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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (SIMPLIFYING  
INCOME REPORTING AND OTHER MEASURES) BILL 2020**

**EXPOSURE DRAFT EXPLANATORY MEMORANDUM**

**(Circulated by the authority of the  
Minister for Families and Social Services, Senator the Hon Anne Ruston)**

## **SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (SIMPLIFYING INCOME REPORTING AND OTHER MEASURES) BILL 2020**

### **OUTLINE**

This Bill implements the Budget 2019-20 measure ‘Changing the Social Security Income Assessment Model’.

This Bill changes the way employment income is used to determine a person’s rate of payment under the social security law. Currently, the *Social Security Act 1991* assesses employment income in the social security instalment period in which it is earned, derived or received. In practice, because employment income is usually earned before it is paid, a person is required to estimate and report the amount of employment income they have earned in a social security instalment period, with this estimate being used to determine their rate of payment. In most cases, a person will not know exactly how much employment income they will be paid for an instalment period until they are paid at a later date. This frequently results in social security recipients over-estimating or under-estimating their total employment income for an instalment period, with the consequence that recipients are either underpaid or overpaid their social security entitlements.

This Bill amends the *Social Security Act 1991* to ensure that employment income is assessed once it is paid to a social security recipient. This will provide a more accurate picture of the amounts of employment income paid to social security recipients and minimise the number of social security overpayments resulting from misreported employment income.

To facilitate this new assessment model, Services Australia will use data collected by the Australian Taxation Office (primarily information from the Single Touch Payroll system). The Bill amends the *Social Security (Administration) Act 1999* to remove any doubt that this may be done.

The Bill also amends the *A New Tax System (Family Assistance) (Administration) Act 1999* to remove any doubt that Services Australia can use information from the Single Touch Payroll system to administer the family assistance law. It further amends the *Student Assistance Act 1973* to remove any doubt that Services Australia can use this information to administer that Act and the ABSTUDY scheme.

This Bill also amends the provisions in the *Veterans’ Entitlements Act 1986* regarding the work bonus and pension bonus scheme.

The amendments made by this Bill commence as follows:

- (a) if the *Social Services and Other Legislation Amendment (Simplifying Income Reporting and Other Measures) Act 2020* (the Act) receives the Royal Assent before 15 May 2020— on 1 July 2020;

(b) if the Act receives the Royal Assent on or after 15 May 2020—the first day of the first calendar month that occurs after the end of the period of 2 months beginning on the day this Act receives the Royal Assent.

This means that if the Bill received the Royal Assent on 16 May 2020, the Bill would commence on 1 August 2020.

### **Financial impact statement**

<b>MEASURE</b>	<b>FINANCIAL IMPACT OVER THE FORWARD ESTIMATES</b>
<i>Changing the Social Security Income Assessment Model</i>	\$2.1 billion

### **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

The statement of compatibility with human rights appears at the end of this Explanatory Memorandum.

# SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (SIMPLIFYING INCOME REPORTING AND OTHER MEASURES) BILL 2020

## NOTES ON CLAUSES

### Abbreviations used in this Explanatory Memorandum

- **Family Assistance Act** means the *A New Tax System (Family Assistance) Act 1999*;
- **Family Assistance Administration Act** means the *A New Tax System (Family Assistance)(Administration) Act 1999*;
- **Privacy Act** means the *Privacy Act 1988*;
- **Social Security Act** means the *Social Security Act 1991*;
- **Social Security Administration Act** means the *Social Security (Administration) Act 1999*;
- **Student Assistance Act** means the *Student Assistance Act 1973*;
- **Veterans' Entitlements Act** means the *Veterans' Entitlements Act 1986*.

**Clause 1** sets out how the new Act is to be cited – that is, as the *Social Services and Other Legislation Amendment (Simplifying Income Reporting and Other Measures) Act 2020*.

**Clause 2** provides a table setting out the commencement dates of the new Act.

**Clause 3** provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule, and any other item in a Schedule to the Bill has effect according to its terms.

## Schedule 1 – Amendments

### Summary

This Schedule implements the Budget 2019-20 measure ‘Changing the Social Security Income Assessment Model’.

### Background

Part 1 of this Schedule will amend Division 1AA of Part 3.10 and other provisions of the Social Security Act to replace the current rules used to assess employment income under the social security law.

Under current rules, employment income is generally assessed in the social security instalment period in which it is first earned, derived or received.

The new rules inserted by Part 1 of this Schedule (referred to in this Explanatory Memorandum as the ‘***new employment income attribution rules***’), will treat amounts of employment income paid to a person in a social security instalment period as being received from the start of the instalment period in which the employment income was paid. The new rules will then apply the employment income forward for the number of days determined under the new employment income attribution rules.

A special employment income attribution rule will also be included to address the situation in which a social security pensioner is paid the same amount of employment income on a monthly basis and is paid on the same day each month. New section 1073B will determine a daily amount of employment income to be attributed to the person for each day in a social security instalment period. This new section will ensure that social security pensioners who are paid employment income in this way will not experience fluctuations in their rate of pension as a result of employment income.

Part 1 of this Schedule will also make consequential amendments to various provisions in the Social Security Act, Social Security Administration Act and Veterans’ Entitlements Act that refer to employment income being assessed on an earned, derived or received basis.

Part 1 of this Schedule also makes amendments to the Social Security Act and the Veterans’ Entitlements Act to ensure that members of the pension bonus scheme will not be adversely affected by the new employment income attribution rules inserted by Part 1 of this Schedule.

Services Australia will use taxation information (primarily data from the Single Touch Payroll system) to assess employment income under the social security law when it is paid. Part 2 of this Schedule will amend the Social Security Administration Act to remove any doubt that the administering Secretary and other officers who make decisions under the social security law can participate in the information exchanges

necessary for this to occur consistently with the current confidentiality provisions in that Act, as well as the Privacy Act.

Part 2 of this Schedule also amends the Family Assistance Administration Act to remove any doubt that Services Australia can use information from the Single Touch Payroll system to administer the family assistance law. It further amends the *Student Assistance Act 1973* to remove any doubt that Services Australia can use this information to administer that Act and the ABSTUDY scheme.

Part 2 of this Schedule further amends the Family Assistance Administration Act and the Social Security Administration Act to clarify that the information exchanges required for the use of information from the Single Touch Payroll System may be automated. It also amends the Student Assistance Act to underpin automation of these information exchanges.

Part 2 of this Schedule is enacted for the avoidance of doubt but will also enhance transparency in how information from the Single Touch Payroll system is used.

Part 3 of this Schedule amends the Social Security Act to insert new section 1072A. This new section provides for the assessment of certain non-remunerative lump sum amounts over a period not exceeding 52 weeks. This new section will apply to income paid in the form of a lump sum payment of arrears of periodic payments.

## **Explanation of the changes**

### **Schedule 1 - Amendments**

#### ***Part 1 – Simplifying income reporting***

##### ***Social Security Act***

**Items 1, 2 and 3** amend the definition of ‘employment income’ in section 8.

Subsection 8(1) defines employment income as ordinary income of a person that comprises employment income under subsection 8(1A) and includes ordinary income that is characterised as employment income of the person because of the operation of subsection 8(1B).

Subsection 8(1A) provides that employment income is ordinary income ‘earned, derived or received, or that is taken to have been earned, derived or received, by the person from remunerative work undertaken by the person as an employee in an employer/employee relationship’. Subsection 8(1A) then lists particular types of income that are included in the definition of employment income (salary, wages, commissions, leave payments (where the person is in a continuing employer/employee relationship) and employment-related fringe benefits) and particular types of income that are excluded from this definition (superannuation payments, certain compensation payments relating to a person’s inability to earn, derive or receive income from remunerative work, leave payments (where the person is not in a continuing employer/employee relationship), termination payments,

comparable foreign payments, instalments of parental leave pay and dad and partner pay).

Items 1 and 2 amend paragraph 8(1A)(a) and subparagraph 8(1A)(b)(i) of the definition of employment income to omit references to employment income ‘earned, derived or received’ or ‘taken to have been earned, derived or received’ by a person.

Item 1 also amends paragraph 8(1A)(a) to remove reference to employment income as ordinary income ‘from remunerative work undertaken by’ a person. This clarifies that employment income is not only income ‘from remunerative work undertaken’ by a person but is also income for work not yet undertaken by a person.

Item 3 repeals paragraph 8(1B)(a) and substitutes a new paragraph that omits references to the words ‘earned, derived or received’ and ‘taken to be earned derived or received’.

The amendments to subsection 8(1A) and subsection 8(1B) made by items 1, 2 and 3 are a consequence of the insertion, by item 37 of this Part, of new employment income attribution rules in Division 1AA of Part 3.10. Employment income will no longer be assessed in relation to the day it is ‘earned, derived or received’ or ‘taken to have been earned, derived or received’ by a person. Instead, employment income will be assessed in respect of the period it is ‘taken to be received’ by the new income attribution rules in Division 1AA.

**Item 4** amends paragraph 23(4A)(d) to omit the words ‘earns, derives or receives, or is taken to earn, derive or receive, employment income’, and substitutes the words ‘has employment income’. Subsection 23(4A) sets out when a person is ‘receiving a social security payment’ for the purposes of the social security law.<sup>1</sup> The subsection currently treats a person as receiving a social security payment for an additional 12 weeks where their rate of payment is reduced to nil as a result of employment income they have earned, derived or received, or employment income the Social Security Act has treated them as having earned, derived or received. The amendments made by this item are a consequence of the insertion, by item 37 of this Part, of new employment income attribution rules in Division 1AA of Part 3.10. Employment income will no longer be assessed in relation to the day it is ‘earned, derived or received’ or ‘taken to have been earned, derived or received’ by a person. Instead, employment income will be assessed in respect of the period it is ‘taken to be received’ by the new income attribution rules in Division 1AA.

**Item 5** inserts new subsection 93H(2A) after subsection 93H(2). Section 93H sets out a person’s annual pension rate for the purposes of working out the amount of their pension bonus under the pension bonus scheme. If a person is a registered

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<sup>1</sup> The ‘social security law’ is defined in subsections 23(17) and (18) of the Social Security Act as follows:

- (17) A reference in this [Social Security Act] to the social security law is a reference to this Act, the [Social Security Administration Act] and any other Act that is expressed to form part of the social security law.
- (18) A reference in this [Social Security Act] to a provision of the social security law is a reference to a provision of this Act, the [Social Security Administration Act] or any other Act that is expressed to form part of the social security law.

member of the scheme (registrations for the scheme closed on 1 July 2014) and is qualified to receive a pension bonus under section 92C, section 93D sets out how to calculate the amount of the bonus to be paid to the person. Part of this calculation process involves working out the person's 'annual pension rate' under section 93H. New subsection 93H(2A) provides that the annual pension rate is to be worked out by disregarding the amendments made by this Part. This amendment will ensure that where a person claims their pension bonus, employment income previously earned by the person will not, once paid to the person, reduce the amount of the pension bonus payable to them under the pension bonus scheme. This prevents the situation in which a person ceases work, claims their pension bonus and has the amount of their pension bonus reduced because of employment income paid after they ceased employment.

**Items 6, 7 and 8** amend section 1061Q, which sets out the qualification criteria for telephone allowance. Paragraph 1061Q(3C)(b), paragraph 1061Q(3F)(b) and paragraph 1061Q(3G)(b) provide, amongst other things, that a person can qualify for telephone allowance if the person ceases to receive a social security pension or allowance because the person or the person's partner earns, derives or receives, or is taken to earn, derive or receive, employment income. Items 6, 7 and 8 amend these paragraphs to omit the words 'earns, derives or receives, or is taken to earn, derive or receive, employment income', and substitute the words 'has employment income'. These amendments are a consequence of the insertion, by item 37 of this Part, of new employment income attribution rules in Division 1AA of Part 3.10. Employment income will no longer be assessed in relation to the day it is 'earned, derived or received' or 'taken to have been earned, derived or received' by a person. Instead, employment income will be assessed in respect of the period it is 'taken to be received' by the new income attribution rules in Division 1AA.

**Items 9 and 10** amend paragraph 1061ZEA(2)(e) and paragraph 1061ZMA(2)(e). Section 1061ZEA and section 1061ZMA apply to a person who is qualified for a pensioner concession card (PCC) or a health card (HCC) and ceases to receive the social security payment which qualified the person for the card. These sections provide that a person will continue to be qualified for their PCC or HCC for 12 weeks from the end of the social security instalment period in which the payment ceased if the person (or their partner) 'earns, derives or receives, or is taken to earn, derive or receive, employment income' and the employment income (either alone or in combination with other ordinary income) is the reason the person ceases to receive the social security payment. Items 9 and 10 amend paragraph 1061ZEA(2)(e) and paragraph 1061ZMA(2)(e) to omit the words 'earns, derives or receives, or is taken to earn, derive or receive, employment income', and substitute the words 'has employment income'. These amendments are a consequence of the insertion, by item 37 of this Part, of new employment income attribution rules in Division 1AA of Part 3.10. Employment income will no longer be assessed in relation to the day it is 'earned, derived or received' or 'taken to have been earned, derived or received' by a person. Instead, employment income will be assessed in respect of the period it is 'taken to be received' by the new income attribution rules in Division 1AA.

**Item 11** amends point 1067G-H23 of the rate calculator for youth allowance in section 1067G. Point 1067G-H23 currently provides that 'ordinary income is to be taken into account in the fortnight in which it is first earned, derived or received. This



item amends this provision to insert the words '(except employment income)' after the words 'ordinary income'. This will mean that this provision no longer applies to employment income. This amendment is a consequence of the insertion, by item 37 of this Part, of new employment income attribution rules in Division 1AA of Part 3.10. Employment income will no longer be assessed in relation to the day it is 'earned, derived or received' or 'taken to have been earned, derived or received' by a person. Instead, employment income will be assessed in respect of the period it is 'taken to be received' by the new income attribution rules in Division 1AA.

