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No. 112 2002–03

Family and Community Services Legislation
Amendment Bill 2002

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 112 2002–03

Family and Community Services Legislation Amendment
Bill 2002

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13 February 2003

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Family and Community Services Legislation Amendment Bill 2002

Date Introduced: 4 December 2002

House: House of Representatives

Portfolio: Family and Community Services

Commencement: Many of the remedial amendments commence retrospectively. The amendments discussed in this Digest commence on Royal Assent.

Purpose

To amend the social security law, family assistance law and veterans entitlement law largely to remedy numbering errors, technical errors, misdescribed amendments and unintended consequences resulting from changes to these areas of law in 1999 and 2000.

Background

This bill contains no significant policy changes. Background to those changes is included in the Main Provisions section of this Digest.

Main Provisions

Schedule 1

Schedule 1 amends:

- the *Social Security Act 1991*
- the *Social Security (Administration) Act 1999*, and
- the *Social Security (International Agreements) Act 1999*.

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Items 1–112 commence on Royal Assent. **Items 113–123** commence retrospectively in 2000, coinciding largely with the commencement of other relevant legislation (the *Youth Allowance Consolidation Act 2000* and the *Social Security (Administration) Act 2000*).

Disability Assessment Tools

Items 8–9, and **37–39** deal with tools for assessing disability in adults and children. Sections 38C and 38D provide for Adult Disability Assessment Tool (ADAT) and Child Disability Assessment Tool (CDAT) respectively. They permit the Secretary to issue determinations containing tests for assessing 'the disability, emotional state, behaviour and special care needs of a person' and a means of recording the result of that test in a score.

Under existing determinations, ADAT or CDAT scores reflect the following:

'professional questionnaire score' + 'claimant questionnaire score'

The amendments set requirements for total scores on ADAT or CDAT, based on minimum scores on the professional questionnaire. For example, to be eligible for carer's allowance for a disabled adult, a person must have a total score at least 30 on the ADAT with a minimum score of 12 on the professional questionnaire (**item 39**).

CDEP and Breach Penalties

The *Social Security Act 1991* sets various penalties for repeated breaches of the activity test. For example, there are rate reduction and payability penalties for breaches of activity agreements under Youth Allowance and Newstart Allowance. There are similar penalties in relation to breaches of participation agreements under Parenting Payment. These are waived, and the payments backdated, where the person takes reasonable steps to comply.

Items 10, 11, 13, 14, 16, 17 and 28 amend the *Social Security Act 1991* to provide that a breach penalty will cease to apply to a person who starts to participate in the Community Development Employment Projects Scheme (CDEP). CDEP is a program funded by the Aboriginal and Torres Strait Islander Commission. It enables Community Councils, Aboriginal Corporations, etc. to offer paid work to indigenous community members.¹

These items amend sections 550B (activity test non-payment periods), 557A and 558A (rate reduction periods) relating to Youth Allowance and insert **new sections 631D** and **631E** (non-payment and rate reduction periods) relating to Newstart Allowance.

Item 24 prevents 'double dipping' in relation to Austudy and CDEP.

Youth Allowance and Repayment Debts

Items 18 and **67** reproduce provisions of the *Youth Allowance Consolidation Act 2000* that were not passed into legislation due to an inadvertent numbering error in that Act.

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These provisions aim to provide for reconciliations of income at the end of the year and for the recovery of excess payments and the refund of overpayments or back-payment of underpayments. This process is not unprecedented, being the same process currently used for the provision of the Family Tax Benefit (FTB) and Child Care Benefit (CCB) income supplement payments. But, readers will be aware that end of year income reconciliations for FTB and CCB have given rise to controversy with the creation and recovery of debts.

While this end of year income reconciliation process exists in family assistance law, it is unprecedented in social security law. Currently, income is assessed at the time of claim or review. For pay as you earn (PAYE) taxpayers this commonly involves an examination of pay slips. For those with business income it would commonly involve an examination of tax assessments, balance sheets, profit and loss statements and cash receipt books etc. Once a rate has been set and payments commenced, the recipient is then obliged to report any income changes. The rate would be reset upon any change, and reassessed upon review (eg. when more up-to-date information is available following a tax assessment).

