1 January 2012
15. Schedule 6, items 14 to 25	Immediately after the commencement of Schedule 2 to the <i>Clean Energy (Household Assistance Amendments) Act 2011</i> .	
16. Schedule 6, items 26 and 27	The day this Act receives the Royal Assent.	26 May 2012
17. Schedule 6, item 28	Immediately after the commencement of Schedule 2 to the <i>Clean Energy (Household Assistance Amendments) Act 2011</i> .	
18. Schedule 6, items 29 to 32	1 July 2012.	1 July 2012
19. Schedule 6, item 33	The day this Act receives the Royal Assent.	26 May 2012

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be 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—Immunisation requirements

### Part 1—New rules

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

##### 1 Subsection 6(1)

Repeal the subsection, substitute:

- (1) This section states when the child of an individual (the *adult*) meets the immunisation requirements for the purposes of determining whether:
  - (a) the adult is eligible for child care benefit under Division 4 of Part 3; or
  - (b) FTB Part A supplement is to be added in working out the adult's maximum Part A rate of family tax benefit.

##### 2 After section 61A

Insert:

#### **61B FTB Part A supplement to be disregarded unless immunisation requirements satisfied**

##### *Parents of FTB children*

- (1) The Secretary must disregard clause 38A of Schedule 1 in relation to an individual, an FTB child of the individual and a particular day or days (each of which is an *applicable day*) in an income year if:
  - (a) the FTB child turned 1, 2 or 5 in the income year; and
  - (b) on the applicable day, the child is an FTB child of the individual; and
  - (c) the individual, or the individual's partner, is a parent of the child on the last day of the income year.

##### *Other FTB recipients*

- (2) The Secretary must disregard clause 38A of Schedule 1 in relation to an individual, an FTB child of the individual and a particular

day or days (each of which is an *applicable day*) in an income year if:

- (a) the FTB child turned 1, 2 or 5 in the income year; and
- (b) on the applicable day, the child is an FTB child of the individual; and
- (c) the child is an FTB child of the individual on at least 182 days in the income year, including the last day of the income year; and
- (d) neither the individual, nor the individual's partner, is a parent of the child on the last day of the income year.

*Exception—immunisation requirements*

- (3) However, the Secretary must not disregard clause 38A of Schedule 1 as mentioned in subsection (1) or (2) if:
  - (a) at any time before the end of the second income year after the income year in which the FTB child turned 1, 2 or 5 (as the case requires), the Secretary becomes aware of information suggesting that the child meets the immunisation requirements set out in section 6; and
  - (b) at any time, the Secretary is satisfied that the child met the immunisation requirements set out in section 6 before the end of that second income year.

*Death of the FTB child or eligible individual*

- (4) Subsections (1), (2) and (3) do not apply if either of the following individuals die before the end of the second income year after the income year in which the FTB child turned 1, 2 or 5 (as the case requires):
  - (a) the FTB child;
  - (b) the individual mentioned in subsection (1) or (2).

*Relationship with section 32A of the Family Assistance Administration Act*

- (5) This section does not limit section 32A of the Family Assistance Administration Act (about disregarding the FTB Part A supplement until the reconciliation conditions are satisfied).

*Definition of parent*

(6) In this section:

*parent* includes an adoptive parent and a relationship parent.

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

**3 Subsection 107(1)**

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

**4 After subsection 107(3B)**

Insert:

(3C) Subsection (1) does not limit the date of effect of a review decision, in respect of an original decision that relates to the payment to a person of family tax benefit by instalment, if the following apply:

- (a) under section 61B of the Family Assistance Act, the Secretary disregarded clause 38A of Schedule 1 to that Act in relation to the person, an FTB child of the person and a day;
- (b) the review is undertaken because:

- (i) before the end of the second income year after the income year in which the FTB child turned 1, 2 or 5 (as the case requires), the Secretary becomes aware of information suggesting that section 61B of that Act does not prevent that clause being taken into account in relation to that person, that FTB child and that day; and
- (ii) at any time, the Secretary is satisfied that section 61B of that Act does not prevent that clause being taken into account in relation to that person, that FTB child and that day.

(3D) Subsection (1) does not limit the date of effect of a review decision, in respect of an original decision that relates to the payment to a person of family tax benefit by instalment, if the review is undertaken because of subsections 61B(1), (2) and (3) of the Family Assistance Act not applying in relation to the person because of the operation of subsection 61B(4) of that Act.

## **5 At the end of subsection 109D(4)**

Add:

- ; or (f) the family assistance is family tax benefit and the following apply:
  - (i) under section 61B of the Family Assistance Act, the Secretary disregarded clause 38A of Schedule 1 to that Act in relation to the person, an FTB child of the person and a day;
  - (ii) the Secretary is satisfied the application for review is made because the person considers that section 61B of that Act does not prevent that clause being taken into account in relation to that person, that FTB child and that day;
  - (iii) the application for review is made before the end of the second income year after the income year in which that FTB child turned 1, 2 or 5 (as the case requires); or
- (g) the family assistance is family tax benefit and the application for review is made because of subsections 61B(1), (2) and (3) of the Family Assistance Act not applying in relation to the person because of the operation of subsection 61B(4) of that Act.

## **6 At the end of subsection 109E(3)**

Add:

- ; or (f) the following apply:
  - (i) under section 61B of the Family Assistance Act, the Secretary disregarded clause 38A of Schedule 1 to that Act in relation to the person mentioned in paragraph (1)(a) of this section, an FTB child of the person and a day;
  - (ii) the Secretary is satisfied the application for review is made because the person considers that section 61B of that Act does not prevent that clause being taken into account in relation to that person, that FTB child and that day;
  - (iii) the application for review is made before the end of the second income year after the income year in which that FTB child turned 1, 2 or 5 (as the case requires); or
- (g) the application for review is made because of subsections 61B(1), (2) and (3) of the Family Assistance Act not applying

**Schedule 1** Immunisation requirements  
**Part 1** New rules

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in relation to the person mentioned in paragraph (1)(a) of this section because of the operation of subsection 61B(4) of that Act.

