

*Department of the
Parliamentary Library*



INFORMATION AND RESEARCH SERVICES

Bills Digest

No. 159 2001–02

Family and Community Services Legislation
Amendment (Australians Working Together and
other 2001 Budget Measures) Bill 2002

ISSN 1328-8091

© Copyright Commonwealth of Australia 2002

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of the Parliamentary Library, other than by Senators and Members of the Australian Parliament in the course of their official duties.

This paper has been prepared for general distribution to Senators and Members of the Australian Parliament. While great care is taken to ensure that the paper is accurate and balanced, the paper is written using information publicly available at the time of production. The views expressed are those of the author and should not be attributed to the Information and Research Services (IRS). Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion. Readers are reminded that the paper is not an official parliamentary or Australian government document. IRS staff are available to discuss the paper's contents with Senators and Members and their staff but not with members of the public.

Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2646.

Information and Research Services publications are available on the ParlInfo database. On the Internet the Department of the Parliamentary Library can be found at:
<http://www.aph.gov.au/library/>

Published by the Department of the Parliamentary Library, 2002

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 159 2001-02

Family and Community Services Legislation Amendment
(Australians Working Together and other 2001 Budget
Measures) Bill 2002

Dale Daniels and Nathan Hancock
Social Policy and Law and Bills Digest Groups
3 June 2002

Contents

Purpose	1
Background	1
Main Provisions	2
Parenting Payment Participation Agreements	2
Language, literacy and numeracy supplement.	5
Personal Support Programme (PSP).	6
Closure of Access to Mature Age Allowance (MAA) and Partner Allowance (PA).	6
Flexible Participation Requirements for Mature Age Newstart Allowees	7
Working Credit.	8
Endnotes.	10

Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002

Date Introduced: 16 May 2002

House: House of Representatives

Portfolio: Family and Community Services

Commencement: the Schedules commence on the following dates:

- Schedules 1, 4 & 5 – 1 July 2003,
- Schedule 2 – 20 September 2002,
- Schedules 3 & 7 – 1 July 2002, and
- Schedule 6 – 28 April 2003.

Purpose

The Bill will give effect to a range of measures that were announced in the 2001-2002 Budget and form part of the [Australians Working Together](#) Package. The package of measures is the first stage of the Government's response to the McClure Report on welfare reform.¹

Background

In July 2000 the final report of the Reference Group on Welfare Reform was delivered to Senator Newman the then Minister for Family and Community Affairs. The Group, chaired by Patrick McClure of Mission Australia, had been commissioned in October 1999 to advise the Government on possible approaches to welfare reform.² The Government's response to the report was the [Australians Working Together](#) Package in the 2001-02 Budget.³ This Bill provides the legislative changes required to implement the package.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Main Provisions

Parenting Payment Participation Agreements

Background

The McClure Report recommended the extension of a form of mutual obligation to parents receiving income support that took account of their caring responsibilities, while preparing them for workforce re-entry. Recommendation D12 read as follows⁴:

D12 Implement, with phased transitional arrangements, a participation model of income support for parents with the following features:

- The substantial caring responsibilities of those with children under school age (six years of age) and those caring for a child with a disability be regarded as meeting participation requirements.
- Parents with primary school aged children (six to thirteen years of age) be required to attend an annual compulsory interview to discuss their current and future capacity for increasing participation.
- Parents could choose to enter into a voluntary participation plan, which linked them to available assistance for education, training, employment and other forms of participation. Parents of high school aged children (thirteen and over) be required to enter into a Participation Plan, including job readiness and needs assessment, part-time job search, part-time employment or part-time preparation for paid employment (including education, training, or other relevant forms of participation).

Parents receiving income support have been able to continue for many years without actively preparing for self-support when they no longer have dependent children. Measures to assist them to prepare for that eventuality have been entirely voluntary. Many parents, when their children reached 16 years of age, have had difficult transitions back into the workforce, because of the erosion of skills and loss of networks. The report refers to a pilot study by the Department of Family and Community Services (FACS) that suggested that few of this group participate voluntarily in programs like the Jobs Education and Training Program (JET). The results suggested that there is a low uptake in voluntary interviews, making them 'relatively ineffective'. On the other hand, compulsory interviews were found to be valuable and were supported by a majority of participants. 'For most groups, it appears as if a structured approach within a requirement framework provides the best measure of assistance for Parenting Payment recipients.'⁵

This Government has adopted this recommendation in the following form:⁶

- From September 2002, people who receive parenting payment and whose youngest child is aged 12 to 15 years will need to attend an annual interview with a Centrelink

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Personal Adviser. From July 2003 they will be expected to undertake part-time activity of around six hours each week.