**Item 12** adds a note at the end of point 1067G-H23 of the rate calculator for youth allowance. The note directs the reader to Division 1AA of Part 3.10. Division 1AA contains the new employment income attribution rules inserted by item 37 of this Part.

**Item 13** amends point 1067G-H23A of the rate calculator for youth allowance to insert new paragraph 1067G-H23A(d). Point 1067G-H23A currently provides that if a person whose claim for youth allowance has been granted receives, after the claim was made, a lump sum amount that is paid in relation to remunerative work, the person is taken to receive one fifty-second of that amount as ordinary income during each week in the 12 months commencing on the day on which the person becomes entitled to receive that amount. This item inserts new paragraph 1067G-H23A(d) to ensure that the provision does not apply to amounts of ordinary income that are employment income. This amendment is a consequence of the insertion, by item 37 of this Part, of new employment income attribution rules in Division 1AA of Part 3.10. Employment income will be assessed in respect of the period it is 'taken to be received' by the new income attribution rules in Division 1AA.

**Item 14** amends point 1067G-H23B of the rate calculator for youth allowance to insert new subparagraph 1067G-H23B(b)(iv). Point 1067G-H23B applies where a person whose claim for youth allowance has been granted is a member of a couple and their partner receives, after the claim was made, a lump sum amount that is paid in relation to remunerative work. The provision treats the person's partner as having received one fifty-second of the lump sum amount as ordinary income during each week in the 12 months commencing on the day on which the person becomes entitled to receive that amount. This item inserts new subparagraph 1067G-H23B(b)(iv) to ensure that the provision does not apply to amounts of ordinary income that are employment income. This amendment is a consequence of the insertion, by item 37 of this Part, of new employment income attribution rules in Division 1AA of Part 3.10. Employment income will be assessed in respect of the period it is 'taken to be received' by the new income attribution rules in Division 1AA.

**Item 15** amends paragraph 1067G-H24(a) of the rate calculator for youth allowance. Point 1067G-H24 applies to 'ordinary income payments' (including payments of employment income) that relate to a period greater than a fortnight. For this provision to apply, the quantum of the payments needs to be reasonably predictable and there needs to be reasonable predictability or regularity as to the timing of the payments. This item amends point 1067G-H24 to omit the reference to 'ordinary income payments' in paragraph 1067G-H24(a) and substitutes the words 'payments of ordinary income (except employment income)'. This ensures that the provision does not apply to employment income. This amendment is a consequence of the insertion,

by item 37 of this Part, of new employment income attribution rules in Division 1AA of Part 3.10. Employment income will be assessed in respect of the period it is 'taken to be received' by the new income attribution rules in Division 1AA.

**Item 16** amends point 1067L-D19 of the rate calculator for austudy in section 1067L. Point 1067L-D19 currently provides that 'ordinary income is to be taken into account in the fortnight in which it is first earned, derived or received. This item amends this provision to insert the words '(except employment income)' after the words 'ordinary income'. This will mean that this provision no longer applies to employment income. This amendment is a consequence of the insertion, by item 37 of this Part, of new employment income attribution rules in Division 1AA of Part 3.10. Employment income will no longer be assessed in relation to the day it is 'earned, derived or received' or 'taken to have been earned, derived or received' by a person. Instead, employment income will be assessed in respect of the period it is 'taken to be received' by the new income attribution rules in Division 1AA.

**Item 17** adds a note at the end of point 1067L-D19 of the rate calculator for austudy. The note directs the reader to Division 1AA of Part 3.10. Division 1AA contains the new employment income attribution rules inserted by item 37 of this Part.

**Item 18** amends point 1067L-D20 of the rate calculator for austudy to insert new paragraph 1067L-D20(d). Point 1067L-D20 currently provides that if a person whose claim for austudy has been granted receives, after the claim was made, a lump sum amount that is paid in relation to remunerative work, the person is taken to receive one fifty-second of that amount as ordinary income during each week in the 12 months commencing on the day on which the person becomes entitled to receive that amount. This item inserts new paragraph 1067L-D20(d) to ensure that the provision does not apply to amounts of ordinary income that are employment income. This amendment is a consequence of the insertion, by item 37 of this Part, of new employment income attribution rules in Division 1AA of Part 3.10. Employment income will be assessed in respect of the period it is 'taken to be received' by the new income attribution rules in Division 1AA.

**Item 19** amends point 1067L-D21 of the rate calculator for austudy to insert new subparagraph 1067L-D21(b)(iv). Point 1067L-D21 applies where a person whose claim for austudy has been granted is a member of a couple and their partner receives, after the claim was made, a lump sum amount that is paid in relation to remunerative work. The provision treats the person's partner as having received one fifty-second of the lump sum amount as ordinary income during each week in the 12 months commencing on the day on which the person becomes entitled to receive that amount. This item inserts new subparagraph 1067L-D21(b)(iv) to ensure that the provision does not apply to amounts of ordinary income that are employment income. This amendment is a consequence of the insertion, by item 37 of this Part, of new employment income attribution rules in Division 1AA of Part 3.10. Employment income will be assessed in respect of the period it is 'taken to be received' by the new income attribution rules in Division 1AA.

**Item 20** amends paragraph 1067L-D23(a) of the rate calculator for austudy. Point 1067L-D23 applies to 'ordinary income payments' (including payments of employment income) that relate to a period greater than a fortnight. For this provision

to apply, the quantum of the payments needs to be reasonably predictable and there needs to be reasonable predictability or regularity as to the timing of the payments. This item ensures that the provision no longer applies to employment income. This item amends point 1067L-D23 to omit the reference to 'ordinary income payments' in paragraph 1067L-D23(a) and substitutes the words 'payments of ordinary income (except employment income)'. This amendment is a consequence of the insertion, by item 37 of this Part, of new employment income attribution rules in Division 1AA of Part 3.10. Employment income will be assessed in respect of the period it is 'taken to be received' by the new income attribution rules in Division 1AA.

**Item 21** amends Point 1068-G7A in section 1068. Section 1068 sets out Benefit Rate Calculator B. This rate calculator sets out how to calculate the rate of the following social security benefits:

- (a) jobseeker payment (which will replace newstart allowance from 20 March 2020);
- (b) widow allowance;
- (c) sickness allowance (until this allowance ceases on 20 September 2020); and
- (d) partner allowance.

Point 1068-G7A currently provides that 'ordinary income is to be taken into account in the fortnight in which it is first earned, derived or received. This item amends this provision to insert the words '(except employment income)' after the words 'ordinary income'. This will mean that this provision no longer applies to employment income. This amendment is a consequence of the insertion, by item 37 of this Part, of new employment income attribution rules in Division 1AA of Part 3.10. Employment income will no longer be assessed in relation to the day it is 'earned, derived or received' or 'taken to have been earned, derived or received' by a person. Instead, employment income will be assessed in respect of the period it is 'taken to be received' by the new income attribution rules in Division 1AA.

**Item 22** adds a note at the end of point 1068-G7A of Benefit Rate Calculator B. The note directs the reader to Division 1AA of Part 3.10. Division 1AA contains the new employment income attribution rules inserted by item 37 of this Part.

**Item 23** amends point 1068-G7B of Benefit Rate Calculator B to insert new paragraph 1068-G7B(d). Point 1068-G7B currently provides that if a person whose claim for an allowance has been granted receives, after the claim was made, a lump sum amount that is paid in relation to remunerative work, the person is taken to receive one fifty-second of that amount as ordinary income during each week in the 12 months commencing on the day on which the person becomes entitled to receive that amount. This item inserts new paragraph 1068-G7B(d) to ensure that the provision does not apply to amounts of ordinary income that are employment income. This amendment is a consequence of the insertion, by item 37 of this Part, of new employment income attribution rules in Division 1AA of Part 3.10. Employment income will be assessed in respect of the period it is 'taken to be received' by the new income attribution rules in Division 1AA.

**Item 24** amends point 1068-G7C of Benefit Rate Calculator B to insert new subparagraph 1068-G7C(b)(iv). Point 1068-G7C applies where a person whose claim for an allowance has been granted is a member of a couple and their partner receives, after the claim was made, a lump sum amount that is paid in relation to remunerative work. The provision treats the person's partner as having received one fifty-second of the lump sum amount as ordinary income during each week in the 12 months commencing on the day on which the person becomes entitled to receive that amount. This item inserts new subparagraph 1068-G7C(b)(iv) to ensure that the provision does not apply to amounts of ordinary income that are employment income. This amendment is a consequence of the insertion, by item 37 of this Part, of new employment income attribution rules in Division 1AA of Part 3.10. Employment income will be assessed in respect of the period it is 'taken to be received' by the new income attribution rules in Division 1AA.

**Item 25** amends paragraph 1068-G8(a) of Benefit Rate Calculator B. Point 1068-G8 applies to 'ordinary income payments' (including payments of employment income) that relate to a period greater than a fortnight. For this provision to apply, the quantum of the payments needs to be reasonably predictable and there needs to be reasonable predictability or regularity as to the timing of the payments. This item amends point 1068-G8 to omit the reference to 'ordinary income payments' in paragraph 1068-G8(a) and substitutes the words 'payments of ordinary income (except employment income)'. This item ensures that the provision no longer applies to employment income. This amendment is a consequence of the insertion, by item 37 of this Part, of new employment income attribution rules in Division 1AA of Part 3.10. Employment income will be assessed in respect of the period it is 'taken to be received' by the new income attribution rules in Division 1AA.

**Item 26** repeals an example in point 1068-G8. This example is no longer required as a result of the new employment income attribution rules inserted by item 37 of this Part.

**Item 27** amends point 1068B-D19 in section 1068B. Section 1068B sets out the rate calculator for parenting payment where parenting payment is paid at the partnered rate ('parenting payment--PP (partnered)'). Point 1068B-D19 provides that 'a person's ordinary income is to be taken into account over such period, not exceeding 52 weeks, as the Secretary determines'. This item amends point 1068B-D19 to insert the words '(except employment income)' after the words 'ordinary income'. This amendment is a consequence of the insertion, by item 37 of this Part, of new employment income attribution rules in Division 1AA of Part 3.10. Employment income will be assessed in respect of the period it is 'taken to be received' by the new income attribution rules in Division 1AA.

**Item 28** makes a minor, consequential amendment to the note for point 1068B-D19. This is due to the insertion of a new note in item 29.

**Items 29** inserts a new note at the end of point 1068B-D19 that refers the reader to Division 1AA of Part 3.10. Division 1AA contains the new employment income attribution rules inserted by item 37 of this Part.

**Item 30** amends point 1068B-D20 of the rate calculator for parenting payment--PP (partnered). Point 1068B-D20 provides that, for the purposes of Module D (Income test) of the rate calculator for parenting payment--PP (partnered), a person's ordinary income for a period determined under point 1068B-D19 'is to be reduced to a fortnightly rate rounded to the nearest cent (rounding 0.5 cents downwards)'. This item amends point 1068B-D20 to insert the words '(except employment income)' after the words 'ordinary income'. This amendment is a consequence of the insertion, by item 37 of this Part, of new employment income attribution rules in Division 1AA of Part 3.10. Employment income will no longer be assessed in relation to the day it is 'earned, derived or received' or 'taken to have been earned, derived or received' by a person. Instead, employment income will be assessed in respect of the period it is 'taken to be received' by the new income attribution rules in Division 1AA.

**Items 31, 32, 33, 34, 35 and 36** amend the work bonus provisions in Division 1AAA of Part 3.10. The work bonus provisions apply to social security pensioners of age pension age and operate to disregard \$300 of a pensioner's fortnightly income when determining their rate of pension.

Items 31, 32, 33 and 36 amend various examples in sections 1073AA and 1073AB to account for the new employment income attribution rules provided for in item 37 of this Part. Following the insertion, by item 37 of this Part, of new employment income attribution rules in Division 1AA of Part 3.10, employment income will no longer be assessed in relation to the day it is 'earned, derived or received' or 'taken to have been earned, derived or received' by a person. Instead, employment income will be assessed in respect of the period it is 'taken to be received' by the new income attribution rules in Division 1AA.

Item 34 amends paragraph 1073AA(4BA)(a) to insert the words 'taken, in accordance with Division 1AA, to have been received' after 'employment income'. This amendment is also consequence of the insertion, by item 37 of this Part, of the new employment income attribution rules in Division 1AA of Part 3.10.

Item 35 repeals subsection 1073AA(5) while retaining the heading ('Interpretation') that appears above that subsection. This amendment is a consequential amendment resulting from the repeal, by item 37, of section 1073A of the Social Security Act.

**Item 37** repeals section 1073A and section 1073B of the Social Security Act and substitutes new section 1073A, new section 1073B, new section 1073BA, new section 1073BB, new section 1073BC and new section 1073BD.

These are the new employment income attribution rules that will replace the employment income attribution rules currently contained in section 1073A and section 1073B of the Social Security Act. These new rules will determine how employment income will affect a person's rate of social security.

**New section 1073A** sets out a rule for the attribution of employment income paid in respect of a particular period or periods. This rule applies where one or more amounts of employment income are paid to a person in a social security instalment period and it is possible to identify the particular period or periods to which the

employment income relates (where it is not possible to determine this, section 1073BA will apply).