## **Part 2—Removal of old rules**

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

#### **7 Subsection 3(1) (paragraph (c) of the definition of *family assistance*)**

Repeal the paragraph.

#### **8 Subsection 3(1) (paragraph (d) of the definition of *FTB child*)**

Repeal the paragraph.

#### **9 Subsection 3(1) (definition of *maternity immunisation allowance*)**

Repeal the definition.

#### **10 Division 3 of Part 3**

Repeal the Division.

#### **11 Division 3 of Part 4**

Repeal the Division.

#### **12 Subsection 85(2)**

Omit “and maternity immunisation allowance”.

#### **13 Clause 2 of Schedule 4 (table item 17B)**

Repeal the item.

#### **14 Subclause 3(1) of Schedule 4 (table item 17B)**

Repeal the item.

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

#### **15 Subsection 3(1) (paragraph (b) of the definition of *early claim day*)**

Omit “or”.

**16 Subsection 3(1) (paragraph (c) of the definition of *early claim day*)**

Repeal the paragraph.

**17 Subsection 3(1) (paragraph (c) of the definition of *TFN claim person*)**

Omit “or maternity immunisation allowance”.

**18 Subsection 3(1) (paragraph (c) of the definition of *TFN substitution person*)**

Omit “or maternity immunisation allowance”.

**19 Division 3 of Part 3 (heading)**

Repeal the heading, substitute:

**Division 3—Baby bonus**

**20 Section 36**

Omit “or maternity immunisation allowance”.

**21 Paragraphs 38(1)(a) and (b) and (2)(b) and (c)**

Omit “or maternity immunisation allowance”.

**22 Section 38A (heading)**

Repeal the heading, substitute:

**38A Tax file number requirement to be satisfied for claims for baby bonus in normal circumstances to be effective**

**23 Section 38B (heading)**

Repeal the heading, substitute:

**38B Tax file number requirement to be satisfied for claims for baby bonus because of the death of another individual to be effective**

**24 Subsection 39(1)**

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Omit “or maternity immunisation allowance”.

**25 Subsection 39(4)**

Repeal the subsection.

**26 Subsection 39(5)**

Omit “or maternity immunisation allowance”.

**27 Subsections 41(4A) to (7)**

Repeal the subsections.

**28 Paragraph 42(a)**

Omit “or maternity immunisation allowance”.

**29 Paragraph 42(b)**

Repeal the paragraph, substitute:

- (b) the Secretary is satisfied that the claimant is eligible for baby bonus in accordance with Subdivision A of Division 2 of Part 3 of the Family Assistance Act in respect of the child to whom the claim relates;

**30 Section 42**

Omit “or maternity immunisation allowance” (second and third occurring).

**31 Paragraph 43(a)**

Omit “or maternity immunisation allowance”.

**32 Paragraph 43(b)**

Repeal the paragraph, substitute:

- (b) the Secretary is satisfied that the claimant is, in the circumstances covered by the claim, eligible for baby bonus in accordance with Subdivision B of Division 2 of Part 3 of the Family Assistance Act;

**33 Section 43**

Omit “or maternity immunisation allowance” (second and third occurring).

**34 Section 44**

Omit “or maternity immunisation allowance”.

**35 Paragraphs 46(1)(a) and (b)**

Omit “or maternity immunisation allowance”.

**36 Section 47AA**

Repeal the section.

**37 Section 47AB (heading)**

Repeal the heading, substitute:

**47AB Other rules about payments of baby bonus**

**38 Subsection 47AB(1)**

Omit “or 47AA”.

**39 Subsection 47AB(2) (heading)**

Repeal the heading, substitute:

*Relationship of section 47 with other provisions*

**40 Subsection 47AB(2)**

Omit “Sections 47 and 47AA are”, substitute “Section 47 is”.

**41 Paragraphs 47A(1)(b) and (2)(b)**

Omit “or maternity immunisation allowance”.

**42 Subsection 47A(3)**

Omit “or maternity immunisation allowance, as the case may be”.

**43 Paragraph 66(1)(d)**

Repeal the paragraph.

**44 Paragraph 71(1)(a)**

Omit “, maternity immunisation allowance”.

**45 Section 219TA (paragraph (e) of the definition of *relevant benefit*)**

Repeal the paragraph.

## Part 3—Consequential amendments

### *Income Tax Assessment Act 1997*

#### **46 Section 11-15 (table item headed “family assistance”)**

Omit:

maternity immunisation allowance..... 52-150

#### **47 Section 52-150**

Omit “maternity immunisation allowance,”.

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

#### **48 Section 123TC (paragraph (f) of the definition of *category I welfare payment*)**

Repeal the paragraph.

#### **49 Section 123TC (paragraph (p) of the definition of *category Q welfare payment*)**

Omit “Act; or”, substitute “Act.”.

#### **50 Section 123TC (paragraph (q) of the definition of *category Q welfare payment*)**

Repeal the paragraph.

#### **51 Section 123TC (paragraph (d) of the definition of *category S welfare payment*)**

Repeal the paragraph.

