

1996

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**FAMILY (TAX INITIATIVE) BILL 1996**

**EXPLANATORY MEMORANDUM**

**(Circulated by authority of the Minister for Social Security,  
Senator the Hon Jocelyn Newman)**



## **FAMILY (TAX INITIATIVE) BILL 1996**

### **OUTLINE AND FINANCIAL IMPACT STATEMENT**

This Bill will give legislative effect to the family tax payment, which is a component of the family tax initiative and was announced in the 1996-97 Budget.

The legislation involved is the *Income Tax Assessment Act 1936* and the *Social Security Act 1991*.

The *Family (Tax Initiative) Bill 1996* introduces the new family tax payment. This payment forms part of the family tax initiative, which was announced as a pre-election promise on 18 February 1996, as a commitment to provide additional assistance to families with dependent children.

**Date of effect:** 1 January 1997

<b>Financial Impact:</b>	1996-97	- \$ 403.425 million
	1997-98	- \$ 926.326 million
	1998-99	- \$1076.775 million

The *Family (Tax Initiative) Bill 1996* also makes a number of consequential amendments to the *Income Tax Assessment Act 1936* and the *Taxation Administration Act 1953*, necessary as a result of the amendments in this Bill implementing the family tax payment, or consequential on the amendments in the related *Income Tax Rates Amendment (Family Tax Initiative) Bill 1996*.

## PRELIMINARY

**Clause 1** of the Bill sets out how the amending Act is to be cited, while **clause 2** specifies when the amending Act is to commence.

**Clause 3** specifies that the *Family (Tax Initiative) Bill 1996* provides for the family tax initiative, consisting of family tax assistance and family tax payment, and specifies which items in the Schedules relate to family tax assistance, and which items relate to the family tax payment.

Finally, **clause 4** says that each Act that is specified in a Schedule to the *Family (Tax Initiative) Bill 1996* (the Amending Act) is amended or repealed as set out in the Schedules.

## ***SCHEDULE I - AMENDMENT OF THE INCOME TAX ASSESSMENT ACT 1936***

### **1. Summary of changes**

Schedule 1 makes some consequential amendments to the *Income Tax Assessment Act 1936* (the Tax Act) arising from the introduction of the Family Tax Initiative. The amendments will:

- exempt family tax payments from income tax;
- exempt family tax assistance from the calculation of the tax rebate or complementary tax amount for primary producers (family tax assistance is fully delivered by other means);
- exclude family tax payments from "separate net income" for the purposes of the dependent rebates;
- amend the tax file number provisions to facilitate the collection of tax file numbers by the of the Department of Social Security; and
- allow provisional tax variations for family tax assistance.

### **2. Background**

#### ***Exemption from income tax***

Division 1AA of the Tax Act specifies the taxation treatment of payments that are made under the *Social Security Act 1991*. Section 24AB includes a list of payments and points the reader to the provision dealing with those social security payments. Sections 24ABC to 24ABZD provide details on the treatment of particular payments.

#### ***Primary producers***

Broadly speaking, primary producers can elect to pay tax on average income for a year, rather than actual taxable income. Generally, average income is the average of taxable incomes for the year of income and the previous 4 years. If the taxpayer's average income is less than his or her actual taxable income, the taxpayer is entitled to a tax rebate. If the taxpayer's average income is greater than his or her taxable income, the taxpayer is required to pay an amount of complementary tax to make up the difference.

### ***Separate net income***

"Separate net income" is a concept used in tax law in relation to dependent and certain other rebates. A taxpayer's entitlement to one of these rebates, (such as the dependent spouse rebate) will depend, amongst other things, on the level of the income of the taxpayer's dependent. As the separate net income of the dependent increases, the amount of rebate is reduced, until the cut-off point is reached, above which there is no entitlement to rebate. Certain government benefits and allowances are specifically excluded from separate net income, and it is different from taxable income. "Separate net income" is defined in subsection 159J(6) of the Tax Act.

### ***Tax file numbers***

It is proposed that the Secretary to the Department of Social Security will be able to request claimants for family tax payments to quote their tax file numbers (TFNs), and those of their partners, when they make a claim for family tax payment. Amendments to this effect have been included in Schedule 2 of this Bill (see new sections 900AP and 900AQ). Generally speaking, it is an offence to ask for, or record or use another person's TFN without specific legislative authority.

### ***Provisional tax variations***

A person with a provisional tax liability can lodge a provisional tax variation, which will vary (in most cases, reduce) the amount of provisional tax owing. The variation takes the form of an estimate of particular factors, such as taxable income or rebate entitlements, which affect tax liability. The factors are listed exhaustively in subsection 221YDA(1) of the Tax Act.

Under subsection 221YDA(2) of the Tax Act, if a person lodges a provisional tax variation, the amount of the person's provisional tax liability is the amount calculated in accordance with the estimate.

## **3. Clauses involved in the changes**

**Clause 2:** specifies the commencement date as 1 January 1997.

**Clause 3:** specifies that amendments made by **items 3 to 6 and 10 to 13** of Schedule 1 provide for family tax assistance, and the amendments made by **items 1, 2 and 7 to 9** of Schedule 1 provide for family tax payments.

**Clause 4:** specifies that the Tax Act is amended by Schedule 1.

**Schedule 1:** makes consequential amendments to the Tax Act, necessary as a result of the introduction of the family tax initiative.

#### **4. Explanation of the changes**

##### ***Exemption from income tax***

**Item 1** will include family tax payments in the list of payments under the *Social Security Act 1991* which are dealt with in the Tax Act, and includes a cross-reference to the provision which specifies the taxation treatment of that payment.

**Item 2** will exempt family tax payment from income tax, by inserting new section 24ABXAB in the Tax Act, immediately after current section 24ABXA.

##### ***Primary producers***

**Items 3 and 4** will exclude entitlement to family tax assistance from the calculation which determines whether a primary producer is eligible for a tax rebate, or liable to pay complementary tax, when the taxpayer is not a trustee. Primary producers who claim the rebate or pay complementary tax will receive family tax assistance through Division 5 of the *Income Tax Rates Act 1986*. **Items 5 and 6** operate in the same manner as **items 3 and 4**, except that they will apply to taxpayers who are trustees.

##### ***Separate net income***

**Item 7** amends the definition of "separate net income" in subsection 159J(6) of the Tax Act. This item will exclude family tax payments from "separate net income".

**Item 8** is a minor, consequential amendment to bring the definition of "separate net income" into line with current drafting practices.

##### ***Tax file numbers***

**Item 9** will permit the use of TFNs in relation to the provisions of the *Social Security Act 1991*, which allow the Secretary to the Department of Social Security to request a person to provide a tax file number, and the tax file number of the person's partner if applicable, when that person claims family tax assistance.

##### ***Provisional tax variations***

**Items 10 and 12** are minor amendments to the provisional tax variation provisions, necessary as a consequence of the amendments made by **items 11 and 13**.

**Item 11** will enable a person to lodge a provisional tax variation if family tax assistance entitlement changes during the year (if, for instance, a child is born), by including family tax assistance in the list of factors for which a variation can be lodged.

In the normal course of events, family tax assistance entitlements from the previous year will be taken into account when calculating a person's provisional tax liability. A variation will only be needed if a person's entitlement changes during the year.

**Item 13** will provide that if a person lodges an estimate of family tax assistance entitlements for the year, provisional tax will be calculated in line with that estimate.

### **5. Commencement**

The amendments included in Schedule 1 will commence on 1 January 1997.

## ***SCHEDULE 2 - AMENDMENT OF THE SOCIAL SECURITY ACT 1991***

### **1. Summary of changes**

**Schedule 2 of the Family (Tax Initiative) Bill 1996** introduces the new family tax payment, which will be a payment made under the ***Social Security Act 1991*** (the Social Security Act) . This payment forms part of the family tax initiative, which was announced as a pre-election promise on 18 February 1996, as a commitment to provide additional assistance to families with dependent children.

### **2. Background**

The family tax initiative (FTI), which was announced as a pre-election promise on 18 February 1996, is a commitment to provide additional assistance to families with dependent children, with effect from 1 January 1997. The FTI will be a joint initiative between the Australian Taxation Office and the Department of Social Security.

The FTI may be seen as incorporating two forms of assistance:

- Part A provides for an increase in the tax-free threshold for one parent of \$1,000 for each child. This translates to an increase in disposable income for eligible families of \$200 per child per annum (or \$7.70 per fortnight). Part A is available to all families with dependent children (subject to an income test on combined family taxable income where the family's income must be below \$70,000 per annum (with a \$3,000 increase in the cut-off point for each child after the first) and provides assistance on a per child basis.
- Part B directs additional assistance to single income families (including lone parents) with at least one child under the age of 5 years. Part B will provide an additional increase in the tax-free threshold for one parent of \$2,500 and will be subject to two income tests, as follows:
  - the taxable income for the "breadwinner" must be below \$65,000 per annum (with a \$3,000 increase in the cut-off point for each child after the first); and
  - the income of the breadwinner's partner must not exceed an additional threshold, which is based on the amount of income a person can receive before the person loses eligibility for basic parenting allowance. At present, this threshold is approximately \$4,535 per annum.

The FTI will be available in two forms, one provided by the Australian Taxation Office and the other provided by the Department of Social Security, as follows:



The first form of assistance, known as family tax assistance (FTA), will be delivered by the Australian Taxation Office, and will provide for the FTI as an increase in a person's tax free threshold. The person can elect to receive the FTA by way of reduced tax payments under the PAYE or provisional tax systems, or on assessment at the end of the financial year.

The second, known as the family tax payment (FTP), will be paid through the Department of Social Security to low income families and will consist of fortnightly payment equivalent to the actual benefit obtainable through the increase in the tax threshold. It ensures that low income families who pay little or no tax can get the full benefit of the FTI.

Legislative amendments to give effect to the FTI package will be included in two pieces of legislation, the first being this Bill - the ***Family (Tax Initiative) Bill 1996*** (which will implement the family tax payment). The ***Income Tax Rates Amendment (Family Tax Initiative) Bill 1996*** is the second Bill, and will primarily implement the family tax assistance, as well as amendments to taxation legislation necessary as a consequence of the implementation of the family tax payment.

### **3. Clauses involved in the changes**

- Clause 2:** specifies the commencement date as 1 January 1997.
- Clause 3:** specifies that Schedule 2 provides for the family tax payment.
- Clause 4:** provides that the Social Security Act is amended in accordance with Schedule 1.
- Schedule 2:** amends the Social Security Act to implement the family tax payment, including by inserting a new part, Parts 2.17AA (Family tax payment) and 3.8 (Family tax payment rate calculator) into the Social Security Act.

