

Social Security and Other Legislation Amendment (2012 Budget and Other Measures) Bill 2012

The inquiry

1.1 Pursuant to a resolution of the Senate on 9 May 2012, on 25 May 2012 the provisions of the Social Security and Other Legislation Amendment (2012 Budget and Other Measures) Bill 2012 were referred to the Community Affairs Legislation Committee for inquiry and report by 18 June 2012.¹

1.2 The committee advertised the inquiry and invited interested individuals and organisations to make submissions. Three submissions were received and are listed in Appendix 1. The committee held a public hearing to take evidence in relation to the bills, details of which are shown at Appendix 2.

1.3 The committee thanks submitters, departmental representatives, and the Parliamentary Library, for their assistance in undertaking the current inquiry.

The bill

1.4 The Social Security and Other Legislation Amendment (2012 Budget and Other Measures) Bill 2012 (hereafter the Bill) contains seven schedules. These would implement several 2012 budget measures, as well as other minor amendments to family assistance and child support laws.²

1.5 The Explanatory Memorandum set out the main proposed changes:

The Bill will extend permanently the current income test exemption for the Western Australian Government's Country Age Pension Fuel Card and the Cost of Living Rebate Scheme...

The Bill tightens the rules for people who travel overseas while receiving some income support payments and family payments. Under the change, the length of time individuals can spend overseas while continuing to receive their payments will generally be reduced from 13 weeks to six weeks...

From 1 January 2013, family tax benefit Part A will no longer be available for young people aged 18 or over unless they are in full-time secondary study...

The Bill corrects an inequity in the family tax benefit Part A rate provisions. From 1 July 2012, if an individual is privately collecting child support and it is reasonable to collect the full amount, the maintenance income test for family tax benefit Part A will be based on the individual's

1 *Journals of the Senate*, 9 May 2012, p. 2407.

2 Second reading speech, *House of Representatives Hansard*, 24 May 2012, pp. 10–11.

child support entitlement, instead of restricting the rate of family tax benefit Part A for a child to the base child rate when the individual privately collects less than the full child support entitlement...

An amendment will allow a person's percentage of care for child support and family tax benefit purposes to be based on the actual (new) care of the child immediately [rather than after 14 weeks], in special circumstances, such as where there is evidence of violence or other unusual behaviour...

The Bill amends the clean energy low income supplement provisions to clarify the eligibility of a group of low-income families who may otherwise not be fully assisted for their expected average cost impacts under a carbon price...

the Bill will make minor amendments, including clarifying in the child support legislation the authority for the practice of automated decision-making using computer programs.³

1.6 Submitters raised issues only in respect of the portability provisions (Schedule 2), the Family Tax Benefit Part A (FTB-A) changes (Schedule 3), and matters relating to child support and maintenance payments (Schedules 4 and 5). These matters are the only ones discussed in this report.

Adjustment to portability (Schedule 2)

1.7 The bill changes eligibility rules for a range of government payments, reducing the period for which they can be received while overseas, from 13 to six weeks. According to the budget announcement regarding the measures, the payments that would be affected by the change are:

Disability Support Pension, Parenting Payment, Carer Payment, Carer Allowance, Widow B Pension, Wife pension, Widow Allowance, Partner Allowance, Youth Allowance (student), Austudy, Mobility Allowance, Telephone Allowance, Pension Supplement, Utilities Allowance, Seniors Supplement, Clean Energy Supplement, Low Income Supplement, Concession Cards, Family Assistance, and Paid Parental Leave. Family Tax Benefit Part A payments above the base rate will be reduced to the base rate after 6 weeks of a temporary absence from Australia.⁴

1.8 A number of payments would not be affected:

The change will not apply to age pension, disability support pension recipients assessed as having a severe and permanent disability and no future work capacity, or students studying overseas as part of an approved Australian course. Primary payments paid by the Department of Veterans' Affairs, such as the maximum basic rate of service pension, disability pension, and war widow(er)'s pension, will also be unaffected.⁵

3 Explanatory Memorandum, pp. 1–2.

4 *Budget Paper No. 2, Budget Measures 2012–13*, p. 144.

5 Explanatory Memorandum, p. 4.

1.9 In its submission, the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) explained the policy context and rationale behind revising portability for some welfare payments:

Under the changes, the length of time individuals can spend overseas while continuing to receive their payments will generally be reduced from 13 weeks to six weeks. This is consistent with a trend toward portability limitations announced in 2000 and 2004.