## **Part 4—Application and transitional provisions**

### **52 Application and transitional provisions**

- (1) Subject to subitems (2) and (3), if, before the commencement of this item, an individual was eligible for maternity immunisation allowance under subsection 39(2), (2A), (3), (4), (5), (6) or (9) of the Assistance Act, then, despite the amendments made by Parts 1 and 2, the Assistance Act and the Administration Act, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to that eligibility.
- (2) A claim for payment of maternity immunisation allowance in normal circumstances, based on eligibility referred to in subitem (1), must be made before the end of the earlier of the following days:
  - (a) the last day for making the claim under the Administration Act (worked out in accordance with subsection 39(4) of that Act);
  - (b) 30 June 2013.
- (3) Paragraph 40(b) of the Assistance Act applies, on and after the commencement of this item, only if the death concerned occurs before 1 July 2013.
- (4) Despite the amendment made by item 47, section 52-150 of the *Income Tax Assessment Act 1997* (as in force immediately before the commencement of that item) continues to apply on and after that commencement in relation to payments of maternity immunisation allowance made before, on or after that commencement.
- (5) Despite the amendments made by items 48, 50 and 51:
  - (a) paragraph (f) of the definition of **category I welfare payment** in section 123TC of the *Social Security (Administration) Act 1999* (as in force immediately before the commencement of those items); and
  - (b) paragraph (q) of the definition of **category Q welfare payment** in that section as so in force; and
  - (c) paragraph (d) of the definition of **category S welfare payment** in that section as so in force;

**Schedule 1** Immunisation requirements  
**Part 4** Application and transitional provisions

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continue to apply on and after that commencement in relation to payments of maternity immunisation allowance made before, on or after that commencement.

(6) In this item:

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

**Assistance Act** means the *A New Tax System (Family Assistance) Act 1999*.

## **Schedule 2—Baby bonus**

### **Part 1—Amendments**

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

##### **1 Subsection 66(1)**

Repeal the subsection, substitute:

- (1) The amount of baby bonus for an individual in respect of a child is \$5,000.

##### **2 At the end of clause 3 of Schedule 4**

Add:

*No indexation of baby bonus on 1 July 2012, 1 July 2013 and 1 July 2014*

- (9) Baby bonus is not to be indexed on 1 July 2012, 1 July 2013 and 1 July 2014.

Note: Indexation of baby bonus resumes on 1 July 2015, based on a current figure of \$5,000 (see item 6 of Schedule 2 to the *Family Assistance and Other Legislation Amendment Act 2012*).

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

##### **3 Paragraph 47(2A)(a)**

Omit “in the 2011-2012 financial year”, substitute “between 1 July 2011 and 31 August 2012”.

##### **4 Paragraph 47(2A)(b)**

Repeal the paragraph, substitute:

- (b) if the claimant becomes eligible for baby bonus between 1 September 2012 and 30 June 2015—\$846.15;
- (c) if the claimant becomes eligible for baby bonus on or after 1 July 2015—the amount worked out as follows:

**Schedule 2** Baby bonus  
**Part 1** Amendments

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16.92% × The amount of baby bonus  
the claimant is entitled to

## **Part 2—Application and transitional provisions**

### **5 Application provision**

The amendment made by item 1 applies in relation to individuals who become eligible for baby bonus on or after 1 September 2012.

### **6 Transitional provision**

For the purposes of working out the indexed amount for baby bonus on 1 July 2015 under Schedule 4 to the *A New Tax System (Family Assistance) Act 1999*, the current figure for baby bonus immediately before that day is taken to be \$5,000.

## **Schedule 3—Non-entitlement to family tax benefit on estimated income basis**

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

#### **1 Subsection 3(1) (paragraph (b) of the definition of *receiving*)**

After “sections”, insert “32AI”.

#### **2 Paragraph 103(1)(e)**

Omit “the basis referred to in subsection 20(1), (2A) or (3) of that Act”, substitute “an estimated income basis”.

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

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

Insert:

*estimated income basis*: family tax benefit is worked out on an *estimated income basis* if it is worked out on the basis referred to in subsection 20(1), (2A) or (3).

#### **4 At the end of section 20**

Add:

Note: If family tax benefit is worked out on the basis referred to in subsection (1), (2A) or (3), it is referred to in this Act as being worked out on an *estimated income basis* (see the definition of this term in subsection 3(1)).

#### **5 Subsection 32AA(1)**

Omit “the basis referred to in subsection 20(1), (2A) or (3)”, substitute “an estimated income basis”.

#### **6 Section 32AD**

Omit “the basis referred to in subsection 20(1), (2A) or (3)”, substitute “an estimated income basis”.

**7 Subsections 32AE(2) and (5)**

Omit “the basis referred to in subsection 20(1), (2A) or (3)”, substitute “an estimated income basis”.

**8 After Subdivision CA of Division 1 of Part 3**

Insert:

**Subdivision CB—Non-entitlement to FTB on estimated income basis**

**32AF Non-entitlement to FTB on estimated income basis—review of income during 2 consecutive income years**

*Scope of Subdivision*

- (1) This Subdivision applies in relation to an individual if:
- (a) there are 2 consecutive income years (each of which is a **consecutive year**) in which there are one or more days for which the individual was entitled to be paid family tax benefit worked out on an estimated income basis; and
  - (b) in respect of each consecutive year, the Secretary, under section 105, reviews the rate of family benefit the individual was entitled to be paid for those days on the basis of the individual’s adjusted taxable income as finally determined in respect of the consecutive year by the Secretary; and
  - (c) as a result of the review and in respect of each consecutive year, the Secretary determines either or both of the following:
    - (i) the individual’s Part A rate of family tax benefit is nil for those days because of the individual’s adjusted taxable income, and there are no other days in either consecutive year for which the individual was entitled to be paid the Part A rate;
    - (ii) the individual’s Part B rate of family tax benefit is nil for those days because of subclause 28B(1) of Schedule 1 to the Family Assistance Act.

Note: Family tax benefit may be worked out on an estimated income basis under subsection 20(1), (2A) or (3) (see definition of **estimated income basis** in subsection 3(1)).