### **4. Explanation of the changes**

**Item 1** amends section 3 of the Social Security Act. This section lists the defined terms in the Social Security Act, and points the reader to their location. **Item 1** inserts references to the following definitions:

claim for family tax payment	6AA
elected to receive family tax payment	900AG(2)
excluding provision	6AA
family tax payment payday	6AA
FTP child	900AA, 900AB, 900AC
lowest marginal rate of tax	6AA
recipient	6AA

**Item 2** inserts new section 6AA into the Social Security Act, providing several new definitions for use in the family tax payment provisions. In particular, this item involves inserting definitions which reference the provisions relating to "claim for family tax payment", "election to receive family tax payment", "excluding provision", "family tax payment payday", "FTP child", "lowest marginal rate of tax", and "recipient".

**Item 3** amends the definition of "recipient notification notice" in subsection 23(1) by inserting a reference to "family tax payment" immediately after paragraph (m). **Item 4** makes similar amendments to the definition of "recipient statement notice" in subsection 23(1).

Finally, **item 5** amends the definition of "social security payment" to ensure that family tax payment is treated as a social security payment for the purposes of the Social Security Act.

**Item 6** inserts a new part, Part 2.17AA - family tax payment, into the Social Security Act.

## **NEW PART 2.17AA - FAMILY TAX PAYMENT**

### **New Division 1 - family tax payment**

#### **New section 900AA: FTP child of a person**

New subsection 900AA(1) provides the general rule that a dependent child of a person is an FTP child of the person, for the purposes of family tax payment. "Dependent child" is defined in section 5 of the Social Security Act. However, the following subsections provide a series of exceptions to this rule.

For instance, new subsections 900AA(2) specifies that payments made under prescribed education schemes are not taken into account in determining whether a person is a dependent child for the purposes of family tax payment. A prescribed education scheme is defined in subsection 5(1) of the Social Security Act as including:

- the AUSTUDY Scheme; or
- the ABSTUDY Schooling Scheme; or
- the ABSTUDY Tertiary Scheme; or
- the Veterans' Children Education Scheme; or
- the Post-Graduate Awards Scheme.

New subsection 900AA(3) also specifies that a person who has reached 16 years of age cannot be an FTP child, unless that child is in full-time secondary studies. However, such a child will cease to be an FTP child upon turning 18 (new subsection 900AA(4) refers).

Finally, new subsection 900AA(5) indicates that section 900AA is subject to new sections 900AB and 900AC.

#### **New section 900AB: Requirement for FTP child to be, or live with, an inhabitant of Australia**

In order to be an FTP child, new section 900AB requires that the dependent child must also be an inhabitant of Australia or living with an inhabitant of Australia. "Inhabitant of Australia" is defined in subsection 23(1) as an Australian resident or the holder of certain types of temporary visas which have been approved by the Minister for Social Security.

### New section 900AC: Absences from Australia

New section 900AC applies where a dependent child or a person who qualifies for family tax payment leaves Australia. New subsections 900AC(1) to (3) apply when a dependent child leaves Australia and continues to be absent for more than 3 years. Under new subsection 900AC(1), once the three year period expires, the child cannot be an FTP child for the person so long as the child remains absent from Australia. The result of this section is that the person cannot receive family tax payment in respect of the child.

New subsections 900AC(2) and (3) cover situations where a dependent child has left Australia and returns for less than 13 weeks. Under both these subsections, if a dependent child who has been absent from Australia returns home but remains for less than 13 weeks, then the child is taken to have never returned to Australia. New subsection 900AC(2) applies where the child has been overseas for less than 3 years, while new subsection 900AC(3) applies where the absence has been more than 3 years.

New section 900AC also covers the situation where a dependent child remains in Australia, but the person who receives the family tax payment leaves Australia. Under new subsection 900AC(4), the person may continue to receive the family tax payment for the child. However, new subsection 900AC(5) specifies that, if another person claims and is qualified for the family tax payment for the child, the child ceases to be an FTP child of the original recipient (ie, that person may not receive family tax payment in respect of the child).

### New Division 2 - Qualification for family tax payment

#### New section 900AD: Qualification for family tax payment

New section 900AD lays down the qualification rules for family tax payment. In particular, proposed subsection 900AD(1) ties qualification for family tax payment to receipt of family payment at a rate in excess of the minimum family payment rate.

"Minimum family payment rate" is defined in section 6(1) of the Social Security Act as including the person's "minimum standard family payment rate" (which is calculated in accordance with point 1069-B6 in Module B of the Family Payment Rate Calculator) plus any amount of large family supplement and multiple birth allowance that may be payable to the person.

New subsection 900AD(2) provides a qualification to this rule, by specifying that family tax payment may be paid to a person who receives family payment, but at the minimum family payment rate, because of the operation of the "excluding provisions". The "excluding provisions" are defined in new subsection 6AA(1) of this Bill, and provide exceptions to the following rules relating to:

- "prescribed education scheme child(ren)" (section 832);  
the family payment assets test (section 838);
- the absence of family payment recipient from Australia for more than 13 weeks (point 1069-B5(1);  
the receipt of periodic payments which provides for an increase in the rate of payment with reference to a child (point 1069-B8);  
the impact of income components other than taxable income (1069-H2(b),(c) and (d));  
the family payment maintenance income test (Module J of the Family Payment Rate Calculator);  
the requirement that a person take reasonable maintenance income (point 1069-K3)

New subsection 900AD(3) applies to a person who has an FTP child and who is **not** in receipt of family payment. Such a person would qualify for family tax payment provided the person would receive family payment if the person claimed it and if none of the excluding provisions applied. In addition the person must be an inhabitant of Australia.

New subsection 900AD(4) provides qualification for family tax payment for a fourth group of people. These are people who are in receipt of family tax payment during a particular financial year, but who lose qualification for family payment. New subsection 900AD(4) operates to maintain qualification for these people until the end of the financial year. However, the people must still meet the remaining qualification for family tax payment. That is, they must have an FTP child or children, they must be an inhabitant of Australia and so on. In addition, this group of people must also satisfy the relevant family tax payment income tests.

All the above subsections are subject to two important qualifications. The first, which is laid down in new subsection 900AD(5), applies to situations where two people share the care of an FTP child. In this situation, the person must provide actual care for the child for at least 30 percent of the time in order to qualify for family tax payment.

In addition, qualification for the payment is also subject to point 1070-C8 (new subsection 900AD(6) refers). Thus, a person is not qualified for family tax payment if the person's taxable income is unknown. However, if the person provides the Secretary to the Department of Social Security with an estimate of his or her income, and the Secretary then accepts this estimate, then point 1070-C8(2) provides that point 1070-C8 does not remove qualification.

(Three notes to new section 900AD signpost various definitions which are used in this section. These include "excluding provision", "FTP child", and "inhabitant of Australia".)

**New section 900AE: Qualification for family tax payment ceases after 3 year absence of recipient from Australia**

New section 900AE provides a similar set of rules to those in new section 900AC, relating to absences from Australia. In this case, however, they apply to the family tax payment recipient rather than the FTP child.

The general rule is provided by new subsection 900AE(1). Under this subsection, if a person who is qualified for the family tax payment leaves Australia and remains outside Australia for more than 3 years, then the person ceases to be qualified for the family tax payment after the expiration of the 3 year period.

New subsections 900AE(2) and (3) cover situations where the recipient, who has left Australia, returns to Australia for less than 13 weeks. Under both these subsections, if that person returns home but remains for less than 13 weeks, then he or she is taken to have never returned to Australia. New subsection 900AE(2) applies where the person has been overseas for less than 3 years, while new subsection 900AE(3) applies where the original absence has been more than 3 years.

**New Division 3 - Payability of family tax payment**

**New section 900AF: Family tax payment not payable in certain circumstances**

New section 900AF specifies a number of situations where, even though a person may be qualified for the family tax payment, the family tax payment is not payable to the person. This may include situations where:

- the person has chosen to receive the family tax initiative through the taxation system (ie, family tax assistance);
- the payment has not commenced to be payable,
- the person has not provided a tax file number for the person or the person's partner;
- another person is receiving family tax payment in respect of a child and there is no determination made splitting the family tax payment; or
- the person's rate of family tax payment would be nil.

New section 900AG: Election to receive family tax payment

As noted above, family tax payment forms part of the family tax initiative package, the other component being the family tax assistance. A person may choose which form of assistance they wish to receive under the family tax initiative package. Accordingly, new section 900AG provides that the family tax payment is not payable to a person unless the person elects to receive the payment. Proposed subsection 900AG(2) specifies when a person is taken to have chosen to receive the family tax payment. Under this subsection, a person "elects" to receive the family tax payment where the person has made a claim or notified the Secretary that they wish to receive the payment and has not notified the Secretary that he or she wishes to receive the family tax assistance through the taxation system.

New section 900AH: Family tax payment generally not payable before claim

New section 900AH species that, generally, family tax payment is not payable prior to the person's provisional commencement day (which is specified in new section 900AI). This rule is subject to the exceptions relating to backdating in new sections 900AL and 900AM.

New section 900AI: Family tax payment provisional commencement day

New section 900AI specifies what day will be a person's provisional commencement day (ie, the day on which the person's family tax payment generally commences to be payable).

The general rule is specified in new subsection 900AI, in that the provisional commencement day is normally the day on which the person has claimed family tax payment.

The following subsections provide a series of exceptions to this rule, as follows:

If a person makes a claim for a payment similar to family tax payment, and at that time, the person is qualified for family tax payment, and later claims family tax payment, then the Secretary may decide that the person's provisional commencement day is the date of the original claim (new subsection 900AI(2) refers). Proposed subparagraph 900AI(2)(a)(i) specifies that claims for family payment, child disability allowance or double orphan pension are considered similar to family tax payment. This provision also allows the Secretary to backdate a claim for family tax payment when the person lodges a claim for a pension, allowance, benefit or other payment under another Act or under a program administered by the Commonwealth, provided those payments are similar in character to family tax payment (new subparagraph 900AI(2)(a)(ii) refers).

New subsection 900AI(3) applies where a person lodges a claim, but at the time of the claim, the person is not qualified for the family tax payment. In this case, if the person becomes qualified for the family tax payment within 13 weeks from the date of the claim, then the provisional commencement day is the day on which the person lodged the original claim for family tax payment.

New section 900AJ: Backdating - birth of child

New section 900AJ applies where a child is born to a person, who lodges a claim for family tax payment within 13 weeks of the date of birth of the child. In this case, the person's provisional commencement day is the date of birth of the child.

New section 900AK: Backdating - prospective adoption of child

New section 900AK applies where a person is in the process of adopting a child. Under this section, if a person lodges a claim for family tax payment within 13 weeks of the child being placed in the care of the person, then the person's provisional commencement day is the day on which the child was placed in the person's care.