New subsection 1073A(1) provides that new section 1073A applies if:

- (a) a person is receiving a social security pension or a social security benefit; and
- (b) the person's rate of payment of the pension or benefit is worked out with regard to the income test module of a rate calculator in Chapter 3; and
- (c) one or more amounts of employment income, each of which is in respect of a particular period or periods (each period is an **employment period**), are paid in an instalment period of the person to or for the benefit of the person by the same employer.

A note to new subsection 1073A(1) states that if a person to whom new section 1073A applies has multiple employers, the section applies separately in relation to each employer.

A second note to new subsection 1073A(1) states that if a person is receiving a social security pension and is paid employment income monthly, new section 1073B (discussed below) may apply to that income instead of new section 1073A.

A third note to new subsection 1073A(1) states that new section 1073BA (discussed below) deals with the payment of employment income that is not in respect of a particular period.

New subsection 1073A(2) provides that a person is taken to have received the employment income (that is, the employment income referred to in new paragraph 1073A(1)(c)) over a period (the **assessment period**) that consists of the number of days that is equal to the sum of the number of days in each employment period, where the assessment period begins on the first day of the instalment period in which the amounts of employment income are paid.

An example of how new subsection 1073A(1) and 1073A(2) will apply is then provided. This example is as follows:

*On 3 June a person is paid \$756 employment income for work the person performed in the period beginning on 9 May and ending at the end of 29 May. The number of days in the employment period is 21.*

*Assume the instalment period begins on 1 June. The person is taken to have received the \$756 over the period beginning on 1 June and ending at the end of 21 June (a period of 21 days).*

New subsection 1073A(3) then provides that subject to new subsection 1073A(4), for each day in the assessment period (see new subsection 1073A(2)), the person is taken to have received an amount of employment income worked out by dividing the total amount of the employment income covered by new paragraph 1073A(1)(c) by the number of days in the assessment period (see new subsection 1073A(2)).

An example of how new subsection 1073A(3) will apply is then provided. This example continues the example provided under new subsection 1073A(2) and is as follows:

*To continue the example in subsection (2), the person is taken to have received \$36 (\$756/21) on each of the days in the period beginning on 1 June and ending at the end of 21 June.*

New subsection 1073A(4) then provides that if the person is taken, under new subsection 1073A(3), to have received employment income (the **attributed employment income**) during a part, but not the whole, of a particular instalment period, the person is taken to receive on each day in that instalment period an amount of employment income worked out by dividing the total amount of the attributed employment income by the number of days in the instalment period.

An example of how new subsection 1073A(4) will apply is then provided. This example continues the example provided under new subsection 1073A(2) and is as follows:

*To continue the example in subsection (2), for the instalment period beginning on 15 June and ending at the end of 28 June the person is taken, under subsection (3), to have received employment income during a part of that instalment period (15 June to 21 June). The person is taken to have received \$252 (\$36 x 7).*

*Under subsection (4), the person is taken to receive on each day in that instalment period an amount of employment income of \$18 (\$252/14).*

New subsection 1073A(5) is an interpretation provision for new section 1073A. It provides that new section 1073A applies in relation to an amount of employment income paid on a day in an instalment period, whether or not the amount is received on that day.

New subsection 1073A(6) is a further interpretation provision for new section 1073A. It provides that, in applying new subsection 1073A(2) in relation to one or more amounts of employment income paid by a particular employer in an instalment period, in working out the sum of the number of days in each employment period, if a day in an employment period overlaps with a day in another employment period, that day must only be counted once.

**New section 1073B** sets out a special employment income attribution rule for a small group of social security pensioners who are paid the same amount of employment income on the same day of each month (for example, a person is paid \$1000 on the 15<sup>th</sup> day of every month). This rule will ensure that if a social security pensioner is paid employment income under such an arrangement, their rate of pension will not fluctuate as a result of their employment income.

New subsection 1073B(1) provides that new section 1073B applies if:

- (a) a person is receiving a social security pension; and

- (b) the person's rate of payment of the pension is worked out with regard to the income test module of a rate calculator in Chapter 3; and
- (c) an amount (the **initial amount**) of employment income, in respect of a period of 1 month, is paid on a day in a calendar month (the **initial calendar month**) to or for the benefit of the person by the person's employer; and
- (d) the Secretary is satisfied that, for the reasonably foreseeable future, an amount of employment income, in respect of a period of 1 month, equal to the initial amount will be paid to or for the benefit of the person by that employer on the following:
  - (i) the corresponding day in each calendar month (a **later calendar month**) after the initial calendar month;
  - (ii) if there is no such day in a later calendar month—the last day of the later calendar month.

A note to new subsection 1073B(1) states that if a person to whom new section 1073B applies has multiple employers, the section applies separately in relation to each employer.

To give an example of how new section 1073B applies, assume a person is paid \$1000 each month and is paid on the 15<sup>th</sup> of each month. If the Secretary is satisfied (for example, the person provides a contract of employment setting out the arrangement) that that for the reasonably foreseeable future the person will continue to be paid \$1000 on the 15<sup>th</sup> of every month, then section 1073B will apply to the person.

New subsection 1073B(2) provides that, subject to new section 1073B, for the day on which the initial amount (see new paragraph 1073B(1)(c)) is paid and for each day after that day, the person is taken to have received an amount of employment income worked out using a formula that multiplies the initial amount by 12 and then divides this by 364.

To continue the example above, assume the Secretary became satisfied on 15 July 2020 that a person would be paid \$1000 on the 15<sup>th</sup> day of every month. In this scenario, the person will be taken to receive employment income of \$32.97 ( $1000 \times 12/364$ ) on each day from 15 July 2020 until new subsection 1073B(3) applies to determine the last day on which the person is taken to receive this amount.

New subsection 1073B(3) provides that if, after the day on which the initial amount (see new paragraph 1073B(1)(c)) is paid, the Secretary ceases to be satisfied of the matters referred to in new paragraph 1073B(1)(d) in relation to the person and the person's employer, then new subsection 1073B(2) ceases to apply in relation to the person and the person's employer at the end of the period of 1 month beginning on the last payment day.



New subsection 1073B(4) provides that, for the purposes of new section 1073B, a **payment day** is:

- (a) the day in the calendar month on which the initial amount is paid by the person's employer; or
- (b) the following on which an amount of employment income equal to the initial amount is paid to or for the benefit of the person by that employer:
  - (i) a corresponding day in a later calendar month;
  - (ii) if there is no such day in a later calendar month—the last day of the later calendar month.

To continue the example above, assume that on 18 September 2020 the Secretary ceases to be satisfied that the person will continue to be paid \$1000 on the 15<sup>th</sup> of each month (for example, the person ceases employment or starts to be paid fortnightly). The last day on which the person will be taken to receive a daily amount employment income of \$32.97, under new section 1073B, is 14 October 2020.

New subsection 1073B(5) provides that if the person is taken, under new section 1073B, to have received employment income (the **attributed employment income**) during a part, but not the whole, of a particular instalment period, the person is taken to receive on each day in that instalment period an amount of employment income worked out by dividing the total amount of the attributed employment income by the number of days in the instalment period.

To continue the example above, assume that 14 October 2020 is day 7 of a 14 day instalment period that starts on 8 October 2020 and ends on 21 October 2020. As 7 days' worth of employment income has been attributed to this instalment period, the total amount of employment income attributed the instalment period will be \$230.79 (7 x 32.97). This amount is then divided by 14 (the number of days in the instalment period) to give an amount of \$16.48. This means, that for every day in the instalment period of 8 October 2020 to 21 October 2020 (inclusive) the person will be taken to receive \$16.48 of employment income on each of the 14 days in the instalment period.

New subsection 1073B(6) provides that new section 1073A does not apply to an amount of employment income covered by new paragraph 1073B(4)(a) or new paragraph 1073B(4)(b).

New subsection 1073B(7) is an interpretation provision for new section 1073B. It provides that new section 1073B applies in relation to an amount of employment income paid on a day in a calendar month, whether or not the amount is received on that day.

New subsection 1073B(8) provides that new subsection 1073B(3) does not prevent a later application of this section in relation to the person, whether in connection with the same employer or another employer.

**New section 1073BA** sets out a rule for the attribution of employment income that applies where employment income is paid to a person but is not paid in respect of a particular period. For example, this may apply where an employer pays an employee a bonus and the bonus is not in relation to a specified period. New section 1073B will allow the Secretary to assess such amounts of employment income over a period not exceeding 52 weeks.

New subsection 1073BA(1) provides that new section 1073BA applies if:

- (a) a person is receiving a social security pension or a social security benefit; and
- (b) the person's rate of payment of the pension or benefit is worked out with regard to the income test module of a rate calculator in Chapter 3; and
- (c) an amount of employment income is paid on a day to or for the benefit of the person; and
- (d) the employment income is not in respect of a particular period.

New subsection 1073BA(2) provides that the person is taken to have received the employment income referred to in new subsection 1073BA(1) over such period, not exceeding 52 weeks, as the Secretary determines.

To modify the example used above for new section 1073A, assume that on 3 June 2021 a person is paid \$756 employment income from their employer but it is not possible to determine the period to which this employment income relates.

Assume the instalment period in which the income was paid begins on 1 June 2021 and therefore runs from 1 June 2021 to 14 June 2021 (inclusive). Assume the Secretary makes a determination under new subsection 1073BA(3) that the \$756 employment income relates to a 21 day period.

New subsection 1073BA(3) then provides that the period determined by the Secretary (under new subsection 1073BA(2)) must begin on the first day of the instalment period in which the amount of employment income is paid.

To continue the example above, the period determined by the Secretary would need to begin on 1 June 2021 (the first day of the instalment period in which the income was paid) and ending at the end of 21 June 2021 (a period of 21 days).

New subsection 1073BA(4) then provides that subject to new subsection 1073BA(5), for each day in the period determined by the Secretary (under new subsection 1073BA(2)), the person is taken to have received an amount of employment income worked out by dividing the amount of employment income covered by new paragraph 1073BA(1)(c) by the number of days in that period.

To continue the example above, the person is taken to have received \$36 ( $\$756/21$ ) on each of the days in the period beginning on 1 June 2021 and ending at the end of 21 June 2021.

New subsection 1073BA(5) provides that if the person is taken, under new subsection 1073BA(4), to have received employment income (the **attributed employment income**) during a part, but not the whole, of a particular instalment period, the person is taken to receive on each day in that instalment period an amount of employment income worked out by dividing the total amount of the attributed employment income by the number of days in the instalment period.

To continue the example above for new subsection 1073BA(2), for the instalment period beginning on 15 June 2021 and ending at the end of 28 June 2021 the person is taken, under new subsection 1073BA(4), to have received employment income during a part of that instalment period (15 June 2021 to 21 June 2021). The person is taken to have received \$252 (\$36 x 7).

Under new subsection 1073BA(5), the person is taken to receive on each day in that instalment period an amount of employment income of \$18 (\$252/14).

New subsection 1073BA(6) is an interpretation provision for new section 1073BA. It provides that new section 1073BA applies in relation to an amount of employment income paid on a day, whether or not the amount is received on that day.

**New section 1073BB** is an anti-avoidance provision that operates to prevent a person deferring the payment of employment income from their employer where the deferral of payment is for the sole or dominant purpose of obtaining a social security advantage for a person. Under the current employment income attribution rules in which employment income is generally assessed when it is first earned, it is of little consequence if an employee defers payment of their employment income. Under the new employment income attribution rules provided for in this item, however, should a person defer the payment of employment income to a later date, this would result in a person receiving additional income support. This anti-avoidance provision has been designed to only apply in situations where the Secretary is satisfied a scheme to defer the payment of employment income exists and the sole or dominant purpose of the scheme is to obtain income support or additional income support for a person. This provision will not apply where an employer delays paying an employee for legitimate reasons.

New subsection 1073BB(1) provides that new section 1073BB applies if:

- (a) a person (the **relevant person**) is receiving a social security pension or a social security benefit; and
- (b) the relevant person earns or derives employment income during the whole or a part of an instalment period of the person; and
- (c) one or more entities (who may be, or may include, the relevant person) enter into, commence to carry out, or carry out, a scheme to defer the payment of that employment income; and
- (d) it would be concluded that the entity, or any of the entities, who entered into, commenced to carry out, or carried out, the scheme did so for the sole or

dominant purpose of obtaining a social security advantage for a person (who may be the relevant person or may be the entity or one of the entities).

New subsection 1073BB(8) sets out when an entity has a purpose of 'obtaining a social security advantage' for a person.

Under new paragraph 1073BB(8)(a), an entity will have such a purpose if the entity has a purpose of enabling the person to obtain:

- (a) a social security pension (including age pension, disability support pension, and sole parent pension) (see definition in subsection 23(1) of the Social Security Act);
- (b) a social security benefit (including jobseeker payment (from 1 March 2020), youth allowance, austudy payment and parent payment (partnered)) (see definition in subsection 23(1) of the Social Security Act);
- (c) a service pension (under the Veterans' Entitlements Act);
- (d) income support supplement (under the Veterans' Entitlements Act);
- (e) a veteran payment (under the Veterans' Entitlements Act); or
- (f) a payment under the ABSTUDY Scheme.

Under new paragraph 1073BB(8)(b), an entity will also have such a purpose if the entity has a purpose of enabling the person to obtain one of the payments referred to in new paragraph 1073BB(8)(a) at a higher rate than would otherwise have been payable.

'Entity' is defined broadly in new subsection 1073BB(9) to mean an individual, a company within the meaning of the *Income Tax Assessment Act 1997*, a trust, a partnership within the meaning of the *Income Tax Assessment Act 1997*, any other unincorporated association or body of persons, a corporation sole or a body politic.