The amendments contained within the Bill will contribute to the ongoing sustainability of the Australian social security system and better reflect the expectations of most Australian taxpayers about how social security expenditure should be targeted...

The measure *Portability of Australian Government Payments* also reinforces the overarching principle that those in receipt of a working-age income support payments and supplements are encouraged to participate, in Australia, economically or socially to the extent they are able.⁶

1.10 FaHCSIA also pointed out that, while ensuring appropriate limits to portability for those with a capacity to work, the government had also removed such limitations on those who could not do so:

From 1 July 2012, Disability Support Pension recipients who have a severe and permanent impairment and no future capacity to work will have indefinite portability. In addition, Disability Support Pension recipients who are severely disabled and are required to travel overseas because a family member who they rely on for care and support has been posted overseas through the course of their employment, can now be granted extended portability.⁷

1.11 The National Welfare Rights Network (NWRN) recommended that the committee oppose these changes, identifying this issue as the one of main concern to their members.⁸ It identified two particular groups of people who might be adversely impacted upon by the changes:

Refugees / former refugees with family spread all over the globe (accepted in differing third countries). These people often ask Centrelink for permission to go overseas to visit a relative who is dying and are refused or granted approval for just one week's payment (on Newstart Allowance). A reduction of the portability period to six weeks is a very short time to travel, visit someone who may pass away and then attend a funeral.

People with medical conditions who go overseas for either remedial treatments which are much cheaper or to go [to] climates which their doctor recommends (but not enough to get over the hurdle of being a treatment not

6 FaHCSIA, *Submission 1*, pp. 1–2.

7 FaHCSIA, *Submission 1*, p. 2.

8 Ms Maree O'Halloran, NWRN, *Proof Committee Hansard*, 14 June 2012, p. 6.

available in Australia). Again 6 weeks is a short time for these people to have to pay to go overseas for such a brief period of time.⁹

1.12 NWRN noted that there is capacity for exemptions from, or extensions to, the six week limit.¹⁰ Such exemptions have the capacity to address many of the problematic cases which NWRN and its members identified. However, NWRN's experience has been that fulfilling the requirements to meet the conditions for an exemption or extension can be administratively complex and particularly difficult if circumstances change while the person is overseas.

Potential savings

1.13 The NWRN queried why the government believed that there would be a budget saving measure. It argued that it would only lead to savings if benefit recipients did not change their travel behaviour despite their loss of benefits.¹¹ NWRN asked what evidence there was that this would be the case.

1.14 The Department explained how it had modelled the budget saving figures. The starting point was the existing data on the numbers of recipients of the relevant benefits who remain overseas beyond the current 13 week limitation period for payment of benefits ('overstay'). In the last year, approximately 51 000 people overstayed, for an average of 4.5 weeks. The benefit payments most affected by people overstaying were FTB Part A at greater than the base rate (11 000), FTB Part B (just over 14 000), Disability Support Pension (just over 6000) and Youth Allowance (around 5500).¹²

1.15 The government's budget estimates are based on the projection that the current pattern of overstaying would continue. Based on existing patterns of overstays, the government also presumed that, in addition to the existing numbers of overstayers, there would also be a further number of people who currently travel overseas for between six and 13 weeks who would also overstay once the new restrictions are implemented. Of the 120 000 payment recipients who currently travel overseas for between six and 13 weeks, approximately ten per cent were predicted to overstay, by an average of three weeks. The budget savings were then estimated by applying these figures to the existing pattern of benefit recipients who currently stay overseas for longer than the portability period.¹³

9 NWRN, *Submission 3*, pp. 6–7.

10 NWRN, *Submission 3*, p. 6.

11 Ms Maree O'Halloran, NWRN, *Proof Committee Hansard*, 14 June 2012, p. 6.

12 Mr Philip Moufarrige, FAHCSIA, *Proof Committee Hansard*, 14 June 2012, p. 13.

13 Mr Philip Moufarrige, FAHCSIA, *Proof Committee Hansard*, 14 June 2012, p. 14.

Paid parental leave

1.16 The committee asked the Department to explain the inclusion of Paid Parental Leave (PPL) amongst those payments to which the new portability restrictions would apply, and how much this was expected to contribute to the estimated budget savings.