*Basic non-entitlement rule*

- (2) Subject to this Subdivision:
- (a) if subparagraph (1)(c)(i) applies—the individual is not entitled, on and after the exclusion day, to be paid the Part A rate of family tax benefit worked out on an estimated income basis; and
  - (b) if subparagraph (1)(c)(ii) applies—the individual is not entitled, on and after the exclusion day, to be paid the Part B rate of family tax benefit worked out on an estimated income basis.
- (3) For the purposes of this Subdivision, the **exclusion day**, in relation to an individual, is:
- (a) either:
    - (i) if the later of the consecutive years is 2010-11—1 July 2012; or
    - (ii) in any other case—1 July of the first income year after the later of the consecutive years; or
  - (b) if the Secretary determines a later day in relation to the individual—the later day.
- (4) A determination under paragraph (3)(b) is not a legislative instrument.

*Position of individual's partner*

- (5) While paragraph (2)(a) applies in relation to the individual, the individual's partner (if any) is not entitled to be paid the Part A rate of family tax benefit worked out on an estimated income basis.
- (6) While paragraph (2)(b) applies in relation to the individual, the individual's partner (if any) is not entitled to be paid the Part B rate of family tax benefit worked out on an estimated income basis.

*Multiple applications of section*

- (7) Sections 32AG to 32AM do not prevent this section applying again in relation to the individual in respect of 2 consecutive income years, either or both of which are different from the 2 consecutive income years the subject of the previous application of this section.

### **32AG Exception—greater than nil rate of FTB for later income year**

#### *Scope*

- (1) This section applies if, in respect of an income year (the *payment year*) after the later of the consecutive years, the Secretary, taking into account the individual's adjusted taxable income as finally determined in respect of the payment year by the Secretary, determines either or both of the following on a day (the *payment day*):
  - (a) the individual's Part A rate of family tax benefit is greater than nil on one or more days in the payment year;
  - (b) the individual's Part B rate of family tax benefit is greater than nil on one or more days in the payment year.

#### *Payment day is in same income year as exclusion day*

- (2) If the payment day is in the income year in which the exclusion day occurs, then:
  - (a) if this section applies in relation to the Part A rate of family tax benefit—paragraph 32AF(2)(a) is taken not to have applied in relation to the individual; and
  - (b) if this section applies in relation to the Part B rate of family tax benefit—paragraph 32AF(2)(b) is taken not to have applied in relation to the individual.

**Example:** Assume that under section 32AF the consecutive years are 2009-10 and 2010-11. Assume that the individual is not entitled, on and after 1 July 2012, to be paid the Part A rate and Part B rate of family tax benefit worked out on an estimated income basis. The exclusion day is 1 July 2012.

Assume that on 1 November 2012 the Secretary determines, under subsection (1), that the individual's Part A rate and Part B rate of family tax benefit are greater than nil on one or more days in 2011-12. The payment day is 1 November 2012.

Under subsection (2), subsection 32AF(2) is taken not to have prevented the individual from being entitled, on and after 1 July 2012, to be paid family tax benefit worked out on an estimated income basis.

#### *Payment day is in income year later than that of exclusion day*

- (3) If the payment day is in an income year that is later than the income year in which the exclusion day occurs, then:

- (a) if this section applies in relation to the Part A rate of family tax benefit—paragraph 32AF(2)(a) ceases to apply in relation to the individual on 1 July of the later income year; and
- (b) if this section applies in relation to the Part B rate of family tax benefit—paragraph 32AF(2)(b) ceases to apply in relation to the individual on 1 July of the later income year.

Example: Assume that under section 32AF the consecutive years are 2009-10 and 2010-11. Assume that the individual is not entitled, on and after 1 July 2012, to be paid the Part A rate and Part B rate of family tax benefit worked out on an estimated income basis. The exclusion day is 1 July 2012.

Assume that on 1 November 2013 the Secretary determines, under subsection (1), that the individual's Part A rate and Part B rate of family tax benefit are greater than nil on one or more days in 2011-12. The payment day is 1 November 2013.

Under subsection (3), subsection 32AF(2) ceases to prevent the individual from being entitled, on and after 1 July 2013, to be paid family tax benefit worked out on an estimated income basis.

Note: For the meaning of *consecutive year*, see subsection 32AF(1). For the meaning of *exclusion day*, see subsection 32AF(3).

### 32AH Exception—resumption of eligibility for FTB

#### *Scope*

- (1) This section applies if:
  - (a) the individual is not eligible for family tax benefit for the whole of an income year (the *applicable year*) that is after the later of the consecutive years (other than because of the individual's income or the individual's partner's income); and
  - (b) after the applicable year, the individual makes a claim for family tax benefit in relation to the income year (the *current year*) in which the claim is made; and
  - (c) the Secretary has finally determined the individual's adjusted taxable income in respect of the applicable year; and
  - (d) the Secretary is satisfied that, if the Secretary were to take into account that adjusted taxable income, either or both of the following would apply in respect of one or more days in the current year:
    - (i) the individual's Part A rate of family tax benefit would be greater than nil;

- (ii) the individual's Part B rate of family tax benefit would be greater than nil, or would be nil (other than because of subclause 28B(1) of Schedule 1 to the Family Assistance Act).

*Exclusion day is in current year*

- (2) If the exclusion day is in the current year, then:
  - (a) if this section applies in relation to the Part A rate of family tax benefit—paragraph 32AF(2)(a) is taken not to have applied in relation to the individual; and
  - (b) if this section applies in relation to the Part B rate of family tax benefit—paragraph 32AF(2)(b) is taken not to have applied in relation to the individual.

**Example:** Assume that under section 32AF the consecutive years are 2009-10 and 2010-11. Assume that the individual is not entitled, on and after 1 July 2012, to be paid the Part A rate and Part B rate of family tax benefit worked out on an estimated income basis. The exclusion day is 1 July 2012.

Assume that the individual is not eligible for family tax benefit for the whole of 2011-12 (the applicable year). Assume that in 2012-13 (the current year) the individual makes a claim for family tax benefit for 2012-13.