'Scheme' is defined broadly in new subsection 1073BB(9) to mean:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether there are 2 or more parties or only one party involved.

New subsection 1073BB(2) provides that the Secretary may determine that the relevant person (see new paragraph 1073BB(1)(a)) is taken to have received an amount of employment income, equal to the amount of employment income referred to in new paragraph 1073BB(1)(b), over the period determined by the Secretary. New subsection 1073BB(7) provides that a determination under subsection 1073BB(2) has effect accordingly. A determination under subsection 1073BB(2)

would be a reviewable decision and an affected person could seek review of the determination in the Administrative Appeals Tribunal or the Federal Court.

New subsection 1073BB(3) provides that the period determined by the Secretary under new subsection 1073BB(2) must begin on the first day of the instalment period referred to in new paragraph 1073BB(1)(b).

New subsection 1073BB(4) provides that, subject to new subsection 1073BB(5), for each day in the period determined by the Secretary under new subsection 1073BB(2), the relevant person is taken to have received an amount of employment income worked out by dividing the total amount of the employment income referred to in new paragraph 1073BB(1)(b) by the number of days in that period.

New subsection 1073BB(5) provides that, if the relevant person (see new paragraph 1073BB(1)(a)) is taken, under new subsection 1073BB(4), to have received employment income (the **attributed employment income**) during a part, but not the whole, of a particular instalment period, the relevant person is taken to receive on each day in that instalment period an amount of employment income worked out by dividing the total amount of the attributed employment income by the number of days in the instalment period.

New subsection 1073BB(6) provides that new sections 1073A, 1073B and 1073BA do not apply in relation to the payment of the employment income referred to in new paragraph 1073BB(1)(b).

**New section 1073BC** provides that the employment income attribution rules in new sections 1073A, 1073B, 1073BA and 1073BB do not apply in relation to leave payments that are subject to detailed rules in the rate calculators in section 1064 (Rate of age, disability support, wife pensions and carer payment (people who are not blind)), 1066A (Rate of disability support pension (people under 21 who are not blind)), 1067G (Rate of youth allowance), 1067L (Rate of austudy payment), 1068 (Rate of widow allowance, jobseeker payment (18 or over), sickness allowance (18 or over), partner allowance, and mature age allowance under Part 2.12B), 1068A (Rate of parenting payment--pension PP (single)) and 1068B (Rate of parenting payment--PP (partnered)). There are already rules in these rate calculators that attribute leave payments over a period.

New section 1073BC also provides that new sections 1073A, 1073B, 1073BA and 1073BB do not apply in relation to sick leave entitlements that are also subject to detailed rules in the rate calculators in sections 1067G (Rate of youth allowance) and 1068 (Rate of widow allowance, jobseeker payment (18 or over), sickness allowance (18 or over)). There are already rules in these rate calculators that attribute the sick leave entitlements to the day(s) to which they relate.

**New section 1073BD** sets out an employment income attribution rule for amounts of employment income that are taken, under the Social Security Act, to be received during the whole or part of an instalment period but are not subject to the new employment income attribution rules inserted into Division 1AA of Part 3.10 by this item (that is, new sections 1073A, 1073B, 1073BA and 1073BB). New section 1073BD will apply to the leave payments and sick leave entitlements referred to

above in new section 1073BC. The purpose of this new section is to preserve the effect of current subsection 1073B(1) of the Social Security Act for those payments not subject to the new employment income attribution rules in new sections 1073A, 1073B, 1073BA and 1073BB. Current subsection 1073B(1) of the Social Security Act applies to employment income amounts that are taken, by a provision of the Social Security Act, to be received in the whole or part of an instalment period. Current subsection 1073B(1) then spreads the amounts taken to be received in the whole or part of instalment period evenly across the whole instalment period to minimise the extent to which employment income causes a person's rate of payment to fluctuate across an instalment period.

**Item 38** amends section 1073C to omit the words 'section 1073B, a person is taken to earn, derive or receive' and substitute the words 'section 1073A, 1073B, 1073BA, 1073BB or 1073BD, a person is taken to receive'. This amendment is a consequence of the amendments made by item 37.

**Item 39** amends step 1 of the method statement in section 1073F. Section 1073F is used to determine accruals and depletions from a social security benefit recipient's working credit balance. This item repeals step 1 of the method statement in section 1073F and substitutes a new step 1 that removes references to employment income 'earned, derived or received' on a day. The new step 1 in the method statement refers to employment income 'taken, in accordance with Division 1AA, to have been received on a day'. Division 1AA contains the new employment income attribution rules inserted by item 37 of this Part and this amendment is intended to align the wording of step 1 with the wording of Division 1AA (as amended by this Part).

**Item 40** amends step 1 of the method statement in section 1073H. Section 1073H is used to determine accruals and depletions from a social security pensioner's working credit balance. The amendments made by this item mirror the changes made by item 39 to section 1073F.

**Items 41 and 42** amend subparagraph 1073J(b)(i) and subparagraph 1073J(b)(ii). Section 1073J sets out the circumstances in which a person's working credit balance prevents them losing qualification for disability support pension, carer payment, youth allowance, jobseeker payment or sickness allowance (until this allowance ceases on 20 September 2020). Section 1073J applies to extend a person's qualification for one of these payments if, in addition to meeting other criteria, the person either:

- (a) commences to earn, derive or receive, or to be taken to earn, derive or receive, employment income (under subparagraph 1073J(b)(i)); or
- (b) there is an increase in the employment income that is earned, derived or received, or taken to be earned, derived or received, by the person (under subparagraph 1073J(b)(ii)).

Item 41 omits the words 'earn, derive or receive, or to be taken to earn, derive or receive' from subparagraph 1073J(b)(i) and substitutes the words 'be taken, under a provision of this Act, to receive'.

Item 42 omits the words ‘earned, derived or received, or taken to be earned, derived or received,’ from subparagraph 1073J(b)(ii) and substitutes the words ‘taken, under a provision of this Act, to be received’.

The amendments in items 41 and 42 are a consequence of the insertion, by item 37 of this Part, of new employment income attribution rules in Division 1AA of Part 3.10. Employment income will no longer be assessed in relation to the day it is ‘earned, derived or received’ or ‘taken to have been earned, derived or received’ by a person. Instead, employment income will be assessed in respect of the period it is ‘taken to be received’ by the new income attribution rules in Division 1AA.

The amendments made by items 41 and 42 take account of the repeal of subsection 1073J(2) of the Social Security Act by the *Social Services Legislation Amendment (Welfare Reform) Act 2018*.

### Social Security Administration Act

**Items 43, 44, 45, 46, 47, 48 and 49** amend subsection 96(3), subsection 97(3) and subsection 97B(1). These subsections apply to recipients of the disability support pension. Provided a recipient meets other requirements, these subsections give the Secretary the discretion to suspend rather than cancel a person’s disability support pension if the pension ceases to be payable because the rate of the pension is nil due to income, or increased income, earned from employment.

Item 43 omits the reference in paragraph 96(3)(a) to ‘the income, or increased income, earned by the person from his or her employment’ and substitutes a reference to ‘employment income of the person’.

Item 44 omits the reference in paragraph 96(3)(b) to ‘income or increased income’ and substitutes a reference to ‘employment income’.

Item 45 omits the reference in paragraph 97(3)(a) to ‘the income, or increased income, earned by the person from his or her employment’ and substitutes a reference to ‘employment income of the person’.

Item 46 omits the reference in paragraph 97(3)(b) to ‘income or increased income’ and substitutes a reference to ‘employment income of the person’.

Item 47 omits the reference in paragraph 97B(1)(a) to ‘the income, or increased income, earned by the person from his or her employment’ and substitutes a reference to ‘employment income of the person’.

Item 48 omits the reference in paragraph 97B(1)(b) to ‘income or increased income’ and substitutes a reference to ‘employment income’.

Item 49 omits the reference in paragraph 97B(1)(d) to ‘income the person earned from his or her employment’ and substitutes a reference to ‘employment income of the person’.

The amendments made by these items to subsection 96(3), subsection 97(3) and subsection 97B(1) are a consequence of the insertion, by item 37 of this Part, of new employment income attribution rules in Division 1AA of Part 3.10 of the Social Security Act. Employment income will no longer be assessed in relation to the day it is 'earned, derived or received' or 'taken to have been earned, derived or received' by a person. Instead, employment income will be assessed in respect of the period it is 'taken to be received' by the new income attribution rules in Division 1AA.

**Items 50, 51, 52, 53, 54, 55** amend subsection 110(1A), subsection 110(2A) and subsection 110(3A). These subsections set out date of effect rules for favourable determinations under the social security law. A 'favourable determination' is defined in section 108 as a rate increase determination (under section 78), a determination that resumes a person's social security payment after a suspension (under section 85) and a rate increase determination following non-compliance with a notice relating to rent assistance (under section 85A).

These subsections apply to social security recipients (or, in the case of subsection 110(3A), a social security recipient's partner) who have not reached pension age. Provided a recipient (or, in the case of subsection 110(3A), the recipient's partner) meets other requirements, subsection 110(1A), subsection 110(2A) and subsection 110(3A) provide that a favourable determination will take effect on the first day of an instalment period in which there is a decrease in the amount of employment income that is earned, derived or received, or that is taken to have been earned, derived or received, by the recipient.

Item 50 omits the reference in subparagraph 110(1A)(b)(i) to 'employment income that is earned, derived or received, or that is taken to have been earned, derived or received, by the person' and substitutes a reference to 'the person's employment income taken, in accordance with Division 1AA of Part 3.10 of the 1991 Act, to have been received by the person'.

Item 51 omits the reference in subparagraph 110(1A)(b)(ii) to 'ceased to earn, derive or receive, or to be taken to earn, derive or receive, employment income' and substitutes a reference to 'ceased to be taken, in accordance with that Division (that is, Division 1AA of Part 3.10), to have received employment income'.

Item 52 omits the reference in subparagraph 110(2A)(b)(i) to 'employment income that is earned, derived or received, or that is taken to have been earned, derived or received, by the person' and substitutes a reference to 'the person's employment income taken, in accordance with Division 1AA of Part 3.10 of the 1991 Act, to have been received by the person'.

Item 53 omits the reference in subparagraph 110(2A)(b)(ii) to 'ceased to earn, derive or receive, or to be taken to earn, derive or receive, employment income' and substitutes a reference to 'ceased to be taken, in accordance with that Division (that is, Division 1AA of Part 3.10), to have received employment income'.

Item 54 omits the reference in subparagraph 110(3A)(g)(i) to 'employment income that is earned, derived or received, or that is taken to have been earned, derived or received, by the person' and substitutes a reference to 'the person's employment



income taken, in accordance with Division 1AA of Part 3.10 of the 1991 Act, to have been received by the person’.

Item 55 omits the reference in subparagraph 110(3A)(g)(ii) to ‘ceased to earn, derive or receive, or to be taken to earn, derive or receive, employment income’ and substitutes a reference to ‘ceased to be taken, in accordance with that Division (that is, Division 1AA of Part 3.10), to have received employment income’.

These amendments are a consequence of the insertion, by item 37 of this Part, of new employment income attribution rules in Division 1AA of Part 3.10 of the Social Security Act. Employment income will no longer be assessed in relation to the day it is ‘earned, derived or received’ or ‘taken to have been earned, derived or received’ by a person. Instead, employment income will be assessed in respect of the period it is ‘taken to be received’ by the new income attribution rules in Division 1AA.

**Items 56, 57, 58, 59, 60 and 61** amend subsection 118(2A), subsection 118(2B), subsection 118(5A), subsection 118(5B), subsection 118(6A) and subsection 118(6B). These subsections set out date of effect rules for adverse determinations under the social security law. An ‘adverse determination’ is defined in section 117 as a rate reduction determination (under section 79), a decision to cancel or suspend a person’s payment (under section 80), a decision to cancel or suspend a person’s payment for non-compliance with certain notices (under section 81), a rate reduction determination following non-compliance with a notice relating to rent assistance (under section 81A) and a decision to cancel or suspend a person’s payment for failing to take action to obtain a foreign payment (under section 82).

A common requirement in the date of effect rules contained in these subsections is that a person ‘earns, derives or receives, or is taken to earn, derive or receive, employment income in an instalment period of the person’.

Items 56, 57, 58, 59, 60 and 61 amend paragraph 118(2A)(b), subparagraph 118(2B)(b)(ii), paragraph 118(5A)(b), subparagraph 118(5B)(b)(ii), paragraph 118(6A)(g) and subparagraph 118(6B)(g)(ii) to omit references to ‘earns, derives or receives, or is taken to earn, derive or receive,’ and substitute references to the words ‘is taken, in accordance with Division 1AA of Part 3.10 of the 1991 Act, to have received’.

These amendments are a consequence of the insertion, by item 37 of this Part, of new employment income attribution rules in Division 1AA of Part 3.10 of the Social Security Act. Employment income will no longer be assessed in relation to the day it is ‘earned, derived or received’ or ‘taken to have been earned, derived or received’ by a person. Instead, employment income will be assessed in respect of the period it is ‘taken to be received’ by the new income attribution rules in Division 1AA.

### *Veterans’ Entitlements Act*

**Items 62 and 63** amend section 45UF, the pension bonus scheme provision used to determine a person’s annual pension rate for the purposes of calculating their pension bonus amount under the Veteran’s Entitlements Act.

The amendments renumber the existing section as subsection 45UF(1) and insert new subsection 45UF(2) into the Veterans' Entitlements Act. New subsection 45UF(2) is drafted in substantially the same terms as new subsection 93H(2A) of the Social Security Act (discussed above in item 5 of this Part).

