



Family and Community Services Legislation Amendment (Family Assistance and Related Measures) Bill 2005

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Family and Community Services Legislation Amendment (Family Assistance and Related Measures) Bill 2005

Date Introduced: 26 May 2005

House: House of Representatives

Portfolio: Family and Community Services

Commencement: The various amendments presented in the Bill have differing dates of commencement, from the day on which the Act receives Royal Assent, 1 January 2006 or 1 July 2005. **Section 2** contains a table setting out the commencement dates for each part of the Bill.

Purpose

The Bill contains the largely unrelated measures listed below:

- A new method for calculating Family Tax Benefit Part B (FTBB) entitlement for those who return to the workforce after the birth of a child
- A change to Maternity Payment (MP) eligibility criteria to allow payment for adopted children who enter the care of their adoptive parents up to the age of two years
- A number of changes to the treatment of Family Tax Benefit debts
- A minor change to the FTBB income test, and
- Two minor changes to the payment of rent assistance.

Background

Major measures

Family Tax Benefit Part B for those entering the workforce after the birth of a child

FTBB was introduced in 2000 as a payment for parents who stayed home to look after their children on a full-time or nearly full-time basis.¹ An income test was used as a means of excluding people who worked for more than few hours a week from receiving the payment. However, the inevitable result of such an income test was increased disincentives for parents to return to work after their youngest child was no longer an infant.

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Concern about disincentives produced by income testing of family assistance and other income support payments is not new. The design of the Family Tax Benefit introduced in 2000 was influenced by a desire to reduce disincentives. However, recent research indicates that disincentives are still of concern.²

The 2004 Budget included two measures to address this issue: the measure in this Bill and a measure to ease the income test to allow part payment of FTBB to parents who worked part-time and earned up to about \$19,000 per annum. This second measure was introduced from 1 July 2004.

The change included in this Bill addresses the situation of parents who would face the prospect of a FTB debt if they returned to the workforce part way through a financial year. FTBB eligibility is assessed on an annual basis in line with an estimate of income made at the start of the financial year. Commencing paid employment part way through a year can mean that eligibility for FTBB for the whole year is lost or at least that entitlement is reduced. Any payments already received can become an overpayment debt.

This measure ensures that the parent returning to work retains eligibility for FTBB for the part of the financial year before they return to work. Their income will only reduce entitlement for the period after they return to work. This change significantly reduces the work disincentives faced by parents in this situation.

Maternity Payment (MP) for adopted children

The MP was introduced from July 2004. It replaced the Maternity Allowance introduced in February 1996. Eligibility for the new payment was limited to children who entered the care of their adoptive family before the age of 26 weeks. This effectively excluded most adopted children because only a minority were adopted before that age. Overseas adoptions were particularly affected. This change ensures that eligibility is available where the adopted child enters the care of their new family up to the age of two years.

Adoptions in Australia

There were 502 adoptions of children in Australia in 2003–04, an increase of 6 per cent from 472 adoptions in 2002–03. 74 per cent (370) of the adoptions were inter-country placement adoptions, 14 per cent (73) were local placement adoptions and 12 per cent (59) were ‘known’ child adoptions.³

Almost half of all children adopted (43 per cent) were aged less than 1 year. In local placement adoptions 88 per cent of all children were aged less than 1 year, while in inter-country adoptions 41 per cent of children were aged less than 1 year and a further 30 per cent were 1 year of age. ‘Known’ child adoptions differed in that 96 per cent of the children were aged 5 years or more.⁴

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While there were only 59 'known' child adoptions, almost all were aged over 5 years, so these adoptions will not gain access to the MA with this change.

Minor and technical amendments

Family Tax Benefit non-lodger debts

The Bill contains several measures designed to ensure that parents who separate are not disadvantaged by the non-lodgement of income tax returns by their ex-partner. The reconciliation process, where FTB and Child Care Benefit (CCB) entitlements are finalised, relies on tax returns for both ex-partners being lodged. If the lodgement of an ex-partner's tax return is delayed for longer than the two year lodgement period allowed, there is no entitlement to a top-up where family income had been over estimated. This Bill ensures that non-lodgement by an ex-partner does not reduce access to a top-up. The Bill also provides that where separation occurs more than two years after the FTB entitlement year any non-lodger debt incurred because the ex-partner had not lodged a tax return may be written off.

Rent Assistance and FTB past period claims

Rent assistance for a past period can only be claimed in conjunction with FTB if fortnightly instalments of FTB are claimed at the same time. If FTB is claimed as a lump-sum, rent assistance cannot be claimed. In 2004 the time limit for claiming FTB as a lump-sum was extended from one to two years after the end of the entitlement year. The Bill adjusts the *A New Tax System (Family Assistance) Act 1999* (FAA) to make it clear that rent assistance cannot be claimed along with a lump-sum of FTB in either the first or the second year after the entitlement year.

FTB advances and child support debtors

Certain child support debts may be recovered from FTB entitlements. However, they may not be recovered from FTB advances. To ensure that this does not provide a means for debtors to avoid debt recovery, the Bill ensures that advances will not be made available to child support debtors in the same way that they are not available to people who have a social security or family assistance debt.

FTBB income test

The Bill makes a minor adjustment to the FTBB income test. From January 2005 a FTBB supplement was introduced. It is paid as a lump sum at the time of reconciliation after the end of the entitlement year. This amendment merely specifies that the standard rate of FTBB will be reduced by the income test before the supplement is affected.