Ordinarily, income assessments in social security law are not retrospective and debts are not provided for unless the evidence suggests that the recipient has failed to report an increase in income. In that case a debt would be created and recovered. The process provided for in **items 18** and **67** involves a reconciliation of all payments and the creation of debts or entitlements arising out of the reconciliation. Perhaps this signals the intention to expand this end of year income reconciliation process to all income-tested payments?

Mobility Allowance

Mobility Allowance (MA) was introduced in April 1983 for severely handicapped people in employment or vocational training who were unable to use public transport without substantial assistance. It is tax-free and income test free and paid at \$66.20 per fortnight.

It is a condition of MA that the recipient perform an 'approved activity' under the Act.

From November 1986 MA was payable where the claimant performed a combination of employment and vocational training for at least 20 hours per week. From March 1993 MA was extended to people who were unable to use public transport unaided and were undertaking job search or doing voluntary work for at least eight hours per week. From September 1995 MA was extended to handicapped recipients of unemployment payments.

Currently, various criteria for MA require 'gainful employment' and/or 'vocational training' for 'at least 8 hours per week on a continuing basis'. These criteria are to be amended.

Item 43 amends section 1035 of the *Social Security Act 1991* so that a more flexible definition of 'approved activity' is applied when assessing eligibility for MA. The time involved in these activities will be measured on a four weekly rather than a weekly basis. Also, any combination of gainful employment, voluntary work and vocational training will allow a person to qualify rather than the more limited combinations presently prescribed.

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Schedule 2

Schedule 2 amends

- *A New Tax System (Family Assistance) Act 1999*
- *A New Tax System (Family Assistance) (Administration) Act 1999*
- *A New Tax System (Family Assistance and Related Measures) Act 2000*
- *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No 1) 1999*
- *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No 2) 1999*, and
- *A New Tax System (Tax Administration) Act 1999*.

Most of these amendments relate to technical errors, misdescribed amendments and unintended consequences of amendments to family assistance law in 1999 and 2000.

Items 1–51 commence on Royal Assent.

DVA Pensions and Family Assistance

Items 10 and **11** amend *A New Tax System (Family Assistance) Act 1999* to provide a savings arrangement for certain veterans pensions. They protect recipients of Department of Veterans Affairs (DVA) disability and war widow/widower pension from reductions in their entitlement to Family Tax Benefit (FTB) and Child Care Benefit (CCB) due to changes made to the definition of 'adjusted taxable income' on 1 July 2000.

FTB and CCB were introduced in July 2000, as part of a general move to replace Family Allowance, Family Tax Payment, Family Tax Assistance and Childcare Assistance. The new legislation included certain tax-free pensions and benefits in the definition of the 'adjusted taxable income' to be considered when applying the income test to FTB and CCB. DVA disability pension, invalidity service pension, partner service pension, widow or widower pension and income support supplement were among those tax-free pensions. These payments had not previously been assessed under the income test that applied to Family Allowance before July 2000, so the changes disadvantaged some DVA recipients.

Items 10 and **11** restore the position of these recipients as at 30 June 2000.

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Schedule 3

Schedule 3 amends:

- the *Veterans' Entitlement Act 1986*
- the *Commonwealth Services Delivery Agency Act 1997*
- the *Family and Community Services Legislation Amendment (1999 Budget and Other Measures) Act 1999*
- the *Social Security (Administration and International Agreements) (Consequential Amendments) Act 1999*
- the *Social Security Legislation Amendment (Concession Cards) Act 2001*, and
- the *Youth Allowance Consolidation Act 2000*.

These amendments are largely technical and remedial. They do not reflect policy changes.

Schedule 4

Schedule 4 amends

- the *Social Security Act 1991*, and
- the *Social Security (Administration) Act 1999*.

These amendments are largely technical and remedial. They do not reflect policy changes.

Schedule 5

Schedule 5 repeals the *First Home Owners Act 1983*.

No new claims have been permitted under the Act since 30 June 1991 (section 17A).

Endnotes

- 1 For a brief description of how the CDEP scheme works see: <http://www.facs.gov.au/guide/ssguide/11c212.htm>.

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