Proposed subsection 900AK(1) refers to an "authorised person" placing the child in the care of the person. In short, "authorised person" is defined in subsection 900AK(2) as being a person or agency that is authorised to arrange the adoption.

New section 900AL: Backdating - child disability allowance payable

New section 900AL provides that a person's family tax payment can become payable before the provisional commencement day where a child disability allowance begins to be payable. In such a case, this new section specifies that the family tax payment may commence to be payable up to 3 months before the date of the person's provisional commencement day.

(Notes to this section signpost the provisions dealing with the "provisional commencement date" and highlight the fact that backdating of the person's claim may not always be possible.)

New section 900AM: Backdating - death of former recipient

Where a recipient of family tax payment dies, and another person makes a claim for family tax payment for a child within 13 weeks of the date of the family tax payment recipient's death, new section 900AM provides that family tax payment may be payable to the family tax payment claimant before that person's provisional commencement date, but not before the date of the original recipient's death.

New section 900AN: Family tax payment not payable to more than one member of a couple

New section 900AN provides the general rule that family tax payment is only payable to one member of a couple. Under proposed subsection 900AN(1), if one member of a couple is receiving family tax payment, then the family tax payment is not payable to the other member of the couple. Furthermore, if both members of a couple make a claim for family tax payment, and the Secretary is satisfied that both of them qualify for the family tax payment, then the Secretary must make a declaration indicating that each of them is qualified for the payment and naming which member of the couple is to receive the family tax payment.



If the Secretary has made such a declaration, then the family tax payment is not payable to the other member of the couple (new subsection 900AN(3) refers).

When the Secretary makes such a declaration, new subsection 900AN(4) requires the Secretary to give a copy of the declaration to each member of the couple.

Finally, new subsection 900AN(5) specifies that the Secretary must consider which member of the couple is the primary carer of the child or children in making a declaration as to who may receive the family tax payment.

New section 900AO: Family tax payment not payable to 2 people who are not members of the same couple for the same child

New section 900AO applies in situations where two people, who are not members of the same couple, are each qualified for family tax payment for the same child. In this case, provided the Secretary to the Department of Social Security has not made a determination under new section 900AZI that the couple share family tax payment for the child, and provided one person is already receiving family tax payment for the child, then the other person may not receive family tax payment for the child.

New section 900AP: Provision of person's tax file number

New subsection 900AP provides that family tax payment is not payable to a person unless the person has provided a statement of the person's tax file number or has given the Secretary a declaration and satisfied either subsections 900AP(2) or (3).

New subsections 900AP(2) and (3) detail the situations in which a person is taken to satisfy the above request.

New subsection 900AP(2) covers the situation where:

the person completes a declaration stating that the person has a tax file number but does not know what the number is and has asked the Commissioner of Taxation (the Commissioner) to advise the person of the number; and

the person authorises the Commissioner to tell the Secretary whether the person has a tax file number and, if so, what that tax file number is; and

the Commissioner has not told the Secretary that the person does not have a tax file number.

New subsection 900AP(3) covers the situation where:

- the person completes a declaration that states that an application for a tax file number has been made; and

the person authorises the Commissioner to tell the Secretary the person's tax file number or that the application has been refused or withdrawn; and

the Commissioner has not told the Secretary that the person's application for a tax file number has been refused or that the person has not applied for a tax file number; and

- the application for the tax file number has not been withdrawn.

**New section 900AQ: Provision of partner's tax file number**

New section 900AQ relates to the provision of the tax file number of a person's partner.

New subsection 900AQ(1) provides the general rule that, if a person is requested by the Secretary under new section 900AX to give the Secretary a written statement of the person's partner's tax file number and the person fails to provide the required statement or a declaration under new subsection 900AQ(2) or (3) then, family tax payment is not payable to the person.

New subsections 900AQ(2) and (3) detail the situations in which a person is taken to satisfied this requirement.

New subsection 900AQ(2) covers the situation where:

- the partner completes a declaration stating that the partner has a tax file number but does not know what the number is and has asked the Commissioner of Taxation (the Commissioner) to advise the number; and
- the partner authorises the Commissioner to tell the Secretary whether the partner has a tax file number and, if so, what that tax file number is; and
- the Commissioner has not told the Secretary that the partner does not have a tax file number.

New subsection 900AQ(3) covers the situation where:

- the partner completes a declaration that states that an application for a tax file number is pending; and
- the partner authorises the Commissioner to tell the Secretary the partner's tax file number or that the application has been refused or withdrawn; and
- the Commissioner has not told the Secretary that the partner's application for a tax file number has been refused; and
- the application for the tax file number has not been withdrawn.

New subsection 900AQ(4) enables the Secretary to waive the requirement that a person provide a statement of the person's partner's tax file number. This subsection applies if the Secretary is satisfied that the person does not know the partner's tax file number and cannot obtain either the partner's tax file number, a statement of the partner's tax file number or a declaration by the partner in a form approved by the Secretary.

#### **New Division 4 - Claim for family tax payment**

##### **New section 900AR: Need for a claim**

New subsection 900AR(1) requires a person who wants to be paid family tax payment to make a "proper claim" for that payment. A note to this subsection specifies what is involved in a "proper claim".

If a claim is made by or on behalf of a person, and the claim cannot be granted because the person is not qualified for the family tax payment, then new subsection 900AR(2) specifies that the claim is taken not to have been made.

##### **New section 900AS: Form of claim**

New section 900AS specifies that, to be a proper claim, the claim must be in writing and in accordance with a form approved by the Secretary.

##### **New section 900AT: Lodgement of claim**

In order to be a proper claim, a claim must also be lodged

- at an office of the Department of Social Security in Australia; or
- at a place in Australia approved by the Secretary; or
- with a person in Australia approved by the Secretary; and

New subsection 900AT(2) provides that the Secretary may approve a place or person outside Australia for the purpose of lodgement of claims made under an international agreement.

##### **New section 900AU: Claimant must be inhabitant of Australia**

A person must also be an inhabitant of Australia on the day on which the claim for family tax payment is lodged, in order for it to be a proper claim.

(A note to this sections signposts the definition of "inhabitant of Australia".)

New section 900AV: Claim may be withdrawn

New section 900AV specifies that a claimant for family tax payment may withdraw a claim for the payment that has not been determined. If the claim is withdrawn, it is taken not to have been made, and the withdrawal may be made orally or in writing.

New section 900AW: Secretary may request claimant or recipient to give statement of tax file number

New subsection 900AW(1) provides that a claimant for, or recipient of, family tax payment may be requested, but not compelled, by the Secretary to provide a written statement of the person's tax file number. Alternatively, if the person does not have a tax file number, this new section requires the person to apply to the Commissioner of Taxation for a tax file number and provide a written statement of the number once it is issued.

If the person fails to comply with a request under section 900AW, family tax payment ceases to be payable to a person after 28 days (new subsection 900AW(2) refers).

(A note indicates that, in order to satisfy the request, it may be possible for the person to provide a declaration about the person's tax file number and an authority to the Commissioner of Taxation authorising the Commissioner to provide information about the tax file number to the Secretary. This is provided for in subsection 900AP(2) and (3)).

New section 900AX: Secretary may request claimant or recipient to give statement of partner's tax file number

New subsection 900AX(1) provides that a claimant for, or recipient of, family tax payment may be requested, but not compelled, by the Secretary to provide a written statement of the person's partner's tax file number. The request may only be made if the person's partner is in Australia.

If, after 28 days, the person fails to comply with a request under section 900AX, family tax payment ceases to be payable to a person (new subsection 900AX(2) refers).

(Note 1 indicates that in order to satisfy the request it may be possible for the claimant to provide a declaration from the person's partner about the partner's tax file number and an authority to the Commissioner of Taxation authorising the Commissioner to provide information about the tax file number to the Secretary. This is provided for in new subsection 900AQ(2) and (3)).

Note 2 directs the reader to new subsection 900AQ(4) that allows the Secretary to waive the requirement to provide the partner's tax file number in certain circumstances.

### **New Division 5 - Determination of claim**

#### **New section 900AY: Secretary to determine claim**

New section 900AY specifies that the Secretary must determine a claim for family tax payment, in accordance with the Social Security Act.

#### **New section 900AZ: Grant of claim**

The Secretary is to determine that the claim for family tax payment is to be granted when the Secretary is satisfied that the person is qualified for the family tax payment and the family tax payment is payable.

#### **New section 900AZA: Date of effect of determination**

New section 900AZA specifies when a determination to grant a person's claim under new section 900AZA takes effect. The general rule is laid down in new subsection 900AZA(1), which is that the determination takes effect on either the day on which the determination is made, or on a later or earlier day as specified in the determination.

However, new subsections 900AZA(2) to (4) provide a series of exceptions to this rule.

For instance, new subsection 900AZA(2) applies where a person has been advised by the Secretary that his or her claim for family tax payment has been rejected, and the person has sought a review of a decision to reject a person's claim for family tax payment within 13 weeks of that decision. In such a case, a new determination granting the claim takes effect on the date of the original decision.

New subsection 900AZA(3) applies where a person has been advised by the Secretary that his or her claim for family tax payment has been rejected, and the person has not sought a review of a decision to reject a person's claim for family tax payment within 13 weeks of that decision. In this case, a new determination granting the claim takes effect on the date on which the person sought the review.

If, however, the person has not been advised of the original decision to reject a claim, then new subsection 900AZA(4) applies. In this case, the decision to grant the person's claim takes effect on the day on which the previous decision took effect.

### **New Division 6 - Rate of family tax payment**

#### **New section 900AZB: Rate struck for financial year**

New section 900AZB specifies that, once the rate of family tax payment has been worked out for a person, it does not have to be worked out again in a financial year unless:

- a notifiable event occurs or is likely to occur in relation to the person;
- the person or his or her partner revises an estimate of income;
- the person or the person's partner has underestimated their income;

**New section 900AZC: How to work out a person's family tax payment rate**

New section 900AZC indicates that the Family Tax Payment Rate Calculator at the end of section 1070 provides the mechanism for working out the rate of family tax payment for a person.

**New Division 7 - Payment of family tax payment**

**New section 900AZD: Start of family tax payment**

New section 900AZD specifies when a family tax payment becomes payable to a person. Under this provision, the family tax payment becomes payable on the first day on which the person is qualified for the payment and there is no provision of the Social Security Act which makes the payment not payable to the person.

(Notes to this section signposts the provisions relating to qualification for family tax payment, the circumstances in which family tax payment is not payable, and the definition of "recipient".)

**New section 900AZE: Payment by instalments**

New section 900AZE specifies that family tax payment is a payday based payment. That is, a full instalment of family tax payment is payable to a recipient on each family tax payment payday on which the person is qualified for the family tax payment, and the family tax payment is payable to the person (new subsection 900AZE(1) refers).