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Rent assistance

The Bill makes two changes to the administration of rent assistance. First, amendments ensure that double payments of rent assistance through FTB and through a social security or veteran's entitlements payment cannot occur. If they do through administrative error they will be recoverable.

Second, amendments ensure that where a rent certificate review is not submitted, only the rent assistance portion of a person's FTB or social security payment will be cancelled, rather than the whole payment as at present.

Main Provisions

Schedule 1 – Method of calculating Part B rate for those who return to work after the birth of a child etc

Item 2 provides a definition of 'passive employment income' to include income from paid leave, or compensation payment etc. This definition is inserted to prevent this sort of income from being defined as 'returns from paid work'.

Item 4 inserts a definition of 'secondary income earner'. Normally the 'secondary income earner' of a couple is the partner with the lesser amount of income, but where both partners have the same income the 'secondary income earner' is to be the one who returns to work first in any one year. These sorts of cases where both partners have the same income are very rare.

Item 5 inserts various definitions such as 'paid work', 'returns to paid work'. 'Paid work' is not just minimal paid work but requires a 'substantial degree of exertion'. This is then defined under 'returns to paid work' as of at least 10 hours per week for 4 consecutive weeks.

'Returns to paid work' also requires the person to notify Centrelink in writing within the year of work. Notification within the year that FTBB is paid for should not be a problem as recipients will want to gain the advantage of the beneficial application of this new treatment of paid employment income under the FTBB income test. Notification in writing is somewhat exceptional as in most other notification requirements, verbal notification by phone is usually sufficient.

Item 8 amends the FTBB income test sections in the FAA to calculate the rate where the recipient 'returns to work after the birth of a child etc'. While it refers to returning to work after the birth of a child, it really refers to any employment income earned during the year where previously there was no employment income earned.

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Schedule 2 – Maternity payment

Item 1 adjusts the age limit of the child under which an adopted child can qualify an adoptive parent for MA from 26 weeks to 2 years of age.

Item 2 stipulates that where the child is adopted from overseas the child must have been aged less than 2 years on arrival in Australia as part of the adoption process. This means where the child was aged less than two on arrival but the adoption processes only commenced after arrival, the child would not qualify the adoptive parent for MA.

Item 3 requires the claim for MA to be made within 26 weeks of the adopted child coming into the claimant's care. This is the same rule that currently applies for children adopted from inside Australia.

Item 5 provides for the commencement of these changed MA provision to go back to when MA originally commenced, being from 1 July 2004. The other requirement to claim within 26 weeks of the child coming into care would otherwise undermine this, so **Item 6** provides for transitional provisions to get around this problem.

Item 7 allows only one MA payment to be made in respect of a child.

Schedule 3 – Family assistance amendments

Item 8 makes amendments to the section 28 of the FAA to allow a separated partner entitlement to any top-up payment after two years, even though the other partner has not lodged their tax return. Currently unless both separated partners lodge their tax returns within two years of the year FTB was paid for, no top-up payment owed to the partner who has lodged their return can be made.

Item 16 inserts amendments into the FAA to allow the write-off of FTB and CCB debts in certain circumstances. The circumstances are where one partner of a separated couple has not lodged a tax return within two years of the relevant payment year, for which FTB or CCB was paid.

Schedule 4 – Rent assistance

Part 1 – Duplicate rent assistance payments

Item 3 amends the FAA to allow the payment of RA for a period of up to two years in the past. This might apply where the claim for FTB is lodged up to two years after the end of the relevant year for which FTB is being paid. The **Item 3** amendments also ensure the rate of RA paid attached to FTB takes into account any RA paid for the same period attached to qualification to any other income support payment paid under the SSA. **Item 3** also requires the RA payable attached to FTB to likewise take into account any RA paid

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attached to an income support payment provided under the *Veterans' Entitlements Act 1986* (VEA).

Part 2 – Rent certificates

Item 31 allows the amount of RA deemed to be payable to be varied on its own, separate to the amount of FTB payable.

Item 36 places a new section in the SSA to allow the separate cancellation of RA payable, where the rent certificate is not provided. The main income support payment can still be paid, rather than it also being cancelled.

Item 37 allows the increase of the rate of assistance payable (the RA amount) to be restored where the rent certificate is later provided.

Endnotes

¹ *A New Tax System (Family Assistance) Bill 1999*, Bills Digest No. 175, 1998-99.

² Examples of research in this area are: G. Beer 'Work Disincentives under A New Tax System: The distribution of effective marginal tax rates in 2002', Paper presented to the 2002 Conference of Economists, 30 September 2002. Full text at: <http://www.natsem.canberra.edu.au/publication.jsp?titleID=CP0306> M. Toohey and G. Beer, 'Is it worth working now? :Financial incentives for working mothers under Australia's new tax system'. Paper presented to the 2003 Australian Social Policy Conference 9 July 2003. Full text at: <http://www.natsem.canberra.edu.au/publication.jsp?titleID=CP0212>

³ Australian Institute of Health and Welfare, *Adoptions Australia 2002–04*, Child Welfare Series No. 35, Canberra, 26 November 2004, p. X.
<http://www.aihw.gov.au/publications/index.cfm/title/10073>

⁴ *ibid.*

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