Assume that the Secretary is satisfied that, if the Secretary were to take into account the individual's final adjusted taxable income for 2011-12, the individual's Part A rate and Part B rate of family tax benefit would be greater than nil on one or more days in 2012-13.

Under subsection (2), subsection 32AF(2) is taken not to have prevented the individual from being entitled, on and after 1 July 2012, to be paid family tax benefit worked out on an estimated income basis.

*Current year is later than that of exclusion day*

- (3) If the current year is later than the income year in which the exclusion day occurs, then:
  - (a) if this section applies in relation to the Part A rate of family tax benefit—paragraph 32AF(2)(a) ceases to apply in relation to the individual on 1 July of the current year; and
  - (b) if this section applies in relation to the Part B rate of family tax benefit—paragraph 32AF(2)(b) ceases to apply in relation to the individual on 1 July of the current year.

**Example:** Assume that under section 32AF the consecutive years are 2010-11 and 2011-12. Assume that the individual is not entitled, on and after 1 July 2012, to be paid the Part A rate and Part B rate of family tax

benefit worked out on an estimated income basis. The exclusion day is 1 July 2012.

Assume that the individual is not eligible for family tax benefit for the whole of 2012-13 (the applicable year). Assume that in 2013-14 (the current year) the individual makes a claim for family tax benefit for 2013-14.

Assume that the Secretary is satisfied that, if the Secretary were to take into account the individual's final adjusted taxable income for 2012-13, the individual's Part A rate and Part B rate of family tax benefit would be greater than nil on one or more days in 2013-14.

Under subsection (3), subsection 32AF(2) ceases to prevent the individual from being entitled, on and after 1 July 2013, to be paid family tax benefit worked out on an estimated income basis.

Note: For the meaning of *consecutive year*, see subsection 32AF(1). For the meaning of *exclusion day*, see subsection 32AF(3).

### 32AI Exception—income support payments

#### *Scope*

- (1) This section applies if, on a day (the *income support day*) after the later of the consecutive years, the individual, or the individual's partner (if any), is receiving support (*income support*), in the form of a social security pension, a social security benefit, a service pension or income support supplement.

#### *Trigger day is on or before exclusion day*

- (2) If the trigger day is on or before the exclusion day, subsection 32AF(2) is taken not to apply to the individual.

#### *Trigger day is after exclusion day*

- (3) If the trigger day is after the exclusion day, subsection 32AF(2) ceases to apply to the individual on and from the trigger day.

#### *Trigger day for income support payments*

- (4) In this section:  
*trigger day* means the later of:
  - (a) the earliest income support day; and

- (b) 1 July of the income year the Secretary becomes aware that the individual, or the individual's partner, is receiving the income support.

Note: For the meaning of *consecutive year*, see subsection 32AF(1). For the meaning of *exclusion day*, see subsection 32AF(3).

### **32AJ Exception—new FTB child**

#### *Scope*

- (1) This section applies if, on a day (the *FTB child day*) after the later of the consecutive years:
- (a) the individual has an FTB child; and
  - (b) the child was not an FTB child of the individual at any time during the consecutive years.

#### *Trigger day is on or before exclusion day*

- (2) If the trigger day is on or before the exclusion day, subsection 32AF(2) is taken not to apply to the individual.

#### *Trigger day is after exclusion day*

- (3) If the trigger day is after the exclusion day, subsection 32AF(2) ceases to apply to the individual on and from the trigger day.

#### *Trigger day for new FTB child*

- (4) In this section:

*trigger day* means the later of:

- (a) the earliest FTB child day; and
- (b) 1 July of the income year the Secretary becomes aware of the existence of the FTB child.

Note: For the meaning of *consecutive year*, see subsection 32AF(1). For the meaning of *exclusion day*, see subsection 32AF(3).

### **32AK Exception—couple separates**

#### *Scope*

- (1) This section applies if:
-

- (a) at the end of the later of the consecutive years, the individual is a member of a couple; and
- (b) on any later day (a *separation day*) the individual ceases to be a member of that couple.

Note: Paragraph (b) may apply more than once, for example if the couple separates, then reconciles, then again separates.

*Trigger day is on or before exclusion day*

- (2) If the trigger day is on or before the exclusion day, subsection 32AF(2) is taken not to apply to the individual.

*Trigger day is after exclusion day*

- (3) If the trigger day is after the exclusion day, subsection 32AF(2) ceases to apply to the individual on and from the trigger day.

*Reconciliation of separated couple*

- (4) However, if on any day (the *reconciliation day*) after a separation day, the individual again becomes a member of that couple, then subsection 32AF(2) applies in relation to the individual as if the reconciliation day were the exclusion day.

Note: This subsection may apply more than once, for example if the couple separates, then reconciles, then again separates and reconciles.

*Trigger day for separation*

- (5) In this section:

*trigger day*, in relation to a particular separation day, means the later of:

- (a) the separation day; and
- (b) 1 July of the income year the Secretary becomes aware that the individual has (on that separation day) ceased to be a member of that couple.

Note: For the meaning of *consecutive year*, see subsection 32AF(1). For the meaning of *exclusion day*, see subsection 32AF(3).

### **32AL Exception—special circumstances**

#### *Scope*

- (1) This section applies if the Secretary is satisfied that:
  - (a) on a day (the *special circumstances day*) after the later of the consecutive years, special circumstances exist in relation to the individual, the individual's partner (if any) or both; and
  - (b) those circumstances did not exist at the end of the later of the consecutive years; and
  - (c) those circumstances make it inappropriate to prevent the individual from being entitled to be paid the Part A rate and the Part B rate of family tax benefit worked out on an estimated income basis.

#### *Trigger day is on or before exclusion day*

- (2) If the trigger day is on or before the exclusion day, the Secretary must determine that subsection 32AF(2) is taken not to apply to the individual.