1.17 The government responded indicating that the changes would affect only the eligibility criteria, and that 'it does not restrict the ability of those that have qualified for PPL to travel overseas'.¹⁴ The government also indicated that none of the budget savings in the forward estimates were attributable to the proposed changes to the PPL eligibility criteria.

Consultation and information

1.18 The NWRN expressed concern that it had communicated with the Federation of Ethnic Communities' Councils of Australia and that organisation had not been consulted on the measures in the bill.¹⁵

1.19 Departmental officials confirmed that there had not to date been consultation or information meetings with multicultural, migrant and refugee organisations about the new measures.¹⁶ They pointed out that the implementation dates for the portability changes was 1 January 2013. The committee notes that this will allow time for detailed information sessions and discussions about concerns and implementation.¹⁷ It is important that there is adequate discussion and information provided to affected members of the community.

1.20 The committee had heard evidence from the NWRN that there was sometimes a limited understanding of the portability provisions.¹⁸ The committee asked about how information was provided to ensure that citizens were aware of the portability restrictions:

Senator BOYCE: Can you just explain to me how, as a citizen intending to go overseas and in receipt of one of these payments, I know that I can only stay away six weeks? What is the current process for my knowing that?

Mr Moufarrige: There are a couple of processes. One, if you are in receipt of an income support payment, you are required to notify Centrelink if there is anything that may affect the amount that you may get paid. In fact, a person going overseas, their departure, is a notifiable event to Centrelink. They should notify Centrelink that they are going overseas. In notifying Centrelink that they are going overseas, Centrelink has a portability script

14 FAHCSIA, answer to question on notice, received 15 June 2012.

15 Mr Gerard Thomas, NWRN, *Proof Committee Hansard*, 14 June 2012, p. 8.

16 Mr Philip Moufarrige, FAHCSIA, *Proof Committee Hansard*, 14 June 2012, p. 17.

17 Mr Paul McBride, FAHCSIA, *Proof Committee Hansard*, 14 June 2012, p. 17.

18 Mr Gerard Thomas, NWRN, *Proof Committee Hansard*, 14 June 2012, p. 10.

which, as part of that script, they advise people of their portability entitlements. Also Centrelink has on their website, 'What if I am going overseas?' that provides information by payment type regarding the portability provisions.¹⁹

1.21 Senator Smith queried whether asking people to advise the government of their intended period of absence might help the process:

Senator SMITH: So if the requirement was to notify but also perhaps to provide an intention of time you expect to be away, surely that might then trigger a better understanding amongst citizens that, if they intend to be away longer than six weeks, then their entitlement might be affected.

Mr Moufarrige: Yes, and my understanding is Centrelink advises the portability period. I think there might have been a bit of confusion: a portability extension is not something that is granted while the person is still in Australia; to obtain a portability extension for a payment that has a defined portability period which is currently for those payments, which is 13 weeks, there has to be an event that occurs while the person is overseas that is of significance that prevents them from returning. If they are in Australia and they are advised that they have a very sick relative overseas, and they want to go overseas to visit that relative, they cannot advise Centrelink, 'I want X number of weeks on top of the portability period.' But if they do go and visit that relative and, unfortunately, the relative dies then they may be able to get a portability extension to attend the funeral and other matters.²⁰

1.22 The committee notes that, as the extension period is shortened it becomes even more important that there are appropriate communication strategies from Centrelink before citizens leave the country. They need to know their rights and responsibilities, including in relation to any extensions process.

Age/study rules for children for family assistance payments (Schedule 3)

1.23 The bill would change the age of children for whom families may qualify for Family Tax Benefit Part A (FTB-A). Currently the upper age limit for a FTB-A qualifying child is 'under 21 years or a dependent full-time student aged 21 years'.²¹ Commencing 1 January 2013, the bill would change this to age 18 'or until the end of the calendar year for 18 and 19 year-olds who are competing secondary education or equivalent vocational education'.²²

19 Mr Philip Moufarrige, FAHCSIA, *Proof Committee Hansard*, 14 June 2012, p. 15.

20 Mr Philip Moufarrige, FAHCSIA, *Proof Committee Hansard*, 14 June 2012, p. 16.

21 Explanatory Memorandum, p. 11.

22 Explanatory Memorandum, p. 11.

1.24 The government's intention is that support for young people over 18 will shift from the Family Tax Benefit system to the Youth Allowance.²³ This would reflect the intention that they qualify for income support in their own right, not relying on assistance being paid indirectly to a parent or guardian by way of FTB-A.²⁴ The Explanatory Memorandum explains:

A young person who no longer attracts eligibility for family tax benefit Part A may be eligible to receive youth allowance. This change will focus payments in the family assistance system on families with young children, and children who are at school, while youth allowance will become the primary form of assistance to eligible young adults aged 18 and over.²⁵

1.25 The government has noted that this reflects a recommendation of the *Australia's Future Tax System* review (the Henry Review).²⁶

1.26 The National Council of Single Mothers and their Children (NCSMC) did not oppose the measure, but noted that a broader review is needed of how the different payments and eligibility requirements interact.²⁷

1.27 NWRN, like NCSMC, had concerns about the articulation between different welfare measures, and did not support Schedule 3. They commented that, in their view, this Schedule would lead to increased reliance on Youth Allowance. This has very different eligibility criteria to the Family Tax Benefit payments, which could lead to some people over 18 being significantly disadvantaged:

Most obvious, in terms of eligibility, is that the Parental Income Test (PIT) will act to disqualify many young people from any entitlement. This could result in the young person having no visible, or actual means of support. The young person may need to make a claim for Youth Allowance under the 'unreasonable to live at home' requirements, though there are very strict criteria attached to the granting of this payment.

Parents may be unwilling, or unable to financially support young people. Some young people find that they are simply unsuited to further education and a school environment. They may experience significant mental health problems or mild intellectual disabilities, yet they are now supposed to fend for themselves under these new arrangements.

The loss of family income may create or exacerbate family tensions or neglect, and could also place vulnerable young people at risk of homelessness.²⁸

23 FaHCSIA, *Submission 1*, p. 3.

24 Parliamentary Library, *Social Security and Other Legislation Amendment (2012 Budget and Other Measures) Bill 2012 Bills Digest*.

25 Explanatory Memorandum, p. 11.

26 Department of Treasury, *Australia's Future Tax System, Chapter F: The Transfer System, F3. Family and Youth Assistance*, Canberra, 2010, p. 490.

27 Ms Terese Edwards, NCSMC, *Proof Committee Hansard*, 14 June 2012, p. 2.

1.28 NWRN's most significant concern related not directly to the bill's change itself, but to the consequences for those individuals who will then rely on Youth Allowance. NWRN's view was:

The rate of Youth Allowance is grossly inadequate, falling far short of the widely accepted poverty line figure. Youth Allowance payment rates for people aged 18 and over at the 'away from home' rate are just \$402 per fortnight while the rate for those aged over 18 and 'at home' rate is just \$265 per fortnight.

Income free areas and taper rates for youth allowees who are unemployed are considerably harsher than they are for full-time students. The high impact reduction that earnings have on Youth Allowance create disincentives to work and can result in poverty traps.²⁹

1.29 The committee notes that the Henry tax review considered various broad aspects of the youth support system to be appropriate including that:

The rates of payments to young people reflect the fact that those people have lesser needs than adults...The higher rate for youths living away from home reflects the fact that youths living at home have lower accommodation costs.³⁰

Family tax benefit and reasonable maintenance action (Schedule 4)

1.30 Schedule 4 would correct an inequitable outcome for families privately collecting child support. The reform is explained by the Explanatory Memorandum:

This Schedule will amend the family assistance law relating to how much family tax benefit Part A is payable if an individual is privately collecting child support (that is, not through the Child Support Agency) [known as private collect], but does not receive their full child support entitlement and does not take reasonable action to remedy that (for example, swapping to collection by the Child Support Agency).

Currently, the failure to take 'reasonable maintenance action' in such cases results in the individual's rate of family tax benefit Part A for the child being restricted to the base child rate (currently, \$52.64 a fortnight). The inequity is that this may be significantly less than what the individual's family tax benefit Part A rate would have been even if the individual received their full child support entitlement. The current outcome is disproportionate to the individual's inaction.

From 1 July 2012, the amendments in this Schedule will ensure that the rate of family tax benefit Part A for a child is not restricted to the base child rate due to privately collecting less than the full child support entitlement.

28 NWRN, *Submission 3*, p. 10.

29 NWRN, *Submission 3*, p. 11.

30 Department of Treasury, *Australia's Future Tax System, Chapter F: The Transfer System, F3. Family and Youth Assistance*, Canberra, 2010, p. 574.