This amendment will, like new subsection 93H(2A) of the Social Security Act, ensure that where a person claims their pension bonus, employment income previously earned by the person will not, once paid to the person, reduce the amount of the pension bonus payable to them under the pension bonus scheme.

**Items 64 to 67** amend section 46AA which provides for the determination of the amount of the 'work bonus' for the purposes of determining the 'income concession amount' for the relevant 'pension period'.

The 'work bonus' is available to service pensioners and income support supplement recipients who are of 'qualifying age' (60 years) and provides for an 'income concession amount' of up to \$300 per fortnight of the eligible person's 'employment income' to be disregarded for determining the rate of service pension or income support supplement.

The examples to subsections 46AA(2), (4) and (4A) are amended to replace references to the amount of 'work bonus income' a person has 'earned' for a 'pension period' with references to the amount of 'work bonus income' a person 'has' for the 'pension period'.

For the purposes of the 'work bonus' provisions 'employment income' will no longer be assessed in relation to the day it is earned, derived or received' or 'taken to have been earned, derived or received' by a person. Instead, 'employment income' will be assessed in respect of the 'pension period' in which it has been received.

The 'work bonus income' a person 'has' for a 'pension period' is determined under subsection 46AA(4BA) with reference to the 'employment income' of the person as determined under section 46AB.

Paragraph 46AA(4BA)(a) is amended to change the reference to the 'employment income for that [pension] period' to the 'employment income received in that [pension] period'. The amendment is a consequence of the amendments to subsection 46AB(1) (made by items 68 and 69 of this Part) that remove the references to 'employment income' as being 'earned, derived or received'.

**Items 68 and 69** amend subsection 46AB(1). Subsection 46AB(1) distinguishes those amounts of 'ordinary income' which are from the remunerative work of the person and as such are to be treated as 'employment income' for the purposes of the 'work bonus' provisions in section 46AA.

Under paragraph 46AB(1)(a) 'employment income' is the 'ordinary income' that a person has 'earned, derived or received, or that is taken to have been earned, derived or received by the person, from remunerative work undertaken as an employee in an employer/ employee relationship'.

The effect of the amendment to paragraph 46AB(1)(a) is to clarify that 'employment income' is the ordinary income of the person 'that is for the remunerative work of the person' undertaken as an employee in an employer/ employee relationship but also income from remunerative work not yet undertaken the person .

Paragraph 46AB(1)(b) includes a list of the types of income and payments that are to be included in the definition of 'employment income' (salary, wages, commissions and employment-related fringe benefits and if the person is engaged on a continuing basis in an employer/ employee relationship – a leave payment).

Subparagraph 46AB(1)(b)(i) is amended to remove the reference to the 'employment income' of the person including but not being limited to salary, wages, commissions and employment-related fringe benefits 'that are so earned, derived or received or taken to have been so earned, derived or received'.

Paragraphs 46AB(1)(c) to (i) list amounts that are to be excluded from the definition of 'employment income' (superannuation payments, certain compensation payments relating to a person's inability to earn derive or receive income from remunerative work, certain leave and termination payments and other payments).

**Item 70** amends section 46AC under which the amount of the 'unused concession balance' is determined for the purposes of the 'work bonus concession' under section 46AA.

For the purposes of the 'work bonus' provisions 'employment income' will no longer be assessed in relation to the day it is earned, derived or received' or 'taken to have been earned, derived or received' by a person. Instead, 'employment income' will be assessed in respect of the 'pension period' in which it has been received.

The example to subsection 46AC(2) is amended to replace the reference to the amount of 'work bonus income' a person 'earns' for a 'pension period' with a reference to the amount of 'work bonus income' a person 'has' for the 'pension period'.

**Item 71** amends section 46AD which is applicable in the circumstances where it is determined that an invalidity service pensioner will be eligible for both the ordinary income concession (referred to as the 'initial amount') available under section 115G (to participants in the Veterans' Vocational Rehabilitation Scheme) and the 'work bonus' concession available for 'employment income' under section 46AA.

For the purposes of the 'work bonus' provisions 'employment income' will no longer be assessed in relation to the day it is earned, derived or received' or 'taken to have been earned, derived or received' by a person. Instead, 'employment income' will be assessed in respect of the 'pension period' in which it has been received.

The example to subsection 46AD(3) is amended to replace the reference to the amount of 'work bonus income' a person 'earns' for a 'pension period' with a reference to the amount of 'work bonus income' a person 'has' for the 'pension period'.

**Item 72** is an application and savings provision for the amendments made by this Part to the Social Security Act and Social Security Administration Act.

Sub-item 72(1) provides that the amendments made by items 4, 6 to 11, 15, 16, 20, 21, 25, 27, 30, 34, 35, 37 (to the extent that it substitutes new sections 1073A, 1073B and 1073BA of the Social Security Act) and 38 to 42 apply in relation to an amount of employment income paid to or for the benefit of a person:

- (a) on or after the commencement of this item; and
- (b) if the person has a transitional instalment period—after the beginning of that period and before this item commences.

***Transitional instalment period*** is defined in sub-item 72(11) as an instalment period that begins before the day on which this item commences and includes that day.

Sub-item 72(2) provides that sub-item 72(1) does not apply in relation to an amount of employment income to the extent that the amount:

- (a) was earned or derived before the commencement of this item; and
- (b) has been taken into account in working out the person's rate of social security pension or social security benefit.

Sub-item 72(1) and sub-item 72(2) address the situation in which a person is paid employment income during an instalment period that begins on or after the day the Bill commences and the situation in which a person is paid employment income during a 'transitional instalment period'.

#### *Example 1*

A person's social security instalment period starts on 1 July 2020. Assume a 1 July 2020 commencement for the Bill. This instalment period is therefore not a 'transitional instalment period' as the instalment period begins on the day the Bill commences (not on a day before commencement). The person is paid \$150 of employment income on 10 July 2020. This consists of \$50 employment income earned or derived before 1 July 2020 and \$100 employment income earned after 1 July 2020. The person has already had the \$50 employment income earned or derived before 1 July 2020 taken into account in determining their rate for the instalment period ending 30 June 2020. The person would therefore have \$100 applied from 1 July 2020 to 14 July 2020 under new section 1073A (see item 37 of this Part) when determining the person's rate of social security for that instalment period.

#### *Example 2*

A person's social security instalment period starts on 24 June 2020 and ends on 7 July 2020. Assume a 1 July 2020 commencement for the Bill. The instalment period is therefore a 'transitional instalment period'. The person is paid \$100 of employment income on 29 June 2020. This consists of \$50 employment income earned or derived

before 24 June 2020 and \$50 employment income earned after 24 June 2020. The person has already had the \$50 employment income earned or derived before 24 June 2020 taken into account in determining their rate of payment for the instalment period ending 23 June 2020. The person would therefore have \$50 applied from 24 June 2020 to 7 July 2020 under new section 1073A (see item 37 of this Part) when determining the person's rate of social security for that instalment period (that is, the transitional instalment period).

### *Example 3*

A person's social security instalment period starts on 24 June 2020 and ends on 7 July 2020. Assume a 1 July 2020 commencement for the Bill. The instalment period is therefore a 'transitional instalment period'. The person is paid \$100 of employment income on 2 July 2020. This consists of \$50 employment income earned or derived before 24 June 2020 and \$50 employment income earned or derived after 24 June 2020. The person has already had the \$50 employment income earned or derived before 24 June 2020 taken into account in determining their rate of payment for the instalment period ending 23 June 2020. The person would therefore have \$50 applied from 24 June 2020 to 7 July 2020 under new section 1073A (see item 37 of this Part) when determining the person's rate of social security for that instalment period (that is, the transitional instalment period).

Sub-item 72(3) provides that sub-item 72(1) does not apply in relation to a lump sum amount paid to a person, or a partner of a person, after the beginning of a transitional instalment period of the person and before this item commences, where the lump sum amount is covered by point 1067G-H23A, 1067G-H23B, 1067L-D20, 1067L-D21, 1068-G7B or 1068-G7C of the Social Security Act. This sub-item is intended to ensure that lump sum amounts for remunerative work that are paid to a person prior to the commencement of the Bill continue to be assessed under the current provisions in the rate calculators (that is, points 1067G-H23A, 1067G-H23B, 1067L-D20, 1067L-D21, 1068-G7B or 1068-G7C of the Social Security Act). These provisions apportion lump sum amounts for remunerative work over a period of 12 months beginning on the day on which the person, or their partner, becomes entitled to receive that amount. To the extent that a lump sum amount paid for remunerative work is 'employment income' under section 8 of the Social Security Act, and is paid on or after the commencement of the Bill, the new employment income attribution rules, inserted by item 37 of this Part, would apply to the assessment of the lump sum amount.

Sub-item 72(4) provides that sub-item 72(1) does not apply in relation to a lump sum amount of employment income in respect of which paragraphs 1073A(1)(a) and (b) of the Social Security Act are satisfied before the commencement of this item. Section 1073A of the Social Security Act, as in force immediately before that commencement, continues to apply in relation to that amount on and after that commencement.

Sub-item 72(5) provides that the amendments made by items 13, 14, 18, 19, 23 and 24 apply in relation to a lump sum amount that is paid on or after the commencement of this item.

Sub-item 72(6) provides that new section 1073BB of the Social Security Act (the new anti-avoidance provision - see item 37 of this Part), as substituted by this Part, applies in relation to an amount of employment income referred to in new paragraph 1073BB(1)(b) of that Act that is earned or derived on or after the commencement of this item, whether:

- (a) the instalment period referred to in that paragraph begins before, on or after that commencement; or
- (b) the scheme was entered into, or commenced to be carried out, before, on or after that commencement.

Sub-item 72(7) provides that new paragraph 1073BD(c) of the Social Security Act, as substituted by this Part, applies in relation to an amount of employment income that, on or after the commencement of this item, a person is taken to receive, whether the instalment period referred to in that paragraph begins before, on or after that commencement.

Sub-item 72(8) provides that the amendments of sections 96, 97 and 97B of the Social Security Administration Act made by this Part apply in relation to an amount of employment income paid on or after the commencement of this item.

Sub-item 72(9) provides that sections 96, 97 and 97B of the Social Security Administration Act, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to income, or increased income, earned by a person before that commencement from the person's employment.

Sub-item 72(10) provides that the amendments of sections 110 and 118 of the Social Security Administration Act made by this Part apply in relation to:

- (a) an instalment period of a person that begins on or after the commencement of this item; and
- (b) a transitional instalment period of a person.

**Item 73** is an application provision for most of the amendments made by this Part to the Veterans' Entitlements Act. This provision states that the amendment made by item 67 applies in respect of a pension period that includes the day on which this item commences and later pension periods.

## ***Part 2 – Exchange of information relating to taxation information***

The use of taxation information (primarily data from the Single Touch Payroll system) to assess employment income under the social security law when it is paid, and to administer Australia's tax-transfer system, will require Services Australia and the Australian Taxation Office to exchange information. This Part will amend the Family Assistance Administration Act, the Social Security Administration Act and the Student Assistance Act to remove any doubt that the administering Secretary and other officers who make decisions under the family assistance law, social security

law and Student Assistance Act can participate in these information exchanges consistently with the confidentiality provisions of those Acts and the Privacy Act. The provisions of this Part that do this are enacted for the avoidance of doubt, but will also enhance transparency in how Single Touch Payroll data is used.

This Part will also amend the Family Assistance Administration Act and the Social Security Administration Act to confirm, for the avoidance of doubt, that these information exchanges may be automated using computer programs. It will further amend the Student Assistance Act to provide for the automation of these information exchanges using computer programs.

Existing provisions of the taxation law will underpin the participation of the Australian Taxation Office in these information exchanges. The taxation law includes the *Taxation Administration Act 1953* amongst other Acts and instruments (see the definition of 'taxation law' in section 995-1 of the *Income Tax Assessment Act 1997*).

### *Family Assistance Administration Act*

The Australian Government will use taxation information (primarily data from the Single Touch Payroll system) to administer the family assistance law.<sup>2</sup> Among other things, the family assistance law provides for various forms of family tax benefits (see Parts 3 and 4 of the Family Assistance Act) and child care subsidy (see Part 4A of the Family Assistance Act).

The use of Single Touch Payroll data to administer the family assistance law requires Services Australia and the Australian Taxation Office to exchange information. To engage in these information exchanges, Services Australia will obtain, make a record of, disclose and use protected information, as that term is defined in subsection 3(1) of the Family Assistance Administration Act (referred to in this Explanatory Memorandum as 'protected family assistance information'). These information exchanges may be automated using computer programs. The amendments to the Family Assistance Administration Act in this Part remove any doubt that these things can be done.

**Item 74** inserts new section 161A. This new section contains definitions of new terms '**taxation information**' and '**taxation officer**' for the purposes of Division 2 of Part 6 of the Family Assistance Administration Act. This division of Part 6 deals with the confidentiality of protected family assistance information.

The term 'taxation information' is defined to mean information held by a taxation officer other than a tax file number (TFN). The definition makes clear that taxation

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<sup>2</sup> Section 3 of the Family Assistance Administration Act defines the 'family assistance law' as follows:

**family assistance law** means any one or more of the following:

- (a) this [Family Assistance Administration Act];
- (b) the Family Assistance Act;
- (c) any instrument (including regulations) made under this Act or the Family Assistance Act;
- (d) Schedules 5 and 6 to the A New Tax System (Family Assistance and Related Measures) Act 2000.

information includes protected information (other than a TFN) within the meaning of subsection 355-30(1) in Schedule 1 to the *Taxation Administration Act 1953*. TFNs are excluded from the definition of taxation information to safeguard this information from use for purposes unrelated to tax.

