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INFORMATION AND RESEARCH SERVICES

Bills Digest

No. 33 2001–02

Family Assistance Estimate Tolerance (Transition)
Bill 2001

ISSN 1328-8091

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Published by the Department of the Parliamentary Library, 2001

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Family Assistance Estimate Tolerance (Transition) Bill
2001

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27 August 2001

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Family Assistance Estimate Tolerance (Transition) Bill 2001

Date Introduced: 22 August 2001

House: Senate

Portfolio: Family and Community Services

Commencement: Royal Assent

Purpose

To give effect to the Government's decision to allow a \$1,000 excess payment tolerance for Family Tax Benefit (FTB) and Child Care Benefit (CCB), arising from an underestimate of family income or shared care, in the 2000-2001 income year.

The Bill allows for the provision of a disallowable instrument, to give the minister power to set conditions for the waiver of certain classes and amounts of debts, that arise under the *Family Assistance (Administration) Act 1999* (FAAA). A disallowable instrument is being used, rather than amendments to the FAAA, as the waiver of debts is, at this time, intended to be used in respect of debts arising only in the 2000-2001 payment year. The Government has not indicated its intentions in respect of waiving debts for subsequent years and this issue is discussed in this Digest.

Background

Announcement of \$1,000 tolerance on FTB and CCB overpayments for the 2000-2001 financial year

The Government announced on 1 July 2001, that there would be a \$1,000 tolerance for families who had a FTB or CCB overpayment, because they had underestimated their 2000-2001 year family income.¹

FTB and CCB – family assistance introduced from 1 July 2000

The FTB and CCB family assistance arrangements were introduced from 1 July 2000 as a part of the government's A New Tax System arrangements. The FTB and CCB payments were introduced with the passage of the *A New Tax System (Family Assistance) Act 1999*.²

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Complimenting this Act was the *A New Tax System (Family Assistance) (Administration) Act 1999*, which provided the administrative provisions for FTB and CCB, such as the making of claims for benefits, determination of claims, payment of benefits, recipient obligations, termination of payments and the review processes.³

Forms of family assistance

There are three main forms of family assistance:

- Family Tax Benefit (the sum of FTB-Part A and FBT-PartB)
- Maternity Allowance and Maternity Immunisation Allowance (MIA), and
- Child Care Benefit (CCB).

Two payment options for the payment of family assistance (FTB and/or CCB)

For FTB and CCB there are several payment options.

For FTB:

- Payment by fortnightly instalments paid by the Family Assistance Office (Centrelink). This method requires an income estimate and may result in an under or overpayment, or
- Reduction amounts withheld from wages paid to the claimant or their partner. This method requires an income estimate and may result in an under or overpayment, or
- By the Australian Tax Office (ATO) through the tax system as a lump sum payment at the end of the financial year. This method requires no estimate as the amount paid is calculated retrospectively against actual taxable income and there is no under or overpayment.

For CCB:

- Paid by instalments to the child-care service provider. This method requires an income estimate and may result in an under or overpayment, or
- Claimed at the end of the year from the Family Assistance Office (Centrelink). This method requires no estimate as the amount paid is calculated retrospectively against actual taxable income and there is no under or overpayment.

Calculating the rate of FTB or CCB to be provided by instalments – payment based on an estimate

A person choosing to receive FTB fortnightly during the year, or CCB as a fee reduction from the child-care centre, needs to provide an estimate of family income for the current year.

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Those who do need to provide an estimate are those who are:

- single and receive income support payment from either Centrelink or Veterans' Affairs
- only claiming the minimum rate of CCB and do not claim FTB
- claiming a lump sum payment for a previous financial year for which actual family income is known, or
- claiming FTB through the tax system when lodging a tax return at the end of the year, or, claim CCB from the Family Assistance Office (Centrelink) at the end of the year.

Basing the qualification and payment rate on current year income (even an estimate) has the benefit of being more up-to-date than the previous arrangements, which referred to previous year income. See *Previous payment arrangements for family allowance – 10% tolerance for variations in income* below.

Legislation allows the provision of FTB and CCB to be provided in advance based on a income estimate

The rate of FTB and CCB payable is prescribed in the *Family Assistance Act 1999* (FAA). For FTB, sub-section 33(1) of the *Family Assistance (Administration) Act 1999* (FAAA) allows FTB to be provided in advance by way of instalments.⁴ Likewise for CCB, sub-section 55(1) of the FAAA allows CCB to be based on an estimate and provided in advance.⁵

Reconciliations of income estimates and income assessments at the end of the year

Where FTB or CCB has been paid on the basis of an income estimate, at the end of the year a reconciliation is conducted, comparing the estimate against the actual taxable family income, as determined by the ATO. This reconciliation occurs automatically, as once the actual income for the year is assessed by the ATO, the ATO provides the Family Assistance Office with the income assessment.