New subsection 900AZE(2) would authorise the payment of arrears of family tax payment in cases where a person's provisional commencement day is earlier than the day the person lodges a family tax payment claim. This subsection provides that the arrears are payable on the first family tax payment payday occurring on or after the date the person lodges the claim, rather than on the actual payday (which occurred before the date of claim).

Finally, new subsection 900AZE(3) enables the Secretary to direct the earlier payment of a family tax payment instalment if it would be unreasonable for it to be paid on the normal payday, eg, because of a public or bank holiday.

**New section 900AZF: Payments to be paid to person or nominee**

New subsection 900AZF(1) provides that family tax payment is to be paid to the recipient to whom it is payable.

However, new subsection 900AZF(2) enables the Secretary to direct that the whole or a part of the family tax payment be paid to someone else on behalf of the recipient. Subsection 900AZF(3) then requires the payment to be in accordance with that direction.

#### New section 900AZG: Payments into bank account etc

New section 900AZG specifies how family tax payment is to be paid. In general, family tax payment must be paid to the credit of a bank account, credit union account or building society account nominated by the family tax payment recipient (new subsection 900AZG(2) applies). New subsection 900AZG(3) specifies that the account may be maintained by the recipient alone, or in conjunction with another person.

However, new subsection 900AZG(4) specifies that the Secretary may direct either the whole or part of the amount due to a recipient in a different way from that provided for in new subsection 900AZG(2). If the Secretary gives a direction under subsection 900AZG(4), then the family tax payment must be paid in accordance with that direction.

On the other hand, if a person does not provide details of an account for the purposes of new subsection 900AZG(2) within 28 days from the day on which the family tax payment became payable to the person, and the Secretary has not made a direction under new subsection 900AZG(4), the family tax payment ceases to be payable to the recipient (new subsection 900AZG(6) refers).

If the family tax payment is not payable to a person because of new subsection 900AZG(6), but the person nominates an account within 3 months of the end of the 28 day period referred to above, the family tax payment again becomes payable from the first day after the end of that period. On the other hand, if the person nominates an account more than 3 months after the expiration of the 28 day period, the family tax payment becomes payable from the day on which the person nominated the account.

#### New section 900AZH: Payment of family tax payment after death

Where a person to whom family tax payment is payable dies and an amount of the payment is outstanding at the date of death, new subsection 900AZH(1) would enable the Secretary to pay the outstanding amount to another person who, in the Secretary's opinion, is best entitled to it. That person must apply for that amount within 26 weeks of the death or within a further period allowed by the Secretary in special circumstances.

New subsection 900AZH(2) makes it clear that, once a payment has been made under subsection 900AZH(1), the Commonwealth has no liability to any other person or organisation in respect of that amount.

New subsection 900AZI: Secretary may make declaration where 2 people who are not members of the same couple qualified for family tax payment for the same child

New subsection 900AZI applies where 2 people, who are not members of the same couple, are each qualified for family tax payment for the same child. This provision would allow the Secretary to split payment of family tax payment between the two people. It should be noted that, in order to qualify for family tax payment, a child must be in the actual care of a person for at least 30 percent of the time.

If family tax payment is to be shared under new section 900AZI, the Secretary must make a declaration stating that the Secretary is satisfied that each person is qualified for family tax payment for the child and specifying the share of family tax payment that each of them is to receive.

If the Secretary makes a declaration under new subsection 900AZI(1), the Secretary must give a copy of the declaration to both persons involved.

(A note to this section indicates that, until the Secretary makes a determination under new section 900AZI, family tax payment is only payable to one of the 2 people. A second note points the reader to Module F of the Family Tax Payment Rate Calculator in new section 1070.)

**New Division 8 - Protection of family tax payment**

New section 900AZJ: Family Tax Payment to be absolutely inalienable

New section 900AZJ(1) provides that, except where subsection 900AZJ(2) or (3) or section 1359 applies, a recipient's family tax payment is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

New section 900AZJ(2) allows the Secretary to make deductions from a person's family tax payment if the recipient consents to this under section 1234A. Under section 1234A, the Secretary may recover a debt from a person other than the debtor, with the person's consent, if the person is receiving a social security pension, benefit or allowance.

(A note explains the operation of section 1234A.)

New section 900AZK: Effect of garnishee or attachment order

This section protects a saved amount of family tax payment in a recipient's bank account from garnishment from third party creditors. The "saved amount" is calculated by working out the amount withdrawn from the account in the 4 week period immediately prior to the court order coming into effect and deducting it from the amount of family tax payment paid into the account. The account may be maintained by the person alone or jointly or in common with another person.



### **New Division 9 - Recipient obligations**

#### **New section 900AZL: Secretary may require notice of the happening of an event or a change in circumstances**

New section 900AZL would provide for the Secretary to give a recipient of family tax payment a notice requiring the recipient to notify the Department of Social Security if a specified event or change in circumstances that might affect payment occurs or is likely to occur. New section 900AZL(3) would require the notice to:

- be in writing; and
- be given personally or by post; and
- specify how the information is to be given to the Department of Social Security; and
- specify the period within which the information must be given; and
- specify that the notice is a "recipient notification notice".

However, new subsection 900AZL(4) specifies that a notice under new subsection 900AZL(1) is not invalid simply because the notice doesn't specify how the person is to give the information or that the notice is a recipient notification notice.

Under new subsection 900AZL(5), that the Secretary must allow a person at least 14 days to advise the Department of Social Security of the happening of the event or change in circumstances, from the date that the change happens or when the person first becomes aware of the change. If, however, the notice requires the person to tell the Department of Social Security if he or she is leaving Australia, then the person must tell the Department of Social Security immediately (new subsection 900AZL(6) refers).

New subsection 900AZL(7) sets out the compliance conditions for clause new subsection 900AZL(1) and the penalties for contravening those conditions. New subsection 900AZL(7) specifies that, where a recipient is capable of complying with a notice under that clause but refuses or fails to do so, then the recipient may be sent to gaol. A note to this subsection alerts the reader to the fact that a court may impose a fine, rather than, or in addition to, a jail sentence, under subsection 4B(2) of the ***Crimes Act 1914***. The note also explains how the maximum fine may be worked out under that section.

New subsection 900AZL(8) allows new section 900AZL to operate outside Australia. It would extend to acts, omissions, matters and things outside Australia, whether or not in a foreign country. It would also extend to all persons to whom it would normally apply if they resided in Australia, regardless of their nationality or citizenship.

New section 900AZM: Secretary may require recipient to give particular information relevant to payment of family tax payment

New subsection 900AZM(1) provides the Secretary with the power to give a recipient of family tax payment a notice requiring him or her to give the Department of Social Security a statement about a matter that might affect his or her payment. New subsection 900AZM(2) specifies that the notice must:

- be in writing; and
- be given personally or by post; and
- specify how the information is to be given to the Department of Social Security; and
- specify the period within which the statement must be given to the Department of Social Security; and
- specify that the notice is a “recipient statement notice”.

A note to new subsection 900AZM(2) signposts the definition of “recipient statement notice”.

New subsection 900AZM(3) specifies that a notice under new section 900AZL is not invalid simply because it does not specify how the statement is to be given to the Department of Social Security or that the notice is a recipient statement notice.

New subsection 900AZM(4) provides that the period specified in new paragraph 900AZM(2)(d) must end at least 14 days after the day on which the notice is given. New subsection 900AZM(5) specifies that the statement provided in response to a section 900AZM notice must be in writing and must be in a form approved by the Secretary.

Finally, new subsections 900AZM(6) and (7) set out the compliance conditions for new subsection 900AZM(1) and the penalties for contravening those conditions. Where a recipient of family tax payment is capable of complying with a notice under new section 900AZM, but refuses or fails to do so, then he or she may be sent to gaol. A note to this subsection alerts the reader to the fact that a court may impose a fine, rather than, or in addition to, a gaol sentence, under subsection 4B(2) of the *Crimes Act 1914*. The note also explains how the maximum fine may be worked out under that section.

New subsection 900AZM(7) specifies that new section operates outside Australia. It would extend to acts, omissions, matters and things outside Australia, whether or not in a foreign country. It would also extend to all persons to whom it would normally apply if they resided in Australia, regardless of their nationality or citizenship.

New section 900AZN: Secretary may require recipient to give notice of change of address

New section 900AZN provides the Secretary with a power to require a person to tell the Department of Social Security if the person has changed, or is going to change, his or her address.

As with recipient notification notices and recipient statement notices, in order to be valid notice under this section, the notice must have a number of characteristics. For instance, the notice must:

- be in writing; and
- be given personally or by post; and
- state the period within which the person must advise the Department of Social Security of the change of address; and
- state that the notice is a notice given under the *Social Security Act 1991* (new subsection 900AZN(2) refers).

However, new subsection 900AZN(3) specifies that a notice under section 900AZN is not invalid simply because it does not state the period in which the person is to provide the information or that the notice is a notice under the Social Security Act.

Finally, new subsection 900AZN(4) specifies that the person must be given 14 days (from the day on which the recipient changes his or her address or receives the notice, whichever is the later) to respond to the notice.

**Division 10 - Continuation, variation and termination**

**Subdivision A - General**

New section 900AZO: Continuing effect of determination

New subsection 900AZO provides for the continuity of a decision regarding the granting or payable of family tax payment until:

- it stops being payable under new section 900AZP or 900AZQ; or
- a further determination under new sections 900AZV, 900AZW or 900AZX has taken effect.

(Three notes to this section signpost the provisions that give effect to these decisions.)

New subsection 900AZO(2) provides for the continuity of a decision regarding the rate of family tax payment until:

- it stops being payable under new subsection 900AZR; or
- a further determination under new sections 900AZT or 900AZU has taken effect.

(A note to this section signposts the provision that give effect to these decisions.)

### **Subdivision B - Automatic termination**

#### New section 900AZP: Automatic termination - recipient *complying* with section 900AZL notification obligations

This new section applies where a person is receiving family tax payment and complies with a section 900AZL notice by informing the Department of Social Security of the occurrence of an event or change in circumstances within a specified notification period. If, as a result of the event or change in circumstances:

- the person stops being qualified for the family tax payment; or
- the family tax payment would, except as provided in this clause, stop being payable to the person,

then the family tax payment continues to be payable until the end of the notification period and is then automatically terminated.

(A note explains that there is no automatic rate reduction where a person tells the Department of Social Security, within the notification period, of an event or change in circumstances that reduces the rate of the person's family tax payment.)