- From July 2003, all people who receive parenting payment and whose youngest child is aged 6 to 15 years will be required to attend annual interviews at Centrelink.
- A New Transition to Work program to help people return to paid work after long absences will be introduced. It will build on the success of the Jobs, Education and Training (JET) and Return to Work programs.
- Additional assistance with child care will be provided.

Most of these do not require legislative amendments, but the participation requirement for those with children aged 13 to 15 years does. The amendments in **Schedule 1** provide for:

- participation agreements;
- participation agreement breach penalties; and
- access to the approved work programs and the supplement of \$20.80 per fortnight.

All of these measures fall colloquially within the notions of 'mutual obligation' and 'work for the dole'. These notions find their expression in the *Social Security Act 1991* in the form of 'activity test' requirements, which include the 'newstart activity test agreement' and 'youth allowance activity test agreement' and the subsidiary 'approved program of work for unemployment payment'. The measures in this Bill appear to be modelled substantially on the activity test and activity test agreement for youth allowance, although a number of the requirements are more flexible and emphasise issues such as capacity and suitability.

The Bill

Part 1 of **Schedule 1** amends the *Social Security Act 1991*.

Part 2.10 of the *Social Security Act 1991* deals with parenting payment.

Agreement Requirement

Item 12 inserts a new Division 2 into Part 2.10. This imposes an obligation on recipients of parenting payment to enter into a 'participation agreement' where their youngest PP child has turned 13 years (**proposed section 501A**). A party to an agreement must 'take reasonable steps' to comply with its terms (**proposed subsection 501(1)**). However, in any assessment of reasonableness, it is necessary to consider whether the terms of the agreement were appropriate, having regard to the person's capacity to comply and to the person's needs (**proposed subsections 501(2)** and **(3)**). Recipients are exempt if, for example, their child is profoundly disabled (**proposed subsection 501A(2)**).

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Items 43 and 48 of Schedule 1 amend the *Social Security (Administration) Act 1999*. They deal with automatic payment pending internal or external merits review of a decision regarding a person's refusal to enter into a participation agreement.

Participation Agreement Terms

The terms of the participation agreement are generally consistent with the terms that apply to the youth allowance activity agreement. However, there is a general presumption that the participation agreement will involve 150 hours of 'approved activities' per six months (**proposed subsection 501B(1)**); the 'work for the dole' element in the 'approved activities' is voluntary (**proposed paragraph 501B(2)(f)**); and the 'other approved activities' element involves a proposal by the Secretary rather than the parenting payment recipient and it expressly requires agreement between the parties (**proposed paragraph 501B(2)(k)**).

In essence, the intent seems to be to impose very general obligations on parenting payment recipients and provide a range of options to allow tailoring of participation requirements.

In passing it is worth noting a possibly incongruent translation from the youth allowance regime. The participation agreement provisions include an exemption from the 'work for the dole' requirement relating to issues such as illness, disability or injury (**proposed subsection 501B(7)**). This makes sense in the context of a compulsory 'work for the dole' requirement (youth allowance) but might be considered redundant in the context of a voluntary 'work for the dole' requirement (parenting payment).

Rate Reduction

Item 13 inserts a new Subdivision A into Division 4, Part 2.10. This deals with the rate of parenting payment where the recipient is not participating or has breached an agreement. Where a person takes part in a participation agreement, there becomes payable an 'approved program of work supplement' of \$20.80 per fortnight (**proposed section 503A**). However, the basic rate is reduced when a person breaches the agreement once or twice within a two year period. A breach is where the person 'fails to take reasonable steps to comply' with a participation agreement (**proposed subsection 503B(2)**). Following the first or second breach, the rate of parenting payment is progressively reduced (**proposed section 503E**). However, if, within 13 weeks, the recipient takes 'reasonable steps to comply' with the agreement, the original rate becomes payable, and the qualification is backdated, notwithstanding the existence of this or any subsequent 'breach penalty period' that arises during those 13 weeks (**proposed subsection 503C(3)**).