Reconciliations may lead to under or overpayments of FTB or CCB

Where the income estimate provided underestimates the family income for the year, an overpayment arises and the excess FTB or CCB amount needs to be paid back to the Family Assistance Office.

Likewise, where the income estimate provided overestimates the family income for the year, an underpayment arises and the arrears of FTB or CCB are paid to the claimant.

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Legislation provides for a overpayment where an excess amount of FTB or CCB has been paid

Once the actual family taxable income is known after the end of the year by virtue of the ATO tax assessment, sub-section 71(2) of the FAAA provides for any excess payment to be an overpayment.⁶

Waiver of debts up to \$1,000 - how many FTB and CCB payments to families will benefit and at what cost?

The Prime Minister, indicated that some 4,000 families will benefit from this waiver of debts at a cost of about \$200 million.⁷ This is an average debt waiver of \$500 per family. Whilst the debt waiver limit is \$1,000 each for FTB and CCB, the debts for each claimant will vary from anything from 1 cent up to \$1,000. The \$1,000 debt waiver applies each to FTB and CCB, so potentially one family may benefit by up to \$2,000.⁸

Waiver of \$1,000 overpayment applies only for 2000-2001 – plans for 2001-2002

The Government has not spelt out in any detail what their plans are (if any) for under and overpayments that will arise for payments against forward estimates of income for the 2001-2002 year. The Minister for Family and Community Services, Senator the Hon. Amanda Vanstone, did detail in an answer to a Question Without Notice on 9 August 20001, that the government had some minor modifications in mind. The Government also expected a far lesser number of debts, once families become used to the payment arrangements.⁹

If the Government does nothing, there will again be over and underpayments arising from the use of estimates of current year income. Perhaps the Government is hoping more families will elect to take their FTB at the end of the year, a methodology that creates no under or overpayments? However, many families have become used to fortnightly payments, rather than end-of-year lump sums, and this raises issues as to whether assistance is being provided to families in a timely manner?

Forward estimates of annual income will always lead to under and overpayments

The Department of Family and Community Services details that for the 2001 year, approximately 400 000 families (they guesstimate) will claim FTB at the end of the 2000-2001 tax year. Some 1.8 million families have claimed and are being paid FTB for the 2001 year based on an income estimate.

Centrelink had made some 800 000 updates to family income details in the 2000-2001 year arising from families notifying of income changes during the year.¹⁰ This serves to highlight that in a regime that uses forward estimates of annual income, there will always be a significant number of families with income variations leading to under and overpayments. Given human nature and the desire to maximise assistance, it is probable

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underestimates of income will be far more prevalent than overestimates of income, leading to more overpayments than underpayments.

Previous payment arrangements for family allowance – 10% tolerance for variations in income

The family assistance arrangements that existed before July 2000 involved the payment of family allowance (FA). Like the FTB arrangements, payment was for a year (for FA the calendar year) based on adjustable income over a financial year. The main difference was the income referred to was retrospective not prospective. So, for payment in the 2000 calendar year, the income year was the 1998-1999 financial year.

This means in the vast majority of cases, estimates were not required and payment could be based on actual income leaving no opportunity for under or overpayments to arise. The main criticism of using the most recently completed financial year was that it was often up to 18 months out of date. Income estimates did exist under the old system in cases where:

- Income in the 2000 year had significantly varied from the level of 1998-1999 income, ie. reduced or increased by 10% or more; and
- For self-employed claimants, who may not yet have completed a tax assessment having until March of the 2000 year to lodge a tax return, when making a claim for FA.

New arrangements from 1 July 2000 - under and overpayments – refunds and recovery

One feature of the new arrangements is that where an underpayment is detected, as income was overestimated, arrears are paid. This did not occur under the pre-July 2000 arrangements, where no arrears were paid. This is clearly more beneficial.

Under the pre-July 2000 arrangements, a 10% leeway was allowed for overpayments, but where the amount of FA paid exceed the correct amount by 10% or more, a debt was raised for the whole of the excess payment. Under the new arrangements, there is no 10% leeway and the exact amount is to be paid. This 10% tolerance that then applied to underestimates only advantaged those whose income had increased. Those whose income had decreased were not paid arrears. So there is more exactitude now about claimants receiving exactly their correct entitlement.