'Taxation officer' is defined to mean a taxation officer within the meaning of the subsection 355-30(1) in Schedule 1 to the *Taxation Administration Act 1953* or an entity covered by section 355-15 in that Schedule.

These terms are defined consistently with definitions of these terms the Bill inserts in the Social Security Administration Act and the Student Assistance Act (see items 86 and 93 of this Part).

**Item 75** repeals the heading of section 162 and replaces it with a new heading '*Permitted obtaining of, making a record of, disclosure of or use of protected information*'. This change will clarify for the reader that section 162 authorises specific actions with respect to protected family assistance information. No changes are made to the substance of this section.

**Items 76 and 77** insert new notes into section 162 of the Family Assistance Administration Act.

Item 76 inserts a note into subsection 162(1) of the Family Assistance Administration Act that provides that new section 162A (inserted by this Part) is an example of obtaining protected information for the purposes of the family assistance law.

Item 77 inserts a note into subsection 162(2) of the Family Assistance Administration Act that provides that new section 162A (inserted by this Part) is an example of a disclosure of, recording of or use of protected information for the purposes of the family assistance law.

These notes are inserted to draw the reader's attention to the connection between new section 162A of the Family Assistance Administration Act and existing section 162 of that Act. New section 162A of the Family Assistance Administration Act is one example of how protected information can be obtained, recorded, used or disclosed for the purposes of the family assistance law under section 162.

Section 15AD of the *Acts Interpretation Act 1901* provides that if an Act includes an example of the operation of a provision the example is not exhaustive and may extend the operation of the provision.

**Item 78** inserts new section 162A to deal with the obtaining of, making a record of, disclosure of or use of protected family assistance information relating to taxation information. The Bill inserts an equivalent provision in the Social Security Administration Act (see item 90 of this Part) and a similar provision in the Student Assistance Act (see item 100 of this Part).

Existing paragraph 162(1)(a) of the Family Assistance Administration Act provides that a person may obtain protected family assistance information if the information is obtained for the purposes of the family assistance law. Under existing



paragraph 162(2)(d) of the Family Assistance Administration Act, a person may make a record of, disclose, or otherwise use protected family assistance information if the record, disclosure or use made of the information by the person is made for the purposes of the family assistance law.

New subsection 162A(1) removes any doubt that a disclosure of protected family assistance information by an officer is made for the purposes of the family assistance law if the disclosure:

- is made to a taxation officer, and
- is for the purposes of a taxation officer matching the information against taxation information to facilitate the performance of functions, or the exercise of powers, under the family assistance law.

The purpose of this provision is to remove any doubt that a disclosure of protected family assistance information in the circumstances it describes is authorised under existing paragraph 162(2)(d) as being for the purposes of the family assistance law.

New subsection 162A(2) is supplementary to subsection 162A(1) in that it removes any doubt that:

- the obtaining of protected family assistance information in connection with a disclosure referred to in new subsection 162A(1) is authorised under existing paragraph 162(1)(a) as being for the purposes of the family assistance law, and
- the making a record of, or use of, protected family assistance information in connection with a disclosure referred to in new subsection 162A(1) is authorised under existing paragraph 162(2)(d) as being for the purposes of the family assistance law.

New subsection 162A(3) removes any doubt that the collection of 'personal information' that is 'taxation information' collected from a taxation officer for the purposes of the family assistance law is authorised for the purposes of the Privacy Act. This provision relies on the concept of 'personal information' to align with the language of the Privacy Act.

New subsection 162A(4) provides that if an officer obtains personal information that is taxation information in accordance with new subsection 162A(3), the officer will have obtained the information 'under' the family assistance law. This provision removes any doubt that taxation information obtained from the Australian Taxation Office for the purposes of the family assistance law is protected family assistance information. To fall within the concept of 'protected information' as that term is defined in existing subsection 3(1) of the Family Assistance Administration Act, the information must have been obtained 'under' the family assistance law.

New subsection 162A(4) removes any possible connotation that could be associated with the word 'under' in the definition of 'protected information' as meaning obtained in the exercise of a specific statutory power under the family assistance law. In doing

so, it removes any doubt that existing subsection 162(2) (which deals with protected family assistance information but not other information) will authorise the making of a record of, disclosure of, or other use of the information for the purposes of the Privacy Act. It also removes any doubt that the confidentiality provisions in Division 2 of Part 6 of the Family Assistance Administration Act cover this information.

New subsection 162A(5) provides that new section 162A does not limit existing section 162 of the Family Assistance Administration Act. This new subsection makes clear that new section 162A is only one example of how information can be obtained, recorded, used or disclosed for the purposes of the family assistance law and that it should not limit the range of circumstances in which existing section 162 of the Family Assistance Administration Act can apply.

New subsection 162A(5) indicates that new section 162A does no more than make explicit that existing section 162 already operates to facilitate the information exchanges necessary to enable the use of Single Touch Payroll data to administer the family assistance law. By doing so, it is intended to make clear that new section 162A does not imply that the access and use of protected family assistance information is not authorised in other circumstances.

New section 162A is concerned with the actions of 'officers'. The term 'officer' is defined in subsection 3(1) of the Family Assistance Administration Act.

**Items 79 and 80** replace, respectively, the headings of existing sections 163 and 164. These sections create offences for the unauthorised access to or use of protected family assistance information. The amendments do not alter the elements of these offences.

For section 163, the new heading refers to unauthorised obtaining of protected family assistance information (instead of general 'unauthorised access'). For existing section 164, the new heading refers to unauthorised making a record of, disclosure of or use of protected family assistance information (instead of general 'unauthorised use').

**Items 81 and 82** amend section 223. This provision provides for the use of computer programs to make decisions. The Bill makes identical amendments to section 6A of the Social Security Administration Act, which is equivalent to section 223 (see items 83 and 84 of this Part).

Item 81 amends subsection 223(1) to insert the phrase 'or any other officer' after the reference to decisions of the Secretary. This amendment removes any doubt that the Secretary may arrange for the use of computer programs for any purpose for which the Secretary or any other officer may make decisions under the family assistance law. The term 'officer' is defined in existing subsection 3(1) of the Family Assistance Administration Act.

This amendment addresses a possible argument that existing subsection 223(1) only applies for decisions that are specifically vested in the Secretary. In doing so, the amendment ensures that things done under existing section 162 (so far as those things are decisions) may be done using a computer program. Existing section 162

authorises 'a person' (and not the Secretary specifically) to access or use protected family assistance information in certain circumstances.

Item 82 inserts a note at the end of subsection 223(1) of the Family Assistance Administration Act to refer the reader to the definition of 'decision' in existing subsection 3(1) of the Family Assistance Administration Act. This definition of decision refers to the definition of decision in the *Administrative Appeals Tribunal Act 1975*, which covers the doing or refusing to do any act or thing (see paragraph 3(3)(g) of that Act). The note gives as an example of a decision in subsection 3(1) of the Family Assistance Administration Act the doing of things under existing subsection 162(1) or (2) of that Act (which, as noted, deal with access to and use of protected family assistance information).

The purpose of the note is to provide a clear indication that the Secretary may arrange for the use of computer programs to obtain protected family assistance information under subsection 162(1) and disclose it under subsection 162(2) to the Australian Taxation Office as well as to the person to whom the information relates. In *Spence v Queensland* [2019] HCA 15, a majority of the High Court accepted (at [33]) that a legislative note can indicate how a provision is to be read. Gordon J (at [191]) and Edelman J (at [334]) also accepted this in separate judgements.

The amendments made by these items do not facilitate the use of computer programs to make decisions about a person's eligibility for or rate of family assistance.

The amendments made by these items also do not provide for the automation of debt recovery under the family assistance law.

The amendments made by these items are only intended to clarify that decisions under section 162 of the Family Assistance Administration Act to access or use protected family assistance information are decisions under section 223.

Subsection 223(2) will continue to ensure that decisions made by a computer program are taken to be decisions of the Secretary. This will mean that the Secretary will continue to be responsible for all decisions under the family assistance law (including decisions under section 162) made using a computer program authorised under section 223.

### *Social Security Administration Act*

The Australian Government will use taxation information (primarily Single Touch Payroll data) to administer the social security law, including for the purpose of assessing employment income when it is paid, rather than when it is earned. As for using this information to administer the family assistance law, using this information to administer the social security law will require Services Australia and the Australian Taxation Office to exchange information. To engage in these information exchanges, Services Australia will obtain, make a record of, disclose and use protected information, as that term is defined in subsection 23(1) of the Social Security Act (referred to in this Explanatory Memorandum as 'protected social security information'). These information exchanges may be automated using computer

programs. The amendments to the Social Security Administration Act in this Part remove any doubt that these things can be done.

**Items 83 and 84** amend section 6A. This section provides for the use of computer programs to make decisions. The Bill makes identical amendments to section 223 of the Family Assistance Administration Act, which is equivalent to section 6A (see items 81 and 82 of this Part).

Item 83 amends subsection 6A(1) to insert the phrase ‘or any other officer’ after the reference to decisions of the Secretary. This amendment removes any doubt that the Secretary may arrange for the use of computer programs for any purpose for which the Secretary or any other officer may make decisions under the social security law. The term ‘officer’ is defined in existing subsection 23(1) of the Social Security Act, and has the same meaning in the Social Security Administration Act under existing subsection 3(2) of that Act, unless a contrary intention appears.

As for the equivalent amendment to subsection 223(1) of the Family Assistance Administration Act, the amendment of subsection 6A(1) addresses a possible argument that the existing provision only applies for decisions that are specifically vested in the Secretary. In doing so, the amendment ensures that things done under existing section 202 (so far as those things are decisions) may be done using a computer program. Existing section 202 authorises ‘a person’ (and not the Secretary specifically) to access or use protected social security information in certain circumstances.

Item 84 inserts a note at the end of subsection 6A(1) to refer the reader to the definition of ‘decision’ in existing subsection 23(1) of the Social Security Act. This definition of decision refers to the definition of decision in the *Administrative Appeals Tribunal Act 1975*, which covers the doing or refusing to do any act or thing (see paragraph 3(3)(g) of that Act). The note gives as an example of a decision in existing subsection 23(1) of the Social Security Act the doing of things under existing subsection 202(1) or 202(2) of Social Security Administration Act (which deal with access to and use of protected social security information).

The purpose of the note is to provide a clear indication that the Secretary may arrange for the use of computer programs to obtain protected social security information under subsection 202(1) of the Social Security Administration Act, and make a record, disclose, or use that information under subsection 202(2) of that Act. As noted in relation to amendments to the Family Assistance Administration Act, a majority of the High Court in *Spence v Queensland* [2019] HCA 15 accepted (at [33]) that a legislative note can indicate how a provision is to be read. Gordon J (at [191] and Edelman J (at [334]) also accepted this in separate judgements.

The amendments made by these items do not facilitate the use of computer programs to make decisions about a person’s qualification for or rate of social security.

The amendments made by these items also do not provide for the automation of debt recovery under the social security law.

The amendments made by these items are only intended to clarify that decisions under section 202 of the Social Security Administration Act to access or use protected social security information are decisions under section 6A.

Subsection 6A(2) will continue to ensure that decisions made by a computer program are taken to be decisions of the Secretary. This will mean that the Secretary will continue to be responsible for all decisions under the social security law (including decisions under section 202) made using a computer program authorised under section 6A.

**Item 85** repeals the heading of existing section 201A and substitutes a new heading: '*Definitions*'. Existing section 201A currently defines only the term 'officer' for the purposes of Division 3 of Part 5 of the Social Security Administration Act. This provision will be extended to serve as a general definition section for Division 3.

**Item 86** will insert into existing section 201A new definitions of the terms ***taxation information*** and ***taxation officer*** for the purposes of Division 3 of Part 5 of the Social Security Administration Act. This division of Part 5 deals with the confidentiality of protected social security information.

The term '*taxation information*' is defined to mean information held by a taxation officer other than a tax file number (TFN). The definition makes clear that taxation information includes protected information (other than a TFN) within the meaning of subsection 355-30(1) in Schedule 1 to the *Taxation Administration Act 1953*. TFNs are excluded from the definition of taxation information to safeguard this information from use for purposes unrelated to tax.

'*Taxation officer*' is defined to mean a taxation officer within the meaning of the subsection 355-30(1) in Schedule 1 to the *Taxation Administration Act 1953* or an entity covered by section 355-15 in that Schedule.

These terms are defined consistently with definitions of these terms that the Bill inserts in the Family Assistance Administration Act and the Student Assistance Act (see items 74 and 93 of this Part).

**Item 87** repeals the heading of existing section 202 and replaces it with a new heading: '*Permitted obtaining of, making a record of, disclosure or of use of protected information*'. This change will clarify for the reader that section 202 authorises specific actions with respect to protected social security information. No changes are made to the substance of this section.

**Items 88 and 89** insert new notes into section 202 of the Social Security Administration Act.

Item 88 inserts a note into subsection 202(1) of the Social Security Administration Act that provides that new section 202A (inserted by this Part) is an example of obtaining protected information for the purposes of the social security law.

Item 89 inserts a note into subsection 202(2) of the Social Security Administration Act that provides that new section 202A (inserted by this Part) is an example of a

disclosure of, recording of or use of protected information for the purposes of the social security law.

These notes are inserted to draw the reader's attention to the connection between new section 202A of the Social Security Administration Act and existing section 202 of that Act. New section 202A of the Social Security Administration Act is one example of how protected information can be obtained, recorded, used or disclosed for the purposes of the social security law under section 202.