Payability

Item 11 inserts new Subdivision C into Division 1, Part 2.10. This deals with payability of parenting payment in circumstances where the recipient has breached an agreement three or more times within a two year period (**proposed section 500ZA**). A breach is where the person 'fails to take reasonable steps to comply' with a participation agreement (**proposed section 500ZB**). Following this third breach, parenting payment is generally not payable

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

for a period of 8 weeks (**proposed subsection 500ZC(1)**). However, as above, if, within 13 weeks, the recipient takes 'reasonable steps to comply' with the agreement, it becomes payable again and the qualification is backdated (**proposed subsection 500ZC(3)**).

Items 40 and 46 amend the *Social Security (Administration) Act 1999*. They deal with discretionary payment pending internal or external review of a decision regarding breach of a participation agreement that would result in a non-payment period.

Special Benefit

Generally, the Secretary has a discretion to pay Special Benefit to a person who has been disqualified from a social security payment or for whom it is not payable. However, that discretion cannot be exercised in some circumstances, including where a person has been disqualified from newstart allowance for failure to enter into or comply with an activity agreement. **Item 35** extends this prohibition to the participation agreement above.

Grant

Part 2 of Schedule 1 amends the *Social Security (Administration) Act 1999*.

Generally, a payment must be granted if the claimant is qualified and the payment is payable. The disjunction between qualification and payability allows the social security law to deal with these issues separately. The separation is significant in various areas, including the initial grant. For example, under the *Social Security (Administration) Act 1999* newstart allowance must be granted notwithstanding that it is not payable because of a waiting, non-payment or rate reduction period (subsection 37(1)).

Language, literacy and numeracy supplement

The *Australians Working Together* package included a supplementary payment for people attending approved literacy and numeracy training, of \$20.80 per fortnight.⁷

Schedule 2 provides for this supplement to be available to recipients of newstart allowance, youth allowance, parenting payment, mature age allowance, widow allowance, partner allowance and disability support pension. To be qualified, a person must attend an approved literacy and numeracy course on at least one day during the relevant fortnight.

This supplement is not payable if the person receives a pensioner education supplement, approved program of work supplement or a CDEP Scheme Participant Supplement.

No claim is required for the supplement (**Part 2, item 4**)

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Personal Support Programme (PSP)

This program is an expanded version of the existing Community Support Programme (CSP). **Schedule 3** provides for PSP to replace CSP as an activity under the activity test. The bulk of the provisions provide for participation in the PSP to cancel the effect of certain penalties and waiting periods imposed under:

- the liquid assets test,
- moving to an area of low employment prospects non-payment period,
- the seasonal workers preclusion period,
- the ordinary waiting period for newstart allowance,
- the activity test, and
- the administrative breach arrangements.

The program is directed at people with multiple non-vocational barriers to employment such as homelessness, drug problems, domestic violence and mental illness.

Closure of Access to Mature Age Allowance (MAA) and Partner Allowance (PA)

The *Australians Working Together* package included measures to improve assistance to mature age income support recipients and to phase out several payments.⁸ **Schedule 4** deals with the closure of mature age allowance and partner allowance to new claimants from 1 July 2003. Both payments were originally conceived as temporary payments to address the income support needs of particular groups with little recent attachment to the workforce. MAA was introduced in March 1994 as an interim measure to assist older long term jobless people facing difficulties obtaining work in a tight labour market. From 1 July 1996, MAA became a permanent payment. PA was introduced in September 1994 to replace dependent spouse payments to certain income support recipients. In 1995 it was restricted to people born before July 1955 so that it would eventually be phased out by 2020. The other payment for mature age jobless people is the widow allowance (WA) introduced in 1995. WA will be phased out from 1 July 2005 with new grants from this date only to be made to women who were born on or before 1 July 1955.

The McClure Report recommended that payments for mature age jobless people be integrated into a single payment. The Governments approach differs from this recommendation in that it plans to phase out all such payments and assist that group through newstart allowance but with modified activity requirements (see **Schedule 5**).