Even under the FA arrangements, income estimates led to overpayments

Even though income estimates were the exception rather than the rule under the pervious FA payment arrangements, estimates still led to overpayments. In the 1999-2000 year, FA reviews made up 5.6% of all reviews, yet 20.8% of all cancellations, 5.7% of all rate reductions and 41% of all debts. This phenomenon largely arises from income estimates.

This contrasts with newstart allowance, which had 44.6% of all reviews but only 5.5% of cancellations, 1.9% of rate reductions and 14.9% of all debts.¹¹ With income estimates now

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the rule rather than the exception, it is probable that the incidence of over and underpayments will be higher.

Main Provisions

Item 1 amends sub-section 102(1) so that parts of debts can be waived.

Item 2 inserts new sub-section 102(1A) so that the Minister can set certain conditions to be met by the Secretary, and specify limits on amounts to be waived in the disallowable instrument.

Concluding Comments

Using annual family income, whether based on previous year or current year income, has its difficulties. Most difficulties arise for families with variations in income. Given the increased casualisation of the labour force and the proportion of families where both partners are in the labour force, the proportion of families with fluctuating incomes is also increasing. In using annual family income, there probably isn't a methodology that provides assistance that is both up-to-date and free of the potential for either an under or overpayment.

No families enjoy the prospect or process of debts and recovery being raised against the assistance they have already received and for which they have complied with all that has been asked of them. To avoid this problem a move away from annual income (prospective or retrospective) appears worthy of consideration. There are alternative income-measuring methodologies used for other payments and assistance. For the allowance income support payments, income is examined at the time of claim and any adjustments to qualification or the rate made if and when income varies. While this method is responsive, the main argument against it is it is far more costly administratively to deliver.

Endnotes

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- 1 *Government's Generous Help For Australian Families*, Media Release by the Minister for Family and Community Services, 1 July 2001.
 - 2 'A New Tax System (Family Assistance) Bill 1999', *Bills Digest* No. 175 1998–99. <http://www.aph.gov.au/library/pubs/bd/1998-99/99bd175.htm>
 - 3 'A New Tax System (Family Assistance) (Administration) Bill 1999', *Bills Digest* No. 205 1998–99, <http://www.aph.gov.au/library/pubs/bd/1998-99/99bd205.htm>

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4 Determination of entitlement to family tax benefit advance

33.(1) The Secretary must determine that an individual is entitled to be paid a family tax benefit advance for a standard advance period if:

- (a) on the advance assessment day (see subsection (2)):
 - (i) the individual is entitled to be paid family tax benefit by instalment; and
 - (ii) the individual's Part A rate is equal to or exceeds twice the individual's FTB advance rate; and
- (b) the individual has made a request to the Secretary for the payment of a family tax benefit advance for that period; and
- (c) the request is made before the end of that period; and
- (d) the individual is not an individual to whom subsection (1A) applies.

5 Determination of CCB % under section 50J may be based on estimate

55.(1) If:

- (a) a CCB % applicable to a claimant who is an individual is required to be determined under section 50J; and
- (b) subparagraph 7(a)(ii) of Part 4 of Schedule 2 to the Family Assistance Act does not apply to the claimant; and
- (c) the information about an amount needed by the Secretary for the calculation of the CCB % is not available (for example, because the adjusted taxable income of the claimant or another individual cannot be known until after the end of the relevant income year); and
- (d) the claimant gives the Secretary an estimate of the amount needed; and
- (e) the Secretary considers the estimate to be reasonable;

the Secretary may determine the CCB % applicable to the claimant on the basis of the estimate.

6 71.(2) If:

- (a) an amount (the *received amount*) has been paid to a person by way of assistance; and
- (b) the received amount is greater than the amount (the *correct amount*) of assistance that should have been paid to the person under the family assistance law;

the difference between the received amount and the correct amount is a debt due to the Commonwealth by the person.

7 Discussion between the Prime Minister and Laurie Oakes on the Sunday Program of 1 July 2001.

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- 8 Answer provided by Senator the Hon. Amanda Vanstone, Minister for Family and Community Services to a Question Without Notice asked by Senator Denman on 9 August 2001 about Child Care: Centrelink Payments., *Senate Hansard* pages 25879 – 25880.
- 9 Answer provided by Senator the Hon. Amanda Vanstone, Minister for Family and Community Services to a Question Without Notice asked by Senator McKiernan on 9 August 2001 about Taxation: Family Payments., *Senate Hansard* pages 25878 – 25879
- 10 Media Release, *Government's generous help for Australian families* – 1 July 2001. Senator the Hon. Amanda Vanstone, Minister for Family and Community Services.
- 11 Centrelink 1999-2000 Compliance Activity Report - Table 1.

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