#### *Trigger day is after exclusion day*

- (3) If the trigger day is after the exclusion day, the Secretary must determine that subsection 32AF(2) ceases to apply to the individual on and from the trigger day.

#### *Secretary's determinations—general*

- (4) A determination under subsection (2) or (3):
  - (a) has effect in accordance with its terms; and
  - (b) is not a legislative instrument.

#### *Trigger day for special circumstances*

- (5) In this section:

***trigger day*** means the later of:

- (a) the special circumstances day; and
- (b) 1 July of the income year the Secretary becomes aware of the existence of the special circumstances.

Note: For the meaning of *consecutive year*, see subsection 32AF(1). For the meaning of *exclusion day*, see subsection 32AF(3).

### 32AM Exception—determined circumstances

#### *Scope*

- (1) This section applies if the Secretary is satisfied that:
  - (a) on a day (the ***determined circumstances day***) after the later of the consecutive years, circumstances determined in an instrument under subsection (2) exist in relation to the individual, the individual's partner (if any) or both; and
  - (b) the determined circumstances make it inappropriate to prevent the individual from being entitled to be paid the Part A rate and the Part B rate of family tax benefit worked out on an estimated income basis.
- (2) The Minister may, by legislative instrument, determine circumstances for the purposes of paragraph (1)(a).

#### *Trigger day is on or before exclusion day*

- (3) If the trigger day is on or before the exclusion day, the Secretary must determine that subsection 32AF(2) is taken not to apply to the individual.

#### *Trigger day is after exclusion day*

- (4) If the trigger day is after the exclusion day, the Secretary must determine that subsection 32AF(2) ceases to apply to the individual on and from the trigger day.

#### *Secretary's determinations—general*

- (5) A determination under subsection (3) or (4):
  - (a) has effect in accordance with its terms; and
  - (b) is not a legislative instrument.

#### *Trigger day for determined circumstances*

- (6) In this section:

***trigger day*** means the later of:

  - (a) the determined circumstances day; and
  - (b) 1 July of the income year the Secretary becomes aware of the existence of the determined circumstances.

Note: For the meaning of *consecutive year*, see subsection 32AF(1). For the meaning of *exclusion day*, see subsection 32AF(3).

## **9 Paragraphs 65J(2)(b) and (3)(b)**

Omit “the basis referred to in subsection 20(1), (2A) or (3) of this Act”, substitute “an estimated income basis”.

## **10 Application**

- (1) Paragraph 32AF(1)(a) of the *A New Tax System (Family Assistance) (Administration) Act 1999*, as inserted by this Schedule, applies in relation to the 2009-10 income year and later income years.
- (2) Paragraph 32AF(1)(c) of the *A New Tax System (Family Assistance) (Administration) Act 1999*, as inserted by this Schedule, applies in relation to determinations made before, on or after the commencement of this item.

## Schedule 4—Carer allowance

### Part 1—Main amendments

#### *Social Security Act 1991*

##### **1 Division 10 of Part 2.19 (heading)**

Repeal the heading, substitute:

#### **Division 10—Bereavement payments (death of disabled child or adult)**

##### **2 After Subdivision B of Division 10 of Part 2.19**

Insert:

#### **Subdivision BA—Death of disabled adult**

##### **992LA Continued carer allowance during bereavement rate continuation period where disabled adult dies**

(1) If:

- (a) a person is receiving carer allowance (other than because of this section) for a care receiver who is a disabled adult; and
- (b) the disabled adult dies; and
- (c) the person is receiving an income support payment (other than carer payment) at the time of the death of the disabled adult; and
- (d) the person is not qualified for a payment under a provision of this Act (other than this section), or of the Veterans' Entitlements Act, in respect of the death of the disabled adult; the person is qualified for carer allowance during the bereavement rate continuation period as if the disabled adult had not died and had received the care and attention referred to in paragraph 954(1)(d) or 954A(1)(d) (as the case may be).

Note: For *bereavement rate continuation period* see subsection 21(2).

(2) The rate at which the carer allowance is to be paid during the bereavement rate continuation period is the rate at which the

allowance was payable to the person immediately before the day on which the disabled adult died.

### **992LB Lump sum payable in some circumstances**

If:

- (a) a person is qualified for carer allowance under section 992LA in relation to a disabled adult who has died; and
- (b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

a lump sum (worked out using the lump sum calculator at the end of this section) is payable to the person.

#### **Lump Sum Calculator**

This is how to work out the amount of the lump sum:

##### *Method statement*

- Step 1. Work out the rate at which carer allowance was payable to the person immediately before the disabled adult died.
- Step 2. Work out the number of paydays of the person in the bereavement lump sum period.
- Step 3. Multiply the rate obtained in step 1 by the number obtained in step 2: the result is the amount of the lump sum payable to the person under this section.

Note: For *first available bereavement adjustment payday*, *bereavement period* and *bereavement lump sum period* see subsection 21(2).

### **3 Subparagraph 992M(1)(d)(i)**

After “child”, insert “or under Subdivision BA in relation to the death of a disabled adult”.

### **4 Paragraph 992M(1)(e)**

After “subsection 992J(2)”, insert “or 992LA(2), as the case requires,”.

### **5 Paragraph 992M(1)(f)**

After “section 992K”, insert “or 992LB, as the case requires,”.

**6 Subparagraph 992M(2)(d)(i)**

After “child”, insert “or under Subdivision BA in relation to the death of a disabled adult”.

**7 Paragraph 992M(2)(e)**

After “subsection 992J(2)”, insert “or 992LA(2), as the case requires,”.

**8 Paragraph 992M(2)(f)**

After “section 992K”, insert “or 992LB, as the case requires,”.

**9 Application**

The amendments made by this Part apply in relation to deaths occurring on or after the commencement of this Part.