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Flexible Participation Requirements for Mature Age Newstart Allowees

Background

To accommodate people affected by the changes set out in **Schedule 4**, **Schedule 5** provides for changes to the activity test for those aged 50 or more with limited prospects of employment in the short-term. Special provision for older unemployed people are not new. As far back as 1986, reduced reporting requirements were introduced for them. Activity testing arrangements have also been modified somewhat for this group. The current Bill adds to the existing arrangements to increase flexibility.

The Bill

Schedule 5 contains the following adjustments to the activity testing arrangements:

- greater latitude is allowed for people aged 50 years or more to qualify as unemployed,
- existing reduced reporting provisions (reporting at up to 12 weekly intervals rather than fortnightly) for those aged 50 years or more are modified so that receipt of income support for 12 months or more is no longer a necessary qualification,
- those aged 50 years or more may not be required to participate in a work for the dole scheme,
- greater latitude is given for Centrelink officers to suggest activities for over 50 year olds that will help satisfy the activity test,
- eased application of activity test and administrative breach penalties, and
- limited access to payment during temporary absences from Australia (**item 15**).

Latitude in relation to being 'Unemployed'

In order to qualify for newstart, a person must be unemployed *and* must comply with some conditions such as satisfying the 'activity test' (paragraph 593(1)(b)). Moreover, if a person is required, as part of the activity test to enter into an 'activity agreement', he or she must 'enter into that agreement' (paragraph 593(1)(e)). Thus, arguably, a failure to immediately enter into an activity agreement means that a person cannot be considered 'unemployed'.

The Bill relaxes the timing requirement for people aged 50 years or more. It is sufficient that they are not 'unreasonably delaying' entry into an activity agreement (**items 1 and 10 of Schedule 5**).

This would seem to reflect an assumption that there may be difficulties in tailoring appropriate activity agreement terms to people aged 50 years or more. However, it may raise an issue in relation to those aged under 50 years. If there are difficulties in tailoring

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

appropriate activity agreement terms to these working age people, it may be considered appropriate that the same flexibility be introduced in relation to the timing requirement.

Approved Activities

A number of options are available under the newstart activity test. For example, a person may be required to participate in paid work, a work for the dole scheme or work related training (subsection 601(2)). However, there is an exemption from the 'work for the dole' requirement relating to issues such as illness, disability or injury (subsection 601(2E)). This is extended to those over 50 years regardless of other considerations (**item 9**).

Activity Agreement Terms

In relation to the 'approved activities' for newstart activity agreements, the 'other approved activities' element is relaxed in the same way as for parenting payments above (**item 11**).

Reporting Requirements

Currently, a person is qualified for newstart for a period where they comply with reporting requirements for that period (generally 12 weeks). However, leeway may be given where, for example, the Secretary is satisfied that, in the absence of a report, a person may reasonably be expected to comply with the qualification requirements (section 600). For people aged over 50 years, leeway may be given where (a) the person has received a social security payment continuously for 12 months and (b) the Secretary is satisfied that the person's income from employment is not likely to increase (paragraph 600(6)(a)).

The Bill removes the requirement relating to receipt of a payment for 12 months (**item 8**).

Payability and Rate Reduction

As noted, while there are payability and rate reduction penalties for repeated breaches of parenting payment participation agreements, there are concessions where a person takes reasonable steps to comply with the agreement and thereby remedy the breach. In specific terms, parenting payment is not payable for 8 weeks and the rate is progressively reduced. But this can be remedied by any reasonable compliance steps taken within 13 weeks.

The Bill applies a similar set of concessions to newstart recipients over 50 years, although the remedial steps must be taken during the 8 week penalty periods (**items 12–14**).