Instead, the maintenance income test for family tax benefit will be based on the child support that an individual would receive if they were receiving their full child support entitlement. An appropriate incentive to privately collect the full amount will remain, as the extra child support would improve the individual's financial circumstances.³¹

1.31 The NCSMC were supportive of this measure:

NCSMC welcomes steps that aim to address this matter. The proposed legislative changes would go some way in addressing one of the issues associated with Private Collect and that such a change would have NCSMC full endorsement.³²

1.32 The organisation drew attention to the broader issues of which this is a part. In particular, NCSMC was concerned about the way in which Private Collect is operating and the level of awareness amongst single parents of their options for collection of maintenance payments.³³ The committee noted two particular concerns:

Payees are not aware that they can transfer from Private Collect to CSA collect and women report that they incur barriers and are often are discouraged from taking this path.³⁴

And

NCSMC could not locate one woman who had experience of Partial Exemptions but was overwhelmed by women who stated that they would have found it extremely valuable if they had known of its existence. NCSMC then attempted to locate information on Partial Exemption from the Child Support Website and reviewed what we considered to be the most logical areas:

1. Family Separation / Family Violence Support.
2. On line assessment application
3. Private Payments

Partial exemptions information could not be located on Child Support website.³⁵

1.33 The NCSMC's longstanding concern has been that payees are sometimes doubly disadvantaged when a payee of child support does not make the required payments. In these circumstances, single mothers are receiving reduced Family Tax Benefit because the level of that benefit is based on the assessed level of child support income (rather than what might actually being paid). At the same time, they are not

31 Explanatory Memorandum, p. 17.

32 NCSMC, *Submission 2*, p. 7.

33 NCSMC, *Submission 2*, p. 8.

34 NCSMC, *Submission 2*, p. 8.

35 NCSMC, *Submission 2*, p. 9.

getting the actual maintenance payments to which they are entitled.³⁶ The NCSMC noted that the measure in Schedule 4 of the bill would 'try to take the sharper edge off' the disadvantage experienced by single parents when child support payments are not forthcoming.³⁷ The NCSMC was therefore supportive of Schedule 4.

1.34 The NWRN did not oppose this and other schedules apart from those already discussed.³⁸

Committee view

1.35 The committee draws the government's attention to NCSMC's concerns about the availability of information and the quality of advice given within government agencies in relation to Private Collect and partial exemptions.

Percentage of care for children (Schedule 5)

1.36 The NCSMC supported the reforms in this schedule, but again encouraged government to undertake a broader review of regulation and policy in this area.³⁹ The NCSMC was particularly concerned about the current policy that allows a 24 per cent discount on the required child support payment 'in exchange for one night of care per week'. It suggested that this was 'an artificially inflated discount' that risked causing the 'bartering of children' for economic rather than care reasons.⁴⁰ This issue was beyond the scope of the bill and the committee did not receive other submissions raising issues in relation to Schedule 5.

1.37 The department noted NCSMC's concern and explained one of the policy reforms initiated at the same time as the child support payment discount:

a change that came in at the same time was that majority carers whose ex-partners had regular care could then get 100 per cent of the FTB instead of only a part-rate of the FTB. So, while the 24 per cent rule may for some of those families have changed the amount of child support transferred, they also are likely to have benefited from increased amounts of family tax benefit part A.⁴¹

1.38 FAHCSIA noted that there are regular meetings of a national stakeholder engagement group where these issues are discussed, and these discussions were influential in the framing of the current reforms.⁴²

36 Ms Terese Edwards, NCSMC, *Proof Committee Hansard*, 14 June 2012, pp. 1–2.

37 Ms Terese Edwards, NCSMC, *Proof Committee Hansard*, 14 June 2012, p. 2.

38 NWRN, *Submission 3*, p. 12.

39 Ms Terese Edwards, NCSMC, *Proof Committee Hansard*, 14 June 2012, p. 4.

40 NCSMC, *Submission 2*, p. 10.

41 Mr Andrew Whitecross, FAHCSIA, *Proof Committee Hansard*, 14 June 2012, p. 22.

42 Mr Andrew Whitecross, FAHCSIA, *Proof Committee Hansard*, 14 June 2012, p. 18.

Recommendation 1

1.39 The committee recommends that the bill be passed.

Senator Claire Moore

Chair