



Families, Community Services and Indigenous Affairs and Other Legislation (2006 Budget and Other Measures) Bill 2006

Peter Yeend
Social Policy Section

Fiona Childs
Politics and Public Administration Section

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Families, Community Services and Indigenous Affairs and Other Legislation (2006 Budget and Other Measures) Bill 2006

Date introduced: 25 May 2006

House: House of Representatives

Portfolio: Families, Community Services and Indigenous Affairs

Commencement: The commencement dates for all of the schedules in the Bill are set out in the Table in Item 2 of the Bill.

Purpose

To provide legislation to give effect to several government initiatives announced in the 2006-07 Budget and also some other government initiatives. In summary these initiatives are:

- The one-off raising of the Family Tax Benefit Part A (FTB-A) income test free area,
- Expanded access to the Large Family Supplement (LFS) from families with four or more children to families with three or more children,
- Expanded access to the Utilities Allowance (UA) to persons under Age Pension age who are in receipt of either Mature Age Allowance (MAA), Widow Allowance (WA) or Partner Allowance (PA),
- The introduction of the new Australian Government Disaster Recovery Payment (AGDRP) replacing the current Disaster Relief Payment (DRP),
- Allowing access to the maintenance income test free area for past years when maintenance income for passed years is received in a lump-sum payment,
- Expanded access to the Carer Payment (CP) to carers of a disabled child aged under 16,
- Allowing the establishment of special disability trusts in which families can place income to provide for the future needs of a severely disabled person and have the money in the trust exempted from the income and asset tests,
- Changes to governance arrangements of the Australian Institute of Family Studies (AIFS), and
- Minor amendments to family assistance law.

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Background

Schedule 1 – FTB-A income free area

2006-07 Budget announcement

The one-off raising of the FTB-A income test free area to \$40 000 was announced by the government in the 2006-07 Budget.¹ The initiative follows on from (and now overrides) a similar initiative in the 2005-06 Budget, when the FTB-A income test free area was raised from \$33 361 per annum to \$37 500 per annum to take effect from 1 July 2006.² That 2005-06 Budget change to the FTB-A income test free area has been legislated³ for but this proposal will override that change.

Estimated cost

The Budget papers estimate this measure will cost an additional \$999.3 million over four years, made up of an additional \$90.8 million for those who receive their FTB-A through the Australian Tax Office (that is those who claim in their tax assessment at the end of the year) and \$85.8 million to cover the flow on costs for the increased access for families to a Health Care Concession card.⁴ This leaves \$822.7 million being expended to those families who claim their FTB-A by way of fortnightly payments through the Families, Community Services and Indigenous Affairs (FCSIA) portfolio.

Numbers affected

The Budget papers estimates this initiative will increase the amount of FTB-A received for over 480 000 families.⁵

What is FTB-A?

The FTB income supplement payments for families with dependent children (FTB-A and FTB-B) were introduced from 1 July 2000, as the then new income supplement payments for families with children. They were introduced as a part of the A New Tax System (ANTS) changes.⁶ FTB-A and FTB-B replaced a range of income supplement and tax assistance arrangements for families, being Family Allowance, Family Tax Payment Parts A and B, Family Tax Assistance Parts A and B, Guardian Allowance, the Dependant Spouse Tax Rebate and the Sole Parent Tax Rebate.

Who can get FTB-A?

FTB-A can be payable (subject to the income test) to a person if they:

- have a dependent child under 21 (including a foster child), or

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- have a dependent full time student aged 21 to 24, and
- have income under a certain amount, and are living in Australia, and
- are either an Australian citizen, a New Zealand citizen, the holder of a permanent visa or the holder of certain temporary visas.

The FTB-A income test

Adjusted taxable income

The FTB-A income test looks at the adjusted taxable income of the family and where income is below upper cut-off limits (see Table 1 below), either a part-rate or a full rate of FTB-A can be paid. The rate of FTB-A is dependent on the level of family income and how many qualifying children the family has and the ages of the children.