#### New section 900AZQ: Automatic termination - recipient *not complying* with section 900AZL notification obligations

This new section applies where a person is receiving family tax payment and fails to comply with a notice under new section 900AZL (by not informing the Department of Social Security of the occurrence of an event or change in circumstances within a specified notification period). If, as a result of the event or change in circumstances:

- the person stops being qualified for the family tax payment; or
- the family tax payment stops being payable to the person,

then it stops being payable immediately after the day on which the event or change in circumstances occurs.

### **Subdivision C - Automatic rate reduction**

#### **New section 900AZR: Automatic rate reduction - recipient *not complying with* section 900AZL notification obligations**

This new section applies where a person is receiving family tax payment and fails to comply with a notice under new section 900AZL (by not informing the Department of Social Security of the occurrence of an event or change in circumstances within a specified notification period). If, as a result of the event or change in circumstances, the person's family tax payment becomes payable to the person at a reduced rate, then new section 900AZR provides that the family tax payment is payable to the person at that lower rate immediately after the day on which the event or change in circumstances occurred.

#### **New section 900AZS: Changes to payments by computer following automatic termination or reduction**

New section 900AZS applies where a person is paid family tax payment on the basis of data in a computer, and the person's family tax payment is automatically terminated, or the person's rate of family tax payment is automatically reduced, due to the operation of a computer program. Under this section, the automatic termination or rate reduction is taken to be a decision by the Secretary.

(A note to this section explains that the transaction is a decision which may be reviewed by the Secretary under sections 1239 or 1240, or the Social Security Appeals Tribunal under section 1247.)

### **Subdivision D- Determinations**

#### **New section 900AZT: Rate increase determination**

New section 900AZT specifies that the Secretary must determine that a person's rate of family tax payment is to be increased if the Secretary becomes satisfied that the person is currently being, or has been, paid at a rate that is lower than that provided for by the Social Security Act.

(A note to this provision signposts the provision which specifies the date of effect of a determination under this section.)

#### **New section 900AZU: Rate reduction determination**

New section 900AZU specifies that the Secretary must determine that a person's rate of family tax payment is to be reduced if the Secretary becomes satisfied that the person is currently being, or has been, paid at a rate that is higher than that provided for by the Social Security Act.

(Note 1 to this section advises the reader that a determination under new section 900AZU is not necessary if an automatic rate reduction is produced by new section 900AZR. A second note signposts the provision which specifies the date of effect of a determination under this section.)

New section 900AZV: Cancellation or suspension determination

This clause gives the Secretary the power to decide to cancel or suspend payment of family tax payment, where the payment is not payable under the Social Security Act.

(Note 1 explains that a determination under this clause is not necessary where an automatic termination is produced under new section 900AZP or 900AZQ. Note 2 signposts the provision that would deal with the date of effect of a decision under this clause.)

New section 900AZW: Cancellation or suspension for failure to comply with section 900AZM, 1304 or 1305 notice

New section 900AZW gives the Secretary a power to cancel a person's family tax payment, or suspend payment of the family tax payment, if the person is given a notice under the Social Security Act, and the person does not comply with the requirements of the notice.

(Note 1 to this section specifies that new section 900AZW does not apply if the Secretary has cancelled or suspended a person's family tax payment under new section 900AZV. Note 2 signposts the provision which specifies the date of effect of a determination under new section 900AZW.)

New section 900AZX: Cancellation or suspension for failure to comply with section 900AZM, 1304 or 1305 notice after being given a section 900AZN notice

This new section provides that the Secretary may suspend a person's family tax payment if the person has been given a notice which requires the person to tell the Department of Social Security if the recipient has changed, or plans to change, his or her address, and the person does not comply with the notice.

New subsection 900AZX specifies that the Secretary may suspend the family tax payment, even if the Secretary is not satisfied that the person has ceased to be qualified for the payment, nor that the payment is no longer payable.

Finally, new subsection 900AZX(3) specifies that new section 900AZX does not limit the Secretary's power to suspend the person's family tax payment under new section 900AZW.

(Note 1 specifies that new section 900AZX will not apply if the Secretary cancels or suspends a person's family tax payment under new section 900AZV. Note 2 signposts the provision which details the date of effect of a determination under new section 900AZX.)

**New section 900AZY: Changes to payment by computer**

New section 900AZY applies where payment of family tax payment is made to a person on the basis of data in a computer, and where the family tax payment is suspended or cancelled because of the operation of a computer program. Provided that the computer program caused the change for a reason for which the Secretary could determine the change, then the determination is taken to have been made by the Secretary.

(A note to this section explains that a decision covered by new section 900AZY is subject to review by the Secretary and the Social Security Appeals Tribunal.)

**New section 900AZZ: Resumption of payment after cancellation or suspension**

New section 900AZZ(1) provides for the Secretary to make a decision that a family tax payment is to be reinstated in a case where it was stopped incorrectly.

New section 900AZZ(2) enables the decision that gave rise to the payments being stopped to be reconsidered following either a formal application to the Secretary for a review under section 1240 or at the Secretary's instigation.

(A note to this section signposts the provision that sets out the date of effect of a decision under this section.)

**Subdivision E - Date of effect of determinations**

**New section 900AZZA: Date of effect of favourable determination**

New section 900AZZA(1) indicates that the date of effect of a favourable determination under new section 900AZT or 900AZZ is worked out under this section

New section 900AZZA(2) provides that, where a person receiving family tax payment appeals against an adverse decision within 3 months after being notified of the decision and a favourable decision results, then it takes effect on the date on which the adverse decision took effect. This would enable arrears to be paid dating from the day on which the adverse decision took effect.

New section 900AZZA(3) provides that, where a person receiving family tax payment appeals against an adverse decision more than 3 months after being notified of the decision and a favourable decision results, then the new decision takes effect on the appeal date.

New section 900AZZA(4) provides that, where a person receiving family tax payment appeals against an adverse decision in a situation where the Department of Social Security did not advise the person of the original decision, and a favourable decision results, then the new decision takes effect on the date on which the adverse decision took effect. This would enable arrears to be paid to the date on which the original, adverse decision took effect.

Where a favourable decision results from a person informing the Department of Social Security of a change in circumstances, then new section 900AZZA(5) specifies that the new decision it takes effect on the date on which the Department of Social Security received the information or the date on which the change occurred, whichever is later.

New sections 900AZZA(6) and (7) apply where the favourable determination relates to the birth or adoption of a child. Provided that the person notifies the Department of Social Security of the birth of the child within 13 weeks after the date of the birth, then new section 900AZZA(6) specifies that the determination takes effect from the date of birth of the child.

Similarly, where a person is undergoing the process of adopting a child, and provided that the person notifies the Department of Social Security within 13 weeks of the child being placed with the person then, new section 900AZZA(7) specifies that the determination takes effect from the date of placement of the child.

Where none of the above provisions apply, new subsection 900AZZA(8) specifies that a favourable determination takes effect on the determination date or on such later or earlier date specified in the determination. However, the determination cannot take effect more than 13 weeks prior to the date of the determination (new section 900AZZA(9) refers).

Finally, new subsection 900AZZA(10) defines the term "authorised party", which is referred to in new subsection 900AZZA(7).

#### New section 900AZZB: Date of effect of adverse determination

New section 900AZZB provides the mechanism for working out the date of effect of an adverse determination under the Social Security Act. New subsection 900AZZB(1) specifies that a determination made under new section 900AZV, 900AZW or 900AZX would be an adverse determination.

(A note indicates that Chapter 6 of the Social Security Act allows the Secretary to continue payment to a person pending the outcome of a review if the adverse determination under review depends on a discretion or opinion.)

The general rule for the date of effect for an adverse determination is laid down in new subsection 900AZZB(2). Under this subsection, the date of effect of an adverse determination is set as the date on which it is made or another date as specified in the determination.



New subsection 900AZZB(3) ensures that, where the date of effect of an adverse determination is specified but is not the day of the determination, it must be a later date except where the person has contravened a requirement of the Social Security Act or where the person has made a false statement or misrepresentation.

New subsections 900AZZB(4), (5) and (6) address these above-mentioned situations. In particular, an adverse determination may have effect on a day prior to the date of determination if:

- a recipient of family allowance contravening a provision of the Bill (except new sections 900AZM, 900AZN, 1304, 1305, 1306 or 1307) provided the contravention caused a delay in the making of the decision (new subsection 900AZZB(4) refers); or
- where a recipient has made either a false statement or a misrepresentation where this causes the family tax payment to be paid when it should have been cancelled or suspended (new subsection 900AZZB(5) refers); or
- where a recipient has made either a false statement or a misrepresentation which caused the allowance to be paid at a higher rate than it should have been paid (new subsection 900AZZB(6) refers).

New subsections 900AZZB(4), (5) and (6) would operate to backdate the effect of a determination, thereby creating an overpayment which may be recovered.

### **Division 11 Bereavement payments (death of FTP child)**

#### **New section 900AZZC: Death of dependent child**

New section 900AZZC provides a mechanism for paying bereavement payment to a person where that person's dependent child has died. In effect, the provisions will allow for the person to be paid family tax payment in respect of the child for a period of 4 weeks commencing on the day after the day on which the child died.

#### **New section 900AZZD: Continued payment of family tax payment**

New section 900AZZD specifies that if a person is qualified for bereavement payments for a dependent child, the person's family tax payment rate for the four week bereavement period, is calculated as if the child had not died.

**Item 7** inserts a new part, Part 3.8 - Family Tax Payment Rate Calculator, into the Social Security Act.

## **PART 3.8 - FAMILY TAX PAYMENT RATE CALCULATOR**

### New section 1070: Rate of family tax payment

New subsection 1070(1) specifies that a person's rate of family tax payment for a financial year is calculated in accordance with the rate calculator immediately following this section.

The term "appropriate financial year" is defined in new subsection 1070(2). This term is used throughout the family tax payment rate calculator, being, applied throughout the various family tax payment income tests. For the purposes of this rate calculator, the appropriate financial year for a family tax payment payday is the financial year that the payday occurs in.

## **FAMILY TAX PAYMENT RATE CALCULATOR**

### **New Module A - Overall Rate Calculation Process**

#### New Point 1070-A1: Method of calculating rate

New Point 1070-A1 provides that a person's rate of family tax payment for a financial year is a fortnightly rate and is calculated in accordance with this point. This point also specifies that the person's fortnightly rate of family tax payment consists of the sum of the person's fortnightly Part A rate (which is worked out with reference to Method Statement A1 immediately following this point), and the person's fortnightly Part B rate (which is worked out in accordance with Method Statement A2).

New Method Statement A1 lays down a four step method statement for calculating the person's **Part A** family tax payment rate. In effect, the reader is directed to Module B to work out the person's provisional Part A rate. The reader must then work out whether the family income test in Module C applies to the person, and if so, whether the person satisfies this test. If the person is not subject to, or if the person satisfies, the family income test, then the person's fortnightly Part A rate is calculated by multiplying the person's provisional fortnightly Part A rate by the number of FTP children of the person. However, step 4 also alerts the reader to the fact that, if Module F applies to the person (where there is shared care of a child) then the person's Part A rate of family tax payment may be reduced under that module.