## **Part 2—Consequential amendments**

### *Income Tax Assessment Act 1997*

#### **10 Section 52-10 (explanation of the table)**

Before “certain other payments”, insert “except in relation to table item 3A.1 (carer allowance)”.

#### **11 Section 52-10 (table item 3A.1)**

Omit “Not applicable”, substitute “Exempt”.

## Schedule 5—Carer supplement

### *Social Security Act 1991*

#### **1 Section 992X (heading)**

Repeal the heading, substitute:

#### **992X Carer supplement**

#### **2 Subsection 992X(1)**

Repeal the subsection, substitute:

##### *Qualifying for carer supplement*

- (1) A person (the ***qualified person***) is qualified for carer supplement for a year if the person was or is paid an instalment (the ***qualifying instalment***) of carer allowance, carer payment or carer service pension in respect of a period that includes 1 July in the year.

Note: There may be more than one qualifying instalment for carer supplement for a year. For example, if a person is paid both an instalment of carer allowance and an instalment of carer payment in respect of a period including 1 July in the year, both instalments are qualifying instalments for carer supplement for the year for the person.

#### **3 After subsection 992X(3)**

Insert:

##### *Effect of nil rates of carer payment, wife pension, partner service pension and carer service pension*

(3A) If:

(a) a person:

- (i) is not paid an instalment of carer payment or wife pension under this Act in respect of a period that includes 1 July in a year because the person's rate of that payment or pension in respect of that period is nil; or
- (ii) is not paid an instalment of partner service pension or carer service pension under the Veterans' Entitlements

Act in respect of a period that includes 1 July in a year because the person's rate of that pension in respect of that period is nil; and

- (b) the person's rate of that payment or pension in respect of that period is worked out having regard to an income test module of a rate calculator in this Act or the Veterans' Entitlements Act; and
- (c) either:
  - (i) if subparagraph (a)(i) applies—the person has employment income (within the meaning of this Act) in respect of that period; or
  - (ii) if subparagraph (a)(ii) applies—the person has employment income (within the meaning of section 46AB of the Veterans' Entitlements Act) in respect of that period; and
- (d) the person would have been paid an instalment of that payment or pension in respect of that period if all of the person's income, and all of the person's partner's income (if any), in respect of that period were disregarded;

the person is taken, for the purposes of this section, to have been paid an instalment of that payment or pension in respect of that period.

#### **4 Application**

The amendments made by this Schedule apply in relation to 2012 and later years.

## Schedule 6—Other amendments

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

#### **1 Subsection 21(1A)**

Repeal the subsection, substitute:

*When individual satisfies this subsection*

- (1A) An individual satisfies this subsection if:
- (a) the individual is the holder of a visa determined by the Minister for the purposes of subparagraph 729(2)(f)(v) of the *Social Security Act 1991*; and
  - (b) either:
    - (i) the individual is in Australia; or
    - (ii) the individual is temporarily absent from Australia for a period not exceeding 13 weeks and the absence is an allowable absence in relation to special benefit within the meaning of Part 4.2 of that Act.

#### **2 Before subsection 21(2)**

Insert:

*Exception*

#### **3 Paragraph 31(3)(a)**

After “study”, insert “or studying overseas full-time”.

#### **4 Application—item 3**

The amendment made by item 3 applies in relation to deaths occurring on or after the commencement of that item.

#### **5 Paragraph 32(2)(b)**

Repeal the paragraph, substitute:

- (b) apart from this subsection, the period for which the individual is eligible for family tax benefit under subsection 31(2) extends over 2 income years;

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**6 Application—item 5**

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

**7 Subsections 61A(1) and (2)**

Repeal the subsections, substitute:

*Parents of FTB children*

- (1) The Secretary must disregard clause 38A of Schedule 1 in relation to an individual, an FTB child of the individual and a particular day or days (each of which is an *applicable day*) in an income year if:
  - (a) the FTB child turned 4 in the income year; and
  - (b) on the applicable day:
    - (i) the child is an FTB child of the individual; and
    - (ii) the individual, or the individual's partner, is receiving a social security pension, a social security benefit, a service pension or income support supplement; and
  - (c) the individual, or the individual's partner, is a parent of the child on the last day of the income year.

*Other FTB recipients*

- (2) The Secretary must disregard clause 38A of Schedule 1 in relation to an individual, an FTB child of the individual and a particular day or days (each of which is an *applicable day*) in an income year if:
  - (a) the FTB child turned 4 in the income year; and
  - (b) on the applicable day:
    - (i) the child is an FTB child of the individual; and
    - (ii) the individual, or the individual's partner, is receiving a social security pension, a social security benefit, a service pension or income support supplement; and
  - (c) the child is an FTB child of the individual on at least 182 days in the income year, including the last day of the income year; and
  - (d) neither the individual, nor the individual's partner, is a parent of the child on the last day of the income year.

*Exception—health checks*

- (2A) However, the Secretary must not disregard clause 38A of Schedule 1 as mentioned in subsection (1) or (2) if:
- (a) at any time before the end of the second income year after the income year in which the FTB child turned 4, the Secretary becomes aware of information suggesting that one of the following subparagraphs applies:
    - (i) the FTB child meets the health check requirement (see subsection (4));
    - (ii) the FTB child is in a class exempted from the health check requirement by a determination under subsection (6);
    - (iii) the FTB child is in a class that is taken to meet the health check requirement by a determination under subsection (7);
    - (iv) special circumstances exist in relation to the individual or the individual’s partner (or both) that make it inappropriate for the individual, and the individual’s partner, to arrange for the FTB child to meet the health check requirement; and
  - (b) at any time, the Secretary is satisfied that one of those subparagraphs applied before the end of that second income year.