Section 15AD of the *Acts Interpretation Act 1901* provides that if an Act includes an example of the operation of a provision the example is not exhaustive and may extend the operation of the provision.

**Item 90** inserts new section 202A to deal with the obtaining of, making a record of, disclosure of or use of protected social security information relating to taxation information. The Bill inserts an equivalent provision in the Family Assistance Administration Act (see item 78 of this Part) and a similar provision in the Student Assistance Act (see item 100 of this Part).

Existing paragraph 202(1)(a) of the Social Security Administration Act provides that a person may obtain protected social security information if the information is obtained for the purposes of the social security law. Under existing paragraph 202(2)(d) of the Social Security Administration Act, a person may make a record of, disclose, or otherwise use protected social security information if the record, disclosure or use of the information by the person is made for the purposes of the social security law.

New subsection 202A(1) removes any doubt that a disclosure of protected social security information by an officer is made for the purposes of the social security law if the disclosure is:

- made to a taxation officer, and
- is for the purposes of a taxation officer matching the information against taxation information to facilitate the performance of functions, or the exercise of powers, under the social security law.

The purpose of this provision is to remove any doubt that a disclosure of protected social security information in the circumstances it describes is authorised under existing paragraph 202(2)(d) as being for the purposes of the social security law.

New subsection 202A(2) is supplementary to new subsection 202A(1) in that it removes any doubt:

- the obtaining protected social security information in connection with a disclosure referred to in new subsection 202A(1) is authorised under existing paragraph 202(1)(a) as being for the purposes of the social security law, and
- the making a record of, or use of, protected family assistance information in connection with a disclosure referred to in new subsection 202A(1) is

authorised under existing paragraph 202(2)(d) as being for the purposes of the social security law.

New subsection 202A(3) removes any doubt that the collection of 'personal information' that is taxation information collected from a taxation officer for the purposes of the family assistance law is authorised for the purposes of the Privacy Act. This provision relies on the concept of personal information to align with the language of the Privacy Act.

New subsection 202A(4) provides that if an officer obtains personal information that is taxation information in accordance with new subsection 202A(3), the officer will have obtained the information 'under' the social security law. This provision removes any doubt that taxation information obtained from the Australian Taxation Office for the purposes of the social security law is protected social security information. Information must have been obtained 'under' the social security law to fall within the concept of 'protected information' as that term is defined in existing subsection 23(1) of the Social Security Act (and as applied in the Social Security Administration Act under subsection 3(2) of that Act).

New subsection 202A(4) removes any possible connotation that could be associated with the word 'under' in the definition of 'protected information' as meaning obtained in the exercise of a specific statutory power under the social security law. In doing so, it removes any doubt that existing subsection 202(2) (which deals with protected social security information but not other information) will authorise the making of a record of, disclosure of, or other use of the information for the purposes of the Privacy Act. It also removes any doubt that the confidentiality provisions in Division 3 of Part 5 of the Social Security Administration Act cover this information.

New subsection 202A(5) provides that new section 202A does not limit existing section 202 of the Social Security Administration Act. This new subsection is included for the same reasons new subsection 162A(5) of the Family Assistance Administration Act is included in new section 162A of that Act. That is, new subsection 202A(5) makes clear that new section 202A is only one example of how information can be obtained, recorded, used or disclosed for the purposes of the social security law and that it should not limit the range of circumstances in which existing section 202 of the Social Security Administration Act can apply.

As new subsection 162A(5) of the Family Assistance Administration Act does for new section 162A of that Act, new subsection 202A(5) indicates that new section 202A does no more than make explicit that existing section 202 already operates to facilitate the information exchanges necessary to enable the use of Single Touch Payroll data to administer the social security law. By doing so, it is intended to make clear that new section 202A does not imply that the access and use of protected social security information is not authorised in other circumstances.

The relevant definition of officer for new section 202A is the definition of this term in section 201A of the Social Security Administration Act. This definition displaces the general definition in subsection 23(1) of the Social Security Act (as applied in the Social Security Administration Act under subsection 3(2) of that Act) for Division 3 of

Part 5 of the Social Security Administration Act (in which new section 202A is inserted).

**Items 91 and 92** replace, respectively, the headings of sections 203 and 204 of the Social Security Administration Act. These sections create offences for the unauthorised access or use of protected social security information. The amendments do not alter the elements of the offences.

For section 203, the new heading refers to unauthorised obtaining of protected social security information (instead of general 'unauthorised access'). For section 204, the new heading refers to unauthorised making a record of, disclosure of or use of protected social security information (instead of general 'unauthorised use').

### Student Assistance Act 1973

The Australian Government will use taxation information (primarily Single Touch Payroll data) to administer the Student Assistance Act and the ABSTUDY scheme. Using this information for this purpose will require Services Australia and the Australian Taxation Officer to exchange information (as is the case for using this information to administer the family assistance law and the social security law). To engage in these information exchanges, Services Australia will obtain, make a record of, disclose and use protected information, as that term is defined in existing subsection 3(1) of the Student Assistance Act (referred to in this Explanatory Memorandum as 'protected student assistance information'). The amendments to the Student Assistance Act in this Part remove any doubt that these things can be done. The amendments to the Student Assistance Act in this Part also ensure these information exchanges may be automated using computer programs.

**Item 93** inserts new section 350A. This new section contains definitions of the terms '**taxation information**' and '**taxation officer**' for the purposes of Division 3 of Part 10 of the Student Assistance Act. This division of Part 10 deals with the confidentiality of protected student assistance information.

The term '*taxation information*' is defined to mean information held by a taxation officer other than a tax file number (TFN). The definition makes clear that taxation information includes protected information (other than a TFN) within the meaning of subsection 355-30(1) in Schedule 1 to the *Taxation Administration Act 1953*. TFNs are excluded from the definition of taxation information to safeguard this information from use for purposes unrelated to tax.

'*Taxation officer*' is defined to mean a taxation officer within the meaning of the subsection 355-30(1) in Schedule 1 to the *Taxation Administration Act 1953* or an entity covered by section 355-15 in that Schedule.

These terms are defined consistently with definitions of these terms that the Bill inserts in the Family Assistance Administration Act and the Social Security Administration Act (see items 74 and 86 of this Part).

**Item 94** repeals the heading of section 351 of the Student Assistance Act and replaces it with a new heading '*Permitted obtaining of, making a record of, disclosure*



*of or use of protected information*'. This change clarifies for the reader that section 351 authorises specific actions with respect to protected student assistance information'. No changes are made to the substance of this section.

**Items 95 and 98** insert new notes into section 351 of the Student Assistance Act.

Item 95 inserts a new note into subsection 351(1) of the Student Assistance Act that provides that new section 351A (inserted by this Part) is an example of obtaining protected information for the purposes of the Student Assistance Act (including the purposes of the administration of the ABSTUDY scheme).

Item 98 inserts a new note into subsection 351(2) of the Student Assistance Act that provides that new section 351A (inserted by this Part) is an example of a disclosure of, recording of or use of protected information for the purposes of the Student Assistance Act (including the purposes of the administration of the ABSTUDY scheme).

These notes are inserted to draw the reader's attention to the connection between new section 351A of the Student Assistance Act and existing section 351 of that Act. New section 351A of the Student Assistance Act is one example of how protected information can be obtained, recorded, used or disclosed for the purposes of the Student Assistance Act (including the purposes of the administration of the ABSTUDY scheme) under section 351.

Section 15AD of the *Acts Interpretation Act 1901* provides that if an Act includes an example of the operation of a provision the example is not exhaustive and may extend the operation of the provision.

**Item 96** makes a minor, consequential amendment to the existing note in subsection 351(1) of the Student Assistance Act. This is a result of the insertion, by item 95 of this Part, of a new note under this subsection.

**Item 97** repeals the heading of subsection 351(2) relating to the disclosure of protected information and replaces it with a new heading '*Making a record of, disclosure of or use of protected information*'. The new heading better identifies the scope of the provision. No changes are made to the substance of this section.

**Item 99** makes a minor, consequential amendment to the existing note in subsection 351(1) of the Student Assistance Act. This is a result of the insertion, by item 98 of this Part, of a new note under this subsection.

**Item 100** inserts a new section 351A to deal with the obtaining of, making a record of, disclosure of or use of protected student assistance information relating to taxation information. The Bill inserts a similar provision in the Family Assistance Administration Act (see item 78 of this Part) and the Social Security Administration Act (see item 90 of this Part).

Existing subsection 351(1) of the Student Assistance Act relevantly provides that a person may obtain protected student assistance information if the information is obtained for the purposes of that Act (including for the purposes of the administration

of the ABSTUDY scheme). Under existing paragraph 351(2)(d) of the Student Assistance Act, a person may make a record of, disclose, or otherwise use protected student assistance information if the record, disclosure or use made of the information by the person is made for the purposes of the Student Assistance Act (including the purposes of the administration of the ABSTUDY scheme).

New subsection 351A(1) removes any doubt that a disclosure of protected student assistance information by an officer is made for the purposes of the Student Assistance Act (including the purposes of the administration of the ABSTUDY scheme) if the disclosure:

- is made to a taxation officer, and
- is for the purposes of a taxation officer matching the information against taxation information to facilitate the performance of functions, or the exercise of powers, under the Student Assistance Act or the ABSTUDY scheme.

The purpose of this provision is to remove any doubt that a disclosure of protected student assistance information in the circumstances it describes is authorised under existing paragraph 351(2)(d) as being for the purposes of the Student Assistance Act (including the purposes of the administration of the ABSTUDY scheme).

New subsection 351A(2) is supplementary to new subsection 351A(1) in that it removes any doubt that:

- the obtaining of protected student assistance information in connection with a disclosure referred to in new subsection 351A(1) is authorised under existing subsection 351(1) as being for the purposes of the Student Assistance Act (including the purposes of the administration of the ABSTUDY scheme), and
- the making a record of, or use of, protected student assistance information in connection with a disclosure referred to in new subsection 351A(1) is authorised under paragraph 351A(2)(d) as being for the purposes of the Student Assistance Act (including the purposes of the administration of the ABSTUDY scheme).

New subsection 351A(3) removes any doubt that the collection of 'personal information' that is 'taxation information' collected from a taxation officer for the purposes of the Student Assistance Act (including the purposes of the administration of the ABSTUDY scheme) is authorised for the purposes of the Privacy Act. This provision relies on the concept of 'personal information' to align with the language of the Privacy Act.

New subsection 351A(4) provides that new section 351A does not limit existing section 351 of the Student Assistance Act. This new subsection is included for the same reasons new subsection 162A(5) of the Family Assistance Administration Act is included in new section 162A of that Act, and new subsection 202A(5) of the Social Security Administration Act is included in new section 202A of that Act. That is, new subsection 351A(4) makes clear that new section 351A is only one example of how information can be obtained, recorded, used or disclosed for the purposes of

the Student Assistance Act and the ABSUDY scheme and that it should not limit the range of circumstances in which existing section 351 of the Student Assistance Act can apply.

New subsection 351A(4) indicates that new section 351A does no more than make explicit that existing section 351 already operates to facilitate the information exchanges necessary to enable the use of taxation information (including STP data) to administer the Student Assistance Act and the ABSUDY scheme. By doing so, it is intended to make clear that new section 351A does not imply that the access and use of protected student assistance information is not authorised in other circumstances.

New section 351A is concerned with the actions of 'officers'. The term 'officer' is defined in subsection 3(1) of the Student Assistance Act.

New section 351A does not contain a provision equivalent to new subsection 162A(4) of the Family Assistance Administration Act (as inserted by item 78 of this Part) or new subsection 202A(4) of the Social Security Administration Act (as inserted by item 86 of this Part). The effect of these subsections is to remove any doubt that personal information that is taxation information obtained from the Australian Taxation Office is 'protected information' under the family assistance law and the social security law, as relevant.

There is no need to include an equivalent subsection in new section 351A. This is because the definition of 'protected information' in the Student Assistance Act is not the same as the definition of this term in the Family Assistance Administration Act or the Social Security Administration Act. Information must have been obtained 'under' the social security law or the family assistance law to fall within the concept of 'protected information' in the Family Assistance Administration Act and the Social Security Administration Act. The definition of 'protected information' in the Student Assistance Act instead includes a requirement that information has been obtained 'for the purposes of' that Act (including the purposes of the administration of the ABSTUDY scheme). This formulation has a plain operation, and quite clearly encompasses information obtained otherwise than in the exercise of specific statutory powers.

Item 100 also inserts new section 351B to enable the Secretary to arrange for the use of computer programs to make decisions. This provision has a narrower operation than section 223 of the Family Assistance Administration Act and section 6A of the Social Security Administration Act (as amended by items 81, 82, 83 and 84 of this Part), which are the equivalent provisions in those Acts.

New subsection 351B(1) limits the use of computer programs to purposes for which an officer may make a decision that is the doing of a thing under existing subsections 351(1) or (2) of the Student Assistance Act. These subsections deal with access to and use of protected student assistance information. The formulation of 'a decision that is the doing of a thing' is intended to link to the concept of a 'decision' to which the *Administrative Decisions (Judicial Review) Act 1977* applies. Paragraph 3(2)(g) of that Act relevantly provides that a reference in that Act to the making of a decision includes a reference to doing or refusing to do any 'act or thing'.

New subsection 351B(2) deems that a decision made by the operation of a computer program is a decision of the Secretary. Together with the link to the concept of decision in the *Administrative Decisions (Judicial Review) Act 1977*, this is intended to ensure that decisions made under the Student Assistance Act by operation of a computer program are amenable to judicial review. Subsection 223(2) of the Family Assistance Administration Act and subsection 6A(2) of the Social Security Administration Act operate in the same way.