Working Credit

Background

Schedule 6 provides for a Working Credit for workforce age income support recipients. Credits would be built up during periods when little or no private income is earned. Those credits would reduce the amounts that are counted under the income test when earned

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

income increases. This idea is not new. In 1987 the Hawke Government introduced a similar earnings credit for pensioners. In 1994 an earnings credit was introduced for newstart and sickness allowees. The present Government abolished both schemes in its first term, citing doubts about their effectiveness as justification for that action.⁹ The then Minister for Social Security, Mr Ruddock, stated that 'of the estimated 4 million customers who could potentially access the scheme, only 3 per cent...actually accessed their earnings credit balance over the course of a year'. The Government's view was that the existing income test was a 'more equitable arrangement' which provided 'a better incentive to work for DSS customers due to its less complicated nature and generous taper provisions'.¹⁰

This sort of scheme was put back on the agenda because the McClure Report included a strong recommendation for a 'transition bank'. The Government included it in their response to the Report in December of 2000¹¹ and the Labor Opposition welcomed the move.¹² The proposal details were given in the *Australians Working Together* package.¹³

Schedule 6 includes the following major measures:

- the working credit rules,
- provisions to allow a person to use their working credit and not lose qualification for their payment because they are employed, and
- people losing payment because of employment income will, for a twelve week period, be able to retain concession cards, exemption from income tests for Family Tax Benefit and Child Care Benefit, exemption from the Youth allowance parental income test for their child, rent assistance and partner income test concessions, various supplements and telephone allowance.

The Bill

Schedule 6 amends the *A New Tax System (Family Assistance) Act 1999*, *Social Security Act 1991* and the *Social Security (Administration) Act 1999*.

Working Credit Rules

Item 26 inserts *Division 1AA—Employment income attribution rules* into Part 3.10. This area of the *Social Security 1991* that deals with income testing rules.

People on income support with no private income in any fortnight will build up 48 Working Credits. Their credit will build up to a maximum of 1000 credits. If they earn income between \$1 and \$48 per fortnight the credits they receive will be reduced by one for each dollar earned. When they have income from employment that is enough to affect their payment they can use their credit. Income over these amounts would reduce their credit before any excess was assessed under the income test. For example if a newstart allowee earned \$500 from casual work in a fortnight, the income free area of \$62 would be deducted, leaving \$438. If their Working Credit totalled more than that, they would keep

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

all their payment for that fortnight. Their credit would be reduced by 438. If their credit was less than 438 the excess would be assessed under the income test.

Working Credit and qualification for Payments and other Allowances

The Bill provides that a newstart allowee may earn employment income without affecting their qualification for newstart if they have not exhausted their working credit balance (**item 8**). Moreover, for any income tested social security payment that has ceased, after a person has exhausted their working credit balance, they are deemed to be receiving that payment so as to allow them to receive subsidiary allowances, such as the 'approved program of work supplement' and the 'language, literacy and numeracy supplement' (**item 7**). The extension lasts for 12 weeks or until they otherwise become disqualified.

Endnotes

- 1 *Participation Support for a More Equitable Society*, Final Report of the Reference Group on Welfare Reform, July 2000.
- 2 For further material on the welfare review process see the Welfare Review e-brief at: <http://www.aph.gov.au/library/intguide/SP/welfarebrief.htm>.
- 3 For details see *Australians Working Together* website at: <http://www.together.gov.au/>.
- 4 *Participation Support for a More Equitable Society*, Final Report of the Reference Group on Welfare Reform (McClure Report), July 2000, p.43.
- 5 McClure Report, op. cit., p.42.
- 6 See fact sheet at: <http://www.together.gov.au/GovernmentStatement/FactSheets/FS15.asp> for more detail.
- 7 See fact sheet at: <http://www.together.gov.au/GovernmentStatement/FactSheets/FS02.asp> for more detail.
- 8 See fact sheet at: <http://www.together.gov.au/GovernmentStatement/FactSheets/FS17.asp> for more detail.
- 9 The Hon. Philip Ruddock MP, 'Earnings Credit Scheme', Answer to Question on Notice No. 1236, House of Representatives, *Debates*, 24 February 1997, p. 1160.
- 10 *ibid.*
- 11 Senator Jocelyn Newman, 'Welfare Reform Encourages People to reach Potential', *Media Release*, 14 December 2000.
- 12 Senator Chris Evans, 'No Obligation and No Commitment', *Media Release*, 14 December 2000.
- 13 See fact sheet at: <http://www.together.gov.au/GovernmentStatement/FactSheets/FS02.asp> for more detail.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.