**8 Subsection 61A(3) (heading)**

Repeal the heading, substitute:

*Death of the FTB child*

**9 Subsection 61A(3)**

Omit “However, subsection (1) or (2) does”, substitute “Subsections (1), (2) and (2A) do”.

**10 Application—items 7, 8 and 9**

The amendments made by items 7, 8 and 9 apply in relation to an individual’s eligibility for FTB Part A supplement in the 2012-13 income year and later income years.

**11 Subsection 63(4) (table item 2)**

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Omit “clause 30”, substitute “clauses 30 and 31A”.

**12 Paragraph 65(2)(a)**

After “study”, insert “or studying overseas full-time”.

**13 Application—item 12**

The amendment made by item 12 applies in relation to deaths occurring on or after the commencement of that item.

**14 At the end of subparagraph 108(1)(c)(ii)**

Add “and”.

**15 After paragraph 108(1)(c)**

Insert:

(d) subsection (1A) does not apply in relation to the individual;

**16 After subsection 108(1)**

Insert:

*Cases involving members of a couple*

(1A) If:

- (a) the Secretary pays a clean energy advance to an individual in circumstances where the Secretary determined the individual is entitled to the advance under section 103 and where the amount of the advance is not worked out under subsection 105(6); and
- (b) the decision day (see subsection 105(1)) is before 1 July 2013; and
- (c) on the decision day, the individual is a member of a couple; and
- (d) on a day (the *trigger day*) after the decision day and before 1 July 2013, the individual’s circumstances change; and
- (e) the individual is entitled to a further payment of clean energy advance in accordance with an instrument made under subsection (1B);

then the amount of the individual’s further clean energy advance is worked out in accordance with an instrument made under subsection (1B) (which may be nil).

(1B) The Minister may, by legislative instrument:

- (a) specify the circumstances in which individuals are entitled to further payments of clean energy advances for the purposes of subsection (1A); and
- (b) specify a method for working out the amount of further clean energy advances for the purposes of subsection (1A).

**17 Subsection 108(2) (heading)**

Repeal the heading.

**18 Paragraph 108(2)(a)**

Omit “(the *original payment*)”.

**19 Paragraph 108(2)(c)**

After “on a day”, insert “(the *trigger day*)”.

**20 Clause 24G of Schedule 1 (method statement, after step 1)**

Insert:

Step 1A. Work out the individual’s <i>above base clean energy supplement amount</i> for the maintenance income using clause 24HA.
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**21 After clause 24H of Schedule 1**

Insert:

**24HA How to work out an individual’s above base clean energy supplement amount**

The individual’s *above base clean energy supplement amount* for the maintenance income is the difference between:

- (a) the individual’s clean energy supplement (Part A) under Subdivision A of Division 2AA of Part 5 (clause 38AA) for the FTB children of the individual in respect of whom the individual, or the individual’s partner, is entitled to apply for maintenance income from the maintenance payer; and
- (b) the individual’s clean energy supplement (Part A) under Subdivision B of Division 2AA of Part 5 (clause 38AF) for

those children (assuming that the individual's Part A rate were calculated under Part 3).

## 22 Clause 24L of Schedule 1 (formula)

Repeal the formula, substitute:

$$2 \times \left( \begin{array}{l} \text{Above base} \\ \text{standard} \\ \text{amount for} \\ \text{the income} \end{array} + \begin{array}{l} \text{Above base} \\ \text{clean energy} \\ \text{supplement} \\ \text{amount for} \\ \text{the income} \end{array} + \begin{array}{l} \text{RA} \\ \text{amount} \\ \text{for the} \\ \text{income} \end{array} \right) + \text{MIFA amount} \\ \text{for the income}$$

## 23 Clause 24N of Schedule 1 (method statement, after step 4)

Insert:

Step 4A. Work out the individual's *clean energy supplement amount* for the maintenance income using clause 24RA.

## 24 After clause 24R of Schedule 1

Insert:

### 24RA How to work out an individual's clean energy supplement amount

The individual's *clean energy supplement amount* for the maintenance income is the individual's clean energy supplement (Part A) under Subdivision A of Division 2AA of Part 5 (clause 38AA) for the FTB children of the individual in respect of whom the individual, or the individual's partner, is entitled to apply for maintenance income from the maintenance payer.

## 25 Application—items 20 to 24

The amendments made by items 20 to 24 apply in relation to the 2013-14 income year and later income years.

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

## 26 After subsection 21(1)

Insert:

(1A) A determination under paragraph 19(a) may be expressed to come into force on a day before it is made (but not earlier than the day the claim concerned is made).

**27 Application—item 26**

The amendment made by item 26 applies in relation to determinations made on or after the commencement of that item.

**28 Paragraph 65J(2)(a)**

After “108(1)”, insert “, (1A)”.

**29 Subsection 93A(6) (paragraph (a) of the definition of *family assistance payment*)**

Repeal the paragraph, substitute:

(a) a payment of family tax benefit, baby bonus, child care benefit or family tax benefit advance; or

**30 Subsection 107(3B)**

Omit “subsection 61A(1) or (2)”, substitute “subsections 61A(1), (2) and (2A)”.

**31 Paragraph 109D(4)(e)**

Omit “subsection 61A(1) or (2)”, substitute “subsections 61A(1), (2) and (2A)”.

**32 Paragraph 109E(3)(e)**

Omit “subsection 61A(1) or (2)”, substitute “subsections 61A(1), (2) and (2A)”.

***Social Security Act 1991***

**33 Paragraph 1061ZK(4)(b)**

Repeal the paragraph, substitute:

(b) the person’s daily rate of family tax benefit consists of, or includes, a Part A rate calculated under Part 2 or 3A of Schedule 1 to the Family Assistance Act that is greater than nil (disregarding reductions (if any) under clause 5 of that Schedule); and

*[Minister's second reading speech made in—  
House of Representatives on 15 February 2012  
Senate on 1 March 2012]*

(9/12)