New section 351B does not facilitate the use of computer programs for determining eligibility, rates of payment or recovering debts. This provision, on its terms, does not enable this. That is, new section 351B is not capable of underpinning the automation of decision-making regarding ABSTUDY eligibility, rates of payment or the automated recovery of debts under the Student Assistance Act (including ABSTUDY debts).

**Items 101 and 102** replace, respectively, the headings of existing sections 352 and 353. These sections create offences for the unauthorised access or use of protected student assistance information. The new headings better reflect the elements of the offences. The amendments do not alter the elements of the offences.

For existing section 352, the new heading refers to unauthorised obtaining of protected family assistance information (instead of general 'unauthorised access').

For section 353, the new heading refers to unauthorised making a record of, disclosure of or use of protected family student assistance information (instead of general 'unauthorised use').

### ***Part 3 – Other amendments***

#### ***Social Security Act***

**Items 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114 and 115** make minor, consequential amendments to the definition of 'ordinary income' in section 8 and various provisions in the social security rate calculators in sections 1064, 1066, 1066A, 1066B, 1067G, 1067L and 1068.

These amendments are a consequence of the insertion of new section 1072A in item 116 of this Part.

**Item 116** inserts new section 1072A after section 1072.

New subsection 1072A(1) provides that new section 1072A applies if:

- (a) a person has claimed a social security pension or a social security benefit; and
- (b) on or after the first day of the period of 12 months ending at the end of the day the person made the claim, the person receives an amount of income in the form of a lump sum payment of arrears of periodic payments; and
- (c) the lump sum payment is not income within the meaning of Division 1B or 1C of this Part; and
- (d) the lump sum payment is not in relation to remunerative work undertaken by the person; and
- (e) the lump sum payment is not an exempt lump sum; and
- (f) the lump sum payment is not a payment of compensation.

New subsection 1072A(2) provides that the Secretary may determine that the person is taken to have received the lump sum payment over such period, not exceeding 52 weeks, as the Secretary determines.

New subsection 1072A(3) provides that the period determined by the Secretary (that is, the period under new subsection 1072A(2)) must begin on the day on which the person received the lump sum payment.

New subsection 1072A(4) provides that for each day in the period determined by the Secretary (that is, the period under new subsection 1072A(2)), the person is taken to have received an amount of ordinary income worked out by dividing the amount of the lump sum payment by the number of days in that period.

New section 1072A could apply to a lump sum payment that represents an arrears of periodic payments made under an income protection insurance policy. The new section would ensure that a lump sum payment of this kind can be assessed as ordinary income of a person for a period determined by the Secretary (not exceeding 52 weeks) instead of only being assessed in the particular social security instalment period in which it is received.

New section 1072A could also apply where a person has had their defined benefit income stream payments suspended for a period and then has their payments resumed at a later day. If the person is entitled to receive a lump sum payment of arrears to cover the period of the suspension of their defined benefit income stream payments, new section 1072A would allow the Secretary to attribute that lump sum payment for a period determined by the Secretary (not exceeding 52 weeks).

**Item 117** amends subsection 1228A(3). Section 1228A is a debt provision that applies to social security recipients that receive a lump sum 'comparable foreign payment' in respect of the same period during which they have received a social security payment.

A 'comparable foreign payment' is defined in subsection 23(1) as a payment that is 'available from a foreign country' and 'similar to a social security pension'.

Subsection 1228A(1) enables a debt to arise under the social security law if:

- an amount was paid to a person by way of a social security payment in respect of particular period;
- the person or the person's partner receives a lump sum payment of arrears of a comparable foreign payment in respect of the same period; and
- if that lump sum were paid as periodical payment, it would reduce the social security payments paid in respect of that period.

The amount by which the social security payment would have been reduced over the period represented by the lump sum arrears payment is a debt due to the Commonwealth (see subsection 1228A(2)).

Subsection 1228A(3) clarifies that section 1073 (which allows certain income amounts to be apportioned across 12 months) does not apply to the lump sum.

This item amends subsection 1228A(3) to omit the words 'Section 1073 does' and substitute the words 'Sections 1072A and do'. This amendment will ensure that both section 1073 and proposed new section 1072A (inserted by item 116 of this Part) will not apply to a lump sum that is subject to section 1228A.

**Item 118** is an application provision for new section 1072A of the Social Security Act, as inserted by this Part. It provides that the new section applies in relation to a lump sum payment received on or after the commencement of this item.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

*Prepared in accordance with Part 3 of the  
Human Rights (Parliamentary Scrutiny) Act 2011*

### **SOCIAL SERVICES AND OTHER LEGISLATION AMENDMENT (SIMPLIFYING INCOME REPORTING AND OTHER MEASURES) BILL 2020**

The Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Bill**

The Bill implements the Budget 2019-20 measure ‘Changing the Social Security Income Assessment Model.’ Under the new measure, employment income will be assessed under the social security law<sup>1</sup> when it is paid, rather than when it is earned, as is currently the case.

To make this possible, the Australian Government will use data collected by the Australian Taxation Office (primarily Single Touch Payroll data). Single Touch Payroll is a streamlined system employers use to report taxation and superannuation information. The Bill removes any doubt concerning the basis for Services Australia to participate in the information exchanges that enable this.

The Australian Government will also use this information to better integrate and strengthen the integrity of Australia’s tax-transfer system. In this respect, the Bill removes any doubt concerning the basis for Services Australia to exchange information with the Australian Taxation Office so that it can also use this information to administer entitlements under the family assistance law,<sup>2</sup> the *Student Assistance Act 1973* (Student Assistance Act) and the ABSTUDY scheme (which is partly administered under the Student Assistance Act).

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<sup>1</sup> The ‘social security law’ is defined in subsections 23(17) and (18) of the Social Security Act as follows:

- (17) A reference in this [Social Security Act] to the social security law is a reference to this Act, the [Social Security Administration Act] and any other Act that is expressed to form part of the social security law.
- (18) A reference in this [Social Security Act] to a provision of the social security law is a reference to a provision of this Act, the [Social Security Administration Act] or any other Act that is expressed to form part of the social security law.

<sup>2</sup> Section 3 of the Family Assistance Administration Act defines the ‘family assistance law’ as follows:

**family assistance law** means any one or more of the following:

- (a) this [Family Assistance Administration Act];
- (b) the Family Assistance Act;
- (c) any instrument (including regulations) made under this Act or the Family Assistance Act;
- (d) Schedules 5 and 6 to the A New Tax System (Family Assistance and Related Measures) Act 2000.

## ***Human rights implications***

The Bill engages the following human rights or freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*:

- the right to social security in article 9 of the *International Covenant on Economic, Social and Cultural Rights* [1976] ATS 5 (ICESCR), and
- the right to privacy in article 17 of the *International Covenant on Civil and Political Rights* [1980] ATS 23 (ICCPR).

### Right to social security

Article 9 of the ICESCR recognises ‘the right of everyone to social security.’ The Committee on Economic, Social and Cultural Rights (CESCR) has described this right as encompassing the right to access and maintain benefits, in cash or in kind, provided in order to ensure protection in respect of social risks and contingencies.<sup>3</sup>

The elements of the right are:

- a social security system is available for the provision of benefits
- the social security system provides for coverage of social risks and contingencies
- benefits, whether in cash or kind, are adequate and in amount and duration in order that everyone may realise rights contained in articles 10, 11 and 12 of the ICESCR, and
- benefits are accessible.

The CESCR has conceded that social security may be subject to certain limitations, provided that they are ‘reasonable, proportionate and transparent.’<sup>4</sup>

The Bill will change the way in which employment income is assessed for entitlements under the social security law. It will do this by providing that employment income is to be assessed when it is paid, rather than when it is earned. The Bill will also assist the Australian Government administer the family assistance law and the Student Assistance Act (and the ABSTUDY scheme).

The use of Single Touch Payroll data for these things will make it easier for individuals to access social security, in the sense of making it easier for individuals to participate in the administration of entitlements under the family assistance law, the social security law and the Student Assistance Act (and the ABSTUDY scheme). It will:

- reduce the amount of time and effort for individuals to estimate and report employment income
- increase transparency of entitlements and changes to payment, and

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<sup>3</sup> Committee on Economic, *General Comment No 19: The right to social security (art 9)*, 39<sup>th</sup> sess, UN Doc E/C.12/GC/19 (4 February 2008), [10]-[27].

<sup>4</sup> Committee on Economic, *General Comment No 19: The right to social security (art 9)*, 39<sup>th</sup> sess, UN Doc E/C.12/GC/19 (4 February 2008), [24].



- increase the accuracy of employment income reported to government, resulting in greater payment integrity and less risk of inaccurate payments.

In this way, the Bill enhances the right to social security in article 9 of the ICESCR.

The Bill will not otherwise change the availability of social security, the amount or duration of social security, or the social risks and contingencies in respect of which the social security law affords protection.

### Right to privacy

Article 17 of the ICCPR provides that ‘no one shall be subjected to arbitrary or unlawful interference with their privacy.’ The Human Rights Committee has said that the right to privacy includes respect for informational privacy, including in respect of storing, using and sharing private information and the right to control the dissemination of that information.<sup>5</sup> It has further indicated that the right to privacy can be limited to achieve a legitimate objective where the limitations are lawful and not arbitrary. In order not to be arbitrary, any limitation must be reasonable and necessary in the particular circumstances, as well as proportionate to the objectives it seeks to achieve.<sup>6</sup>

The use of Single Touch Payroll data to assess employment income under the social security law when it is paid, and to administer Australia’s tax-transfer system, will require Services Australia and the Australian Taxation Office to exchange personal information. The social security law, the family assistance law and the Student Assistance Act contain detailed provisions dealing with the gathering and protection of information about individuals. These provisions authorise the collection and use of personal information for the purposes of the *Privacy Act 1988*.

The Bill removes any doubt concerning whether Services Australia can participate in the information exchange with the Australian Taxation Office consistently with the confidentiality provisions of the social security law, the family assistance law and the Student Assistance Act. It does this by making explicit that existing provisions of these laws authorise the obtaining of, making a record of, disclosure of or use of information about a person relating to taxation information.<sup>7</sup> In this way, the Bill engages the right to privacy in article 17 of the ICCPR.

The information exchange is necessary to alleviate inefficient and burdensome reporting processes and systems for Australia’s tax-transfer system. This system relies on a range of income-related information to underpin the making of decisions about the provision of payments and benefits. Payroll systems are a key source of this information, particularly for working age payments. The current approach can

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<sup>5</sup> Human Rights Committee, *General Comment No 16: Article 17 (Right to privacy)*, 32<sup>nd</sup> sess UN Doc HRI/GEN/1/Rev 6 (8 April 1988), [10].

<sup>6</sup> Human Rights Committee, *General Comment No 16: Article 17 (Right to privacy)*, 32<sup>nd</sup> sess UN Doc HRI/GEN/1/Rev 6 (8 April 1988). See also Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (Engel Services, 2<sup>nd</sup> ed, 2005), 383.

<sup>7</sup> New section 162A of the Family Assistance Administration Act (inserted by item 78 of Schedule 1 to the Bill), new section 202A of the Social Security Administration Act (inserted by item 90 of Schedule 1 to the Bill) and new section 351A of the Student Assistance Act (inserted by item 100 of Schedule 1 to the Bill).

mean employers are required to provide or confirm this information, often as part of a manual process. Where this occurs, it is inefficient for all involved. The current approach can alternatively mean employees need to estimate employment income they have earned in a particular period (generally, fortnightly), and report this to Services Australia. Challenges in the current environment include:

- employers are placed under an administrative burden in responding to government and employee enquiries, and complying with requirements to provide information
- individuals who claim and receive welfare payments face challenges in reporting income accurately and obtaining information from employees for this purpose
- government experiences a range of inefficiencies in dealing with inaccurate information leading to inaccurate payments and costly monitoring, compliance and debt management processes.

The information exchange will support more efficient and accurate decision-making processes, providing benefits for employers, individuals and government. Key benefits include:

- for employers, there will be a reduction in reporting burden due to a decrease in payroll information requests from government and employees
- for individuals, there will be simplified compliance obligations and greater confidence in the accuracy of payments received, and
- for government, there will be enhanced integrity of welfare payments and family tax benefits.

Two important protections will operate in relation to the information exchange. Firstly, existing subsection 162(2) of the Family Assistance Administration Act, existing subsection 202(2) of the Social Security Administration Act and existing subsection 351(2) of the Student Assistance Act authorise the disclosure of protected information (as defined in those Acts) in certain circumstances. The Bill makes explicit that this includes disclosure for the purpose of a taxation officer matching that information against taxation information to facilitate the performance of functions, or the exercise of powers, under the relevant law. That is, the Bill makes explicit that disclosure is permitted for a limited purpose. Secondly, it will remain an offence to access or use protected information without authority.<sup>8</sup> These protections ensure that the Bill is a reasonable and proportionate means of achieving the objectives of the information exchange.

## **Conclusion**

The Bill is compatible with recognised or declared human rights or freedoms. The Bill enhances the right to social security, by making it easier for individuals to participate in the administration of entitlements under the family assistance law, the social security law and the Student Assistance Act (and the ABSTUDY scheme). To the

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<sup>8</sup> See existing sections 163 and 164 of the Family Assistance Administration Act, existing sections 203 and 204 of the Social Security Administration Act, and sections 352 and 353 of the Student Assistance Act.

extent the Bill limits a person's right to privacy, the limitation is a reasonable and proportionate means of achieving a legitimate objective.

**[Circulated by the authority of the  
Minister for Families and Social Services, Senator the Hon Anne Ruston]**