(A note to this method statement signposts the definition of FTP child.)

New Method Statement A2 then lays down a seven step method statement for calculating the person's **Part B** family tax payment rate. The reader is first directed to Module B to work out the person's provisional Part B rate. However, step 2 provides that the person cannot have a Part B rate if the person does not have a dependent child under the age of 5.

If the person does have a qualifying child, the reader must then work out whether the breadwinner's income test (in Module D) applies, and if so, whether it is satisfied. Provided the person has passed these steps, and if the person is a member of a couple, the reader must then work out whether the spouse income test in Module E applies. If the spouse income test applies to the person or the person's partner, and is satisfied, then step 7 specifies that the person's fortnightly Part B rate of family tax payment is equal to the person's provisional Part B rate. However, this step also alerts the reader to the fact that, if Module F applies to the person (where there is shared care of a child) then the person's Part B rate of family tax payment may be reduced under that module.

(A note to this method statement signposts the definition of FTP child.)

### **New Module B - Calculation of Provisional Rates of Family Tax Payment**

#### **New Point 1070-B1: Provisional Part A rate**

New Point 1070-B1 indicates that a person's provisional fortnightly **Part A** rate of family tax payment is worked out in accordance with Method Statement B1.

New Method Statement B1 specifies that the rate of Part A family tax payment is calculated by multiplying \$1,000 by the lowest marginal rate of tax. This provides the equivalent to the benefit provided by the Part A component of the family tax assistance, on a per annum basis. This amount is then divided by 26 to provide the equivalent fortnightly amount. This Method Statement also provides that, if the rate obtained through the calculations in Step 2 result in a fraction of a cent, the amount obtained is rounded up to the nearest cent.

(A note to this point signposts the definition of "lowest marginal rate of tax".)

#### **New Point 1070-B2 Provisional Part B rate**

Similarly, new Method Statement B2 provides a mechanism for working out a person's provisional **Part B** rate of family tax payment. This rate is calculated by multiplying \$2,500 by the lowest marginal rate of tax. This provides the equivalent to the benefit provided by the Part B component of the family tax assistance, on a per annum basis. This amount is then divided by 26 to provide the equivalent fortnightly amount. As with the provisional Part A rate of family tax payment, any fractional cents obtained though applying the formula are rounded up to the nearest cent.

(A note to this point signposts the definition of "lowest marginal rate of tax".)

## **New Module C - Family Income Test**

### **Submodule 1: Application of family income test**

#### **New Point 1070-C1: People to whom family income test applies**

This point relates to the application of the family income test. Under new point 1070-C1, the family income test does not apply to a person who is qualified for family tax payment under new subsections 900AD(1), (2) or (3). That is due to the fact that people who qualified for family tax payment under those subsections must qualify for family payment, or would receive family payment at a rate exceeding the minimum family payment rate, apart from the application of several excluding provisions (as specified in new section 6AA). An example of an excluding provision is the assets test in section 832.

However, as a person must satisfy the more stringent family payment income test, there is no need to submit these people to the more expansive family tax payment family income test. Accordingly, it is only the people who are paid family tax payment by virtue of the operation of new subsection 900AD(4) who must satisfy the family income test in new Module C. This group of people receive family tax payment until the end of the financial year, despite the fact that he or she no longer receives family payment at a rate in excess of the minimum family payment rate.

#### **New Point 1070-C2: Application of test**

New point 1070-C2 specifies that a person satisfies the family income test if the person's taxable income for the appropriate financial year is less than the person's family income ceiling. A person's "family income ceiling" is specified in point 1070-C7.

#### **New Point 1070-C3: Family income**

New point 1070-C3 defines what is "family income" for the purposes of the family income test in new Module C. Under this point, a person's family income for the appropriate financial year is the person's taxable income for that year. In addition, this point specifies that, if a person is a member of a couple, the income of a person's partner is also to be included as the person's income.

#### **New Point 1070-C4: Taxable income**

This point specifies that a person's taxable income for the appropriate financial year, for the purposes of the family income test, is the most recent estimate of the person's taxable income provided by the person for that year, and accepted by the Secretary for the purposes of Module C.

New Point 1070-C5: Notice estimating taxable income

New point 1070-C5 specifies that a family tax payment recipient may give the Department of Social Security an estimate of his or her taxable income for the appropriate financial year.

New Point 1070-C6: Acceptance of notice

Under new point 1070-C6, the Secretary is to accept a notice under point 1070-C5 (where the person estimates his or her income) but only if the Secretary is satisfied that the estimate is reasonable.

New Point 1070-C7: Family income ceiling

New point 1070-C7 specifies that a person's income ceiling is worked out using Table C at the end of this point. In this Table, the basic ceiling amount is specified in column 1, with an additional amount specified in column 2, which is added in respect of each additional FTP child of the person (after the first).

(A note to this point signposts the definition of "FTP child".)

For example, the family income ceiling for Michael, who has three children, Helen, Suzan and Stephen, and qualifies for family tax payment would be calculated as follows:

Family tax payment - family income ceiling

Basic ceiling	\$70,000 +
Additional free area for the two FTP children ( <u>after the first</u> )	
ie 2 x \$3,000	<u>\$6,000</u> =
family income ceiling	\$76,000

New Point 1070-C8: No estimate of taxable income -person not qualified

New point 1070-C8 provides that a person who is subject to the family income test is not qualified for family tax payment if the income of the person or the person's partner for the appropriate tax year is unknown.

However, new sub-point 1070-C8(2) specifies that the above rule does not apply where the person provides the Secretary with an estimate of his or her income (and the income of the person's partner if applicable) under new point 1070-C5, and the Secretary accepts the estimate under this Module.

### **New Module D - Breadwinner's Income Test**

#### **New point 1070-D1: Relevant person**

New Point 1070-D1 defines the term "relevant person", which is used throughout the Module D "Breadwinner's income test".

Under Module D, the "relevant person" is the person whose rate of family tax payment is being calculated. If the person is not a member of a couple, the relevant person will also be the breadwinner. However, if the person is a member of a couple, and the person is classed as the "breadwinner", the relevant person may be the person's partner.

#### **New point 1070-D2: Taxable income for the relevant tax year**

New points 1070-D2 and 1070-D3 determine who is the "breadwinner" for the purposes of the family tax payment (and therefore for the purposes of the breadwinner's income test and the spouse income test in new Modules D and E).

New point 1070-D2 details what is considered to be taxable income, for the purposes of determining who is the breadwinner. Under this point, the "taxable income for the relevant tax year" is taxable income within the meaning of Module H of the Family Payment Rate Calculator in section 1069. In addition, new point 1070-D2 specifies that the taxable income is the taxable income in the financial year that ended on 30 June in the calendar year that came immediately before the calendar year in which the relevant family tax payment payday occurs. This paragraph duplicates the provision which specifies what is to be considered the base tax year for the purposes of family payment (see point 1069-H14). Alternatively, new paragraph 1070-D2(b) specifies that the relevant financial year may be another year, if the Secretary determines that the income in that year should be applied.

#### **New point 1070-D3: Breadwinner**

New point 1070-D3 specifies who is the breadwinner for the purposes of the breadwinner's income test. This point makes use of the term "relevant person", which is the person whose rate of family tax payment is being calculated.

Under this point, where the relevant person is not a member of a couple, then the relevant person is also the breadwinner.

If the relevant person is a member of a couple, then the breadwinner is the member of the couple whose taxable income (as defined in new point 1070-D2) is equal to or greater than the taxable income of the person's partner (new point 1070-D3(1) refers).

However, new points 1070-D3(2) and (3) provide exceptions to this rule, to ensure that qualification and payability of family tax payment is responsive to changes in a person's circumstances. This provision provides for the Secretary to determine that a person (other than the person specified under point 1070-D3(1)) is the breadwinner, provided that the Secretary is satisfied that such a determination would result in the person being paid a higher rate of family tax payment.

In essence, this provision is designed to target a small group of family tax payment recipients where the recipient is a member of a couple, and the recipient and his or her partner swap roles of child rearing and earning income part way through the financial year.

This can be best illustrated by the following example:

Julia has a taxable income of \$20 000 for a particular financial year, but this was earned in the **first** six months of that financial year when Julia was employed in a job which paid \$40 000 over a full year. Julia's partner Neil has a taxable income for the year of \$15000, which was earned in the **last** 6 months of the financial year (as Neil cared for the children on a full-time basis for the first 6 months of the year), although Neil's salary for an entire year of employment would normally be \$30,000. Due to the operation of points 1070-D2 and 1070-D3(1), Julia would be classified as the breadwinner.

A consequence of this approach is that, if Julia (ie, the person with the greater taxable income over the entire financial year), decides to take time out of the workforce to care for her child/ren on a full-time basis, under point 1070-D3(1), Julia would remain as the breadwinner for the rest of the financial year, provided her income over the entire year is greater than her partner's taxable income. This would therefore, restrict the Secretary from applying the spouse income test to Julia for the period when she was not employed, despite the fact that her income at that time is considerably less than that of her partner, Neil.

However, the spouse income test, in using ordinary income as its basis of measurement, is meant to be responsive to changes in the circumstances of family tax payment recipients. The result outlined above would hamper the responsiveness of the test, and is, therefore, undesirable.

Accordingly, new points 1070-D3(2) and (3) provide the Secretary with a discretion, in cases where making such a decision would result in an increase in a person's rate of family tax payment, to decide that the other member of a couple is the breadwinner. Using the above example, the Secretary could decide that, if Julia chose to care for their child(ren) on a full-time basis for the last 6 months of the financial year and had no other income, then Neil should be classified as the breadwinner for that period.

This discretion is most likely to be used in cases where a family does not qualify for Part B of the family tax payment, because a person does not satisfy the spouse income test in new Module E. However, after swapping the child caring role with the person's partner, a Part B amount may become payable to the family, as the person's partner does (from that point on) satisfy the spouse income test. The following example illustrates this type of situation:

Tom and Mary are eligible for family tax payment on the basis of an estimate of their current taxable income.

Tom has a well-paid job (\$50 000 over a full year) but estimates his taxable income will be \$25 000 in the financial year as he will take 6 months off work to care for the children.

Mary, has a taxable income of \$10 000 earned throughout the year in her part-time job.

The current draft legislation determines that Tom is the "breadwinner" and that Mary is the "breadwinner's partner". However, for the period that Tom is out of the paid workforce he will be on a nil income compared to Mary who is earning a steady \$384 a fortnight (\$10,000 / 26). During this period Mary would be defined as the "breadwinner".