Table 1: Actual annual family income limit at which FTB-A stops

(\$pa) – 2005-06 year⁷

		No of children aged 18 - 24 years		
No children 0 - 17 years	Nil	One	Two	Three
Nil		\$93 465	\$104 147	\$133 870
One	\$92 139	\$102 821	\$113 503	\$125 013
Two	\$101 495	\$112 177	\$123 687	\$135 196
Three	\$101 495	\$122 361*	\$133 870*	\$145 380*

* Income limit is higher for three children aged 13-15

Income test free area

The FTB-A income test has a free area. This is the amount of annual income a family can have before the maximum FTB-A rate is reduced. Currently, for the 2005-06 year the FTB-A income test free area is \$33 361. This is the amount proposed in this initiative to be raised to \$40 000 per annum to start from 1 July 2006, so will therefore apply to the 2006-07 year.

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Income test taper and base payment rate

Income above the free area amount (\$33 361) reduces the maximum FTB-A rate by 20 cents in every dollar until the payment rate reaches the base rate of FTB-A (see Table 2 below).

Table 2: Actual annual family income limit beyond which only base rate of FTB-A is paid

(\$pa) – 2005-06 year⁸

		No of children aged 13 - 15 years		
No Children 0 - 12 years	Nil	One	Two	Three
Nil		\$50 260	\$67 160	\$84 059
One	\$45 479	\$62 378	\$79 278	\$96 177
Two	\$57 597	\$74 496	\$91 396	\$108 295
Three	\$69 715	\$86 614	\$103 514	\$120 413

Income test cut-off limit

FTB-A rate stays at that base rate until family income reaches \$86 213 a year (plus \$3 431 for each child after the first). Thereafter the FTB-A base rate is reduced by 30 cents for every dollar over that amount until payment reaches nil (see Table 1 above).

Indexation of the FTB-A income test free area

Currently, the FTB-A income test free area is indexed to movements in the CPI once a year (1 July).⁹ The indexation is to CPI increase in the 12 month period ending on the preceding December. As with the previous Act passed by the Parliament in 2006 that raised the FTB-A income test free area,¹⁰ this Bill does not make any changes to this indexation arrangement and therefore the new higher free area will also continue to be indexed annually to the CPI.

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Comment

Adjustments to the FTB income tests since FTB was introduced in 2000

The FTB payments (FTB-A and FTB-B) have seen substantive adjustments to their income testing arrangements since they were introduced in July 2000, as a part of the ANTS package of initiatives.¹¹ For FTB-A the major change was the reduction in the FTB-A income test taper rate from 30 per cent down to 20 per cent, announced in the 2004-05 Budget, that took effect from the 2004-05 year.¹² The biggest single adjustment to the FTB-B was announced in the 2004-05 Budget, in which the FTB-B income test free area was doubled to \$4 000 a year and the income test taper rate was reduced from 30 per cent down to 20 per cent.¹³

It is a bit of a surprise that the government announced in the 2006-07 Budget this further one-off increase in the FTB-A income test free area, having previously done the same in the 2005-06 Budget. Again, as with the first announcement, the government is concerned that the FTB income test arrangements complement the Welfare to Work initiatives they announced in the 2005-06 Budget, which are to commence from 1 July 2006.¹⁴ The government is concerned that if it is asking FTB recipients on an income support payment to work more, to be more self-supporting, that they should remove or reduce some of the financial disincentives to earning more income from employment. This refers to the high effective marginal tax rates (EMTR) faced by FTB recipients as they commence to work, or work more hours thereby earning increasing levels of income and at the same time as government assistance is removed and they are required to pay more in tax.¹⁵ The National Centre for Social and Economic Modelling (NATSEM) studies indicate that for some, after government financial assistance is withdrawn and more tax paid, a person, can be left with only 20 or 30 cents in their hand for each extra dollar earned.¹⁶

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The FTB-A recipient mix and income testing

Table 3: Number of customers in receipt of FTB Part A for each of the financial years
2001-02 to 2004-05 by rate of payment¹⁷

FTB (A) Fortnightly Instalment Customers by Payment Rate Type	2001-02	2002-03	2003-04	2004-05
FTB (A) payment rate	As at 28/06/2002	As at 27/06/2003	As at 25/06/2004	As at 24/06/2005
Total	1 795 355	1 783 423	1 809 122	1 828 495
Maximum Rate	620 354	615 207	615 831	610 995
Broken Rate	431 552	427 482	423 531	536 838
Basic Rate	708 709	701 280	721 391	617 879
Tapered Base Rate	34 233	39 277	46 968	62 549
Unknown	507	177	1 401	234

Comments on Table 3

The reduction in the numbers on the maximum rate mirrors the overall reduction in the numbers on working age income support payments like Newstart Allowance over the