In addition, it is proposed that the family also qualify for a Part B payment - as Tom's level of income would be below the threshold specified in Module E (spouse income test). As the spouse income test uses current ordinary income as its unit of measurement then, provided Tom is classified as the partner of the breadwinner, the family would qualify for a Part B amount.

New points 1070-D3(2) and 1070-D3(3) are identical in effect to each other, but the former applies where the relevant person (ie, the person who receives family tax payment) is the breadwinner, and the latter applies where the relevant person is classified as the breadwinner's partner.

New point 1070-D4: People to whom breadwinner's income test applies

New point 1070-D4 specifies who the breadwinner's income test applies to, along much the same lines as with new point 1070-C2.

Under new point 1070-D4, the breadwinner's income test **does not** apply to a person where the person or the person's partner qualifies for family tax payment under new subsections 900AD(1), (2) or (3). That is due to the fact that people who qualified for family tax payment under those subsections must qualify for family payment, or would receive family payment at a rate in excess of the minimum family payment rate, apart from the application of several excluding provisions (as specified in new section 6AA). An example of an excluding provision is the assets test in section 832.



Accordingly, as people covered by new subsections 900AD(1), (2) or (3) must already satisfy the more stringent family payment income test, there is no need to submit these people to the more expansive family tax payment breadwinner's income test. Therefore, and in line with Module C, it is only the people who are paid family tax payment by virtue of the operation of new subsection 900AD(4) (who receive family tax payment until the end of the financial year, despite the fact that they no longer receive family payment at a rate in excess of the minimum family payment rate) who must satisfy the breadwinner's income test in new Module D.

New point 1070-D5: Application of test

New point 1070-D5 specifies that a person satisfies the breadwinner's income test if the person's taxable income for the appropriate financial year is less than the breadwinner's income ceiling. A person's "breadwinner's income ceiling" is specified in point 1070-D7.

New point 1070-D6: Taxable income

Under new point 1070-D6, the taxable income of the breadwinner, for the appropriate financial year is the taxable income, as determined for the purposes of Module C.

New point 1070-D7: Breadwinner's income ceiling

New point 1070-D7 specifies that the breadwinner's income ceiling is worked out using Table D at the end of this point. In this Table, the basic ceiling amount is specified in column 1, with an additional amount specified in column 2, which is added in respect of each additional FTP child of the person (after the first).

(A note to this point signposts the definition of "FTP child".)

Using the earlier example of Michael and his three children, and assuming that Michael is the breadwinner, his breadwinner's income ceiling would be calculated as follows:

Basic ceiling	\$65,000 +
Additional free area for the two FP children ( <u>after the first</u> )	
ie 2 x \$3,000	<u>\$6,000</u> =
family income ceiling	\$71,000

**New Module E - Spouse Income Test**

New point 1070-E1: Definitions

New point 1070-E1 provides two definitions which are used through Module E. The first is the term "breadwinner's partner". This point specifies that the breadwinner's partner is the person who is the partner of the person who is classed as the "breadwinner" for the purposes of Module D (Breadwinner's income test).

The second term is the "relevant person". As with Module D, the relevant person is the person whose rate of family tax payment is being calculated. Therefore, if the person is not a member of a couple, the relevant person will also be the breadwinner. However, if the person is a member of a couple, and the person is classed as the "breadwinner", the relevant person may be the person's partner.

New point 1070-E2: People to whom spouse income test applies

In general, the spouse income test applies to a breadwinner's partner, unless that person is already receiving a non-benefit parenting allowance. This is due to the fact that, in order to qualify for a non-benefit parenting allowance, a person must already satisfy a test which achieves the same result as the family tax payment spouse income test in Module E.

Non-benefit parenting allowance recipients are determined at point 1068A-B1. These recipients are limited to receiving the maximum basic component of parenting allowance. Under this point, it includes a person:

- to whom point 1068A-B2 applies (this group are limited to the maximum basic component of parenting allowance because they are in receipt of a pension, service pension, or the person, or their partner, is in receipt of compensation);
- who has assets that exceed the assets value limit applying to benefit parenting allowance; or
- whose income, including that of their partner, reduces the rate of parenting allowance to a non-benefit parenting allowance rate.

New point 1070-E3: Application of test

A person satisfies the spouse income test in Module E if the person's fortnightly rate of **ordinary income** for the financial year does not exceed the "income ceiling of the breadwinner's partner" (new point 1070-E3 refers). The "income ceiling of the breadwinner's partner" is specified in new point 1070-E5.

(A note to this point signposts the definition of "ordinary income".)

New point 1070-E4: Ordinary income of breadwinner's partner

New point 1070-E4 specifies how the fortnightly rate of ordinary income of the breadwinner's partner is worked out. Under a formula included in this point, the fortnightly rate for a financial year is worked out by dividing the annual ordinary income of the person by 26. This definition is designed to be responsive to changes in the person's circumstances, as the "annual period" in question is not tied in to a particular period (such as the financial year or a particular calendar year).

(A note to this point signposts the definition of "ordinary income".)

**New point 1070-E5: Income ceiling of breadwinner's partner**

In order to qualify for Part B of the family tax payment where a person is a member of a couple, the breadwinner's partner must satisfy the spouse income test in Module E. In effect, this income test ensures that the income earned by the breadwinner's partner is less than the level of income that would preclude payment to basic parenting allowance. Accordingly, the method statement in Table E of new point 1070-E5 duplicates the level of income that may be earned before the person loses payment of basic parenting allowance.

Under this method statement, the reader is, firstly, directed to point 1068A-B6 of the Parenting Allowance Rate Calculator to work out the current maximum basic component of parenting allowance. The remainder of the steps determine the amount of income required to reduce the maximum basic component of parenting allowance to nil. This amount is reduced to nil by applying the allowance income test. Under this test, income up to \$60 a fortnight has no impact on the rate of allowance (the free area). Income above \$60 a fortnight and up to \$140 reduces the rate of an allowance 50 cents for each dollar in this range (50% taper). For each dollar of income above \$140 a fortnight the rate of an allowance is reduced by 70 cents (70% taper).

Step 2 in Table E directs the reader to deduct \$40 from the maximum basic component of parenting allowance. This deduction duplicates the reduction that occurs with the full application of the 50% taper (that is, the \$80 of income that equals income in the range of \$60 to \$140, reduces the rate of an allowance by \$40).

After this amount has been deducted, the resultant amount is divided by 0.7 in step 3. This equals the amount of income being affected by a 70% taper that is required to reduce the maximum basic component of parenting allowance, less \$40, to nil.

Finally, step 4 in Table E adds \$140 to the amount obtained under step 3. This \$140 comprises the \$60 free area and the \$80 income amount which is affected by the 50% taper. The result of step 4 provides the income ceiling of the breadwinner's partner.

**New Module F - Shared Care of Child**

**New Point 1070-F1 - Sharing family tax payment (determination under subsection 900AZI(1))**

This module applies where 2 people (who are not members of the same couple) are each qualified for family tax payment for the same child. In particular, new point 1070-F1 applies where the Secretary has made a determination under new section 900AZI that family tax payment should be shared between the two people. In such a case, the FTP child rate in respect of that child is the proportion specified in the decision.

New point 1070-F1(2) relates specifically to Part A of the family tax payment and specifies that, where there has been a determination under new subsection 900AZI(1), the person's fortnightly Part A rate is the percentage of the rate specified by the Secretary in the notice.

New points 1070-F1(3), (4) and (5) specifies how a Part B rate of family tax payment is to be calculated if a new subsection 900AZI(1) determination is made.

Under new point 1070-F1(3), the general rule is that a person's Part B rate is to be the percentage of the rate specified in the Secretary's determination that would otherwise be payable.

New points 1070-F1(4) applies where a person has several children under the age of 5 years, and the person shares care of one or more of those children. However, this provision only applies if the person has at least one child that the person looks after all of the time. In such a case, the person's may receive the entire fortnightly Part B rate.

New point 1070-F1(5) applies where a person has several children under the age of 5 years, and the person does not have the actual care of any of the children all of the time. This provision applies to specify that the person's fortnightly Part B rate of family tax payment is the maximum care percentage that would otherwise apply.

New point 1070-F1(6) specifies that "maximum care percentage" means the greatest percentage of time during which the person has the actual care of any of the children.

The application of these provisions can be illustrated with the following examples:

#### Example One

Stephen has 2 FTP children (Andrew, aged 3 years, and Janet, aged 13 years). Stephen would qualify for a Part A payment in respect of both Andrew and Janet, while Andrew would also qualify Stephen for a Part B payment.

However, Andrew is also an FTP child of another person (Marianne), and a decision has been made under new subsection 900AZI(1) that family tax payment in respect of Andrew is to be shared on a 50/50 basis.

Point 1070-F1 would apply to specify that the rate of family tax payment for Stephen each fortnight would be half of both a Part A and Part B rate for the "shared" FP child (Andrew - consisting of \$3.85 for Part A and \$9.62 for Part B). Stephen also receives \$7.70 for the other FTP child.

Therefore, Stephen's fortnightly FTP rate would be \$21.17 .

### Example Two

Stephen has 3 FTP children (Andrew, aged 3 years, Pat aged 4 years and Janet, aged 13 years). Stephen would qualify for a Part A payment in respect of all three children, while Andrew and Pat would also qualify Stephen for a Part B payment.

However, Andrew is also an FTP child of another person (Marianne), and a decision has been made under new subsection 900AZI(1) that family tax payment in respect of that child is to be shared on a 50/50 basis.

Point 1070-F1 would apply to specify that the rate of family tax payment would be worked out as follows:

#### Part A

For Andrew:

Stephen would qualify for half of a Part A rate (consisting of \$3.85)

For Pat:

Stephen would qualify for an entire Part A rate (\$7.70)

For Janet

Stephen would qualify for an entire Part A (\$7.70)

Therefore, Stephen's Part A rate would be \$19.25

#### Part B

For Andrew:

Stephen would qualify for half of the Part B rate

For Pat:

Stephen would qualify for the entire Part B rate

As Stephen has two Part B children, new point 1070-F1(4) specifies that, as Stephen has a child which he cares for 100% of the time, he may receive the full Part B rate, regardless of the fact that he shares care for another Part B child.

Therefore, Stephen's fortnightly family tax payment rate would be \$19.25 (Part A)  
+ \$19.24 (Part B) = \$38.49

### Example Three

Stephen has 3 FTP children (Andrew, aged 3 years, Pat aged 4 years and Janet, aged 13 years). Stephen would qualify for a Part A payment in respect of all three children, while Andrew and Pat would also qualify Stephen for a Part B payment.

However, Andrew is also an FTP child of another person (Marianne), and a decision has been made under new subsection 900AZI(1) that family tax payment in respect of Andrew is to be shared on a 50/50 basis. Furthermore, Pat is also an FTP child of Marianne, and the Secretary has determined under new subsection 900AZI(1) that Stephen is to receive 70% of the family tax payment in respect of Pat.

Point 1070-F1 would mean that the rate of family tax payment would be worked out as follows:

#### Part A

For Andrew:

Stephen would qualify for half of a Part A rate (consisting of \$3.85)

For Pat:

Stephen would qualify for the 70% of a Part A rate (\$5.39)

For Janet

Stephen would qualify for an entire Part A amount(\$7.70)

Therefore, Stephen's Part A rate would be \$16.94

#### Part B

For Andrew:

Stephen would qualify for half of the Part B rate

For Pat:

Stephen would qualify for 70% of the Part B rate

Under new point 1070-F1(5), the maximum care percentage is applied in determining Stephen's Part B. As Stephen cares for Pat 70% of the time, while he only cares for Andrew 50% of the time, Stephen may receive 70% of the Part B rate.

Therefore, Stephen's fortnightly family tax payment rate would be \$16.94 (Part A) + \$13.47 (Part B) = \$30.41

(A note to new point 1070-F1 signposts the provision specifying the definition of FTP child.)

**New Point 1070-F2: 2 people who are not members of the same couple qualify for family payment for same child (no determination under subsection 900AZI(1))**

New point 1070-F2 applies where 2 people are qualified for family tax payment for the same FP child and the Secretary has not made a declaration under new subsection 900AZI(1). If family tax payment is already payable to one of the persons, then new point 1070-F2 specifies that the family tax payment not is payable for that child to the other person.

**Item 8** amends section 1223 of the Social Security Act. Current subsection 1223(1) specifies that if an amount has been paid to a social security recipient and the recipient was not qualified for the payment and the amount was not payable, then the amount is a debt due to the Commonwealth. Accordingly, this provision would apply by default to amounts of family tax payment paid incorrectly. However, **item 8** inserts a new subsection (1D) into section 1223, which provides an exception to this rule for particular classes of family tax payment overpayments.

As noted above, qualification for family tax payment is dependent upon receipt (or deemed receipt) of family payment at a rate in excess of the minimum family payment rate (new section 900AD refers). However, it may be possible that a person is qualified for, and is paid, family payment at the higher rate on the basis of an estimate of income, and thus, family tax payment may also be paid to the person. If it later transpires that the person had provided an incorrect estimate of income, the Secretary may determine that the person should have been paid family payment at the minimum family payment rate (ie, the person would have an overpayment of family payment, which he or she would have to pay back to the Department of Social Security). As a result of this decision, the person would not have been qualified for family tax payment for the period as well, as the person did not satisfy the requirement in new section 900AD. Accordingly, any amount of family tax payment would also be an overpayment.

This effect may be unduly harsh, however, as the person may still be qualified for assistance under the family tax initiative by way of family tax assistance (as provided by the Australian Taxation Office). Thus, the person would have to repay the amount of family tax payment to the Department of Social Security, but would later be able to claim family tax assistance from the Australian Taxation Office. In a practical sense, an amount recovered would require the Department of Social Security providing an amended 'statement of payment' which the customer would use to amend their tax assessment and seek an equivalent amount through the taxation system. This creates a great deal of work, not only for the person concerned, but also for the Department of Social Security and the Australian Tax Office in recovering debts and amending assessments to achieve a similar result from the customer's perspective.

Furthermore, new subsection 900AD(4) extends qualification for family tax payment where a person was originally qualified for family tax payment under one of new subsections 900AD(1) to (3), but subsequently lost qualification for family tax payment. This would generally happen if, for example, the person's income increased beyond the threshold which would enable the person to receive family payment at a rate in excess of the minimum rate. Under new subsection 900AD(4), the person would be qualified for, and able to receive, family tax payment until the end of the financial year, provided the person still satisfied the family income test in new Module C and the breadwinner's income test in new Module D. Thus a person may receive family tax payment even though he or she does not receive family payment. This does not appear equitable when compared with the person who incorrectly estimated his or her income and ceased to receive family payment as a result.

However, new subsection 1223(1D) specifies that, in certain circumstances, such an 'overpayment' would not be a debt under the Principal Act.

New subsection 1223(1D) operates to provide that:

- if a person is paid an amount of family tax payment; and
- the person is not qualified for the family tax payment because the person is not qualified for family payment or family payment is not payable to the person at a rate in excess of the minimum family payment rate; and
- the person provided an estimate of his or her income under the family payment income test and, as a result, the person was paid family payment at a rate in excess of the minimum family payment rate; and
- the estimate subsequently proved to be incorrect and there was no reason for the person to believe the estimate was incorrect; and
- the person would have satisfied the family income test (laid down in Module C) and the breadwinner's income test (laid down in Module D) if the person had been subject to those tests

then the amount of family tax payment paid is not a debt under the Social Security Act.

**Item 9** inserts new section 1298C into the Social Security Act. This new section (the Secretary and the Commissioner of Taxation may agree on administrative arrangements) allows the Secretary and the Commissioner of Taxation to make whatever administrative arrangements are necessary for the implementation of the Family Tax Initiative.

**Item 10** creates the first of a series of transitional provisions, necessary to ensure that the Family Tax Initiative commences smoothly. In particular, item 9 relates to those people who qualify for family tax payment under new subsections 900AD(1) or 900AD(2) (apart from those people who come within the ambit of paragraph (a) of the definition of the excluding provisions).



However, paragraph (a) of the excluding provisions is excluded from the operation of **item 10**. This paragraph relates to the rule which excludes qualification for family payment for a person whose child is more than 16 years old and is a "prescribed student child" within the meaning of section 5 of the Social Security Act.

Therefore, **item 10** applies to those people who are in receipt of family payment at a rate in excess of the minimum family payment rate, or those who are paid at that minimum family payment rate because of the operation of the following rules relating to:

- the family payment assets test (section 838);
- absence of family payment recipient from Australia for more than 13 weeks (point 1069-B5(1));
- receipt of periodic payments (point 1069-B8);
- impact of income components other than taxable income (1069-H2(b),(c) and (d));
- the family payment maintenance income test (Module J of the Family Payment Rate Calculator);
- the requirement that a person take reasonable maintenance income (point 1069-K3)

**Item 10** provides that each person covered by the item is taken to have lodged a proper claim for family tax payment and, further, that the Secretary has granted that claim. **Subitem 10(4)** specifies that the rate of family tax payment for the person is worked out initially on the basis that the person has satisfied the family income test and, if the person has a child under 5, the breadwinner has satisfied the breadwinner's income test. However, if the person has a child under 5, the breadwinner's partner (if the person is a member of a couple) must still satisfy the spouse income test in Module E.

Finally, **subitem 10(5)** specifies that nothing prevents the Secretary from reassessing whether the person is qualified for family tax payment, once the person's claim has been granted. Furthermore, if it is apparent that the person is not qualified for the payment, or if there are changes required to the rate of the person's payment, then this subitem also allows the Secretary to reassess the person's family payment status as and when necessary.

**Item 11** applies to those people who qualify for family tax payment because of new subsection 900AD(3). This section covers those people who are not in receipt of family payment, and therefore do not meet the qualification rules for either subsections 900AD(1) or (2), but who would do so if the excluding provisions were not applied.

**Item 11** provides that, if a person who would qualify for family tax payment under new subsection 900AD(3), lodges a claim for the payment on or before 30 June 1997, then the person's provision commencement date is 1 January 1997, or the day on which the person first qualified for family tax payment, whichever is the later. This ensures that those people, who fall into this group and who have lodged claims for family tax payment within the first six months, may have their claim backdated to the date of commencement of the initiative or the date they first qualified for the payment.

Finally, **item 12** applies to those people whose family payment is suspended at the commencement of this initiative and who would otherwise qualify for family tax payment under new subsection 900AD(1) or (2). If the family payment of these people is subsequently restored, then **item 12** provides that the person is taken to have made a proper claim for the family tax payment, and the Secretary is taken to have determined that claim. The effect of this provision is that the family tax payment may be paid from the commencement of the initiative (ie, 1 January 1997). However, while the person is taken to have satisfied the family income test and the breadwinner's income test, if the person is a member of a couple, the breadwinner's partner must still satisfy the spouse income test in Module E before a Part B rate of family tax payment becomes payable.

**Subitem 12(3)** specifies that nothing prevents the Secretary from reassessing whether the person is qualified for family tax payment, once the person's claim has been granted under **subitem 12(2)**. Furthermore, if it is apparent that the person is not qualified for the payment, or if there are changes required to the rate of the person's payment, then this subitem also allows the Secretary to reassess the person's family payment status as and when necessary.

### ***SCHEDULE 3 - AMENDMENT OF THE TAXATION ADMINISTRATION ACT 1953***

#### **1. Summary of changes**

Schedule 3 makes some consequential amendments to the *Taxation Administration Act 1953* (Taxation Administration Act) arising from the introduction of the family tax initiative. The amendments will make adjustments to the offence provisions governing tax file numbers (TFNs).

#### **2. Background**

It is proposed that applicants for family tax payments will be required to quote their tax file numbers (TFNs), and the TFNs of their partners, in their applications for family tax payment.

However, section 8WA of the Taxation Administration Act makes it an offence to ask or require another person to quote his or her TFN, except in certain circumstances. In addition, section 8WB makes it an offence to record, use or communicate another person's TFN, except in the specified circumstances.

#### **3. Clauses involved in the changes**

**Clause 2:** specifies the commencement date as 1 January 1997.

**Clause 3:** specifies that the amendments made by Schedule 3 provide for the family tax payment.

**Clause 4:** specifies that the Taxation Administration Act is amended in accordance with Schedule 3.

**Schedule 3:** makes consequential amendments to the Taxation Administration Act as a result of the introduction of the family tax initiative.

#### **4. Explanation of the changes**

**Item 1** will amend section 8WA of the Taxation Administration Act. This amendment is necessary as a consequence of the amendments made by **item 9** of Schedule 1 of this Bill. **Item 1** of this Schedule will ensure that it will not be an offence to ask or require a claimant for family tax payment to quote the claimant's TFN, or the TFN of the claimant's partner, in connection with a claim for family tax payment.

**Items 2 and 3** amend section 8WB to allow the Secretary to record, use or communicate a claimant's TFN or the TFN of a claimant's partner, in the connection with sections 900AP and 900AQ of the *Social Security Act 1991*. These sections will give the Secretary the power to ask a claimant or recipient of family tax payment to provide the TFN of the claimant or the claimant's partner, or provide proof that the person or the partner has applied to the Commissioner of Taxation for a TFN.

### **5. Commencement**

The amendments included in Schedule 3 will commence on 1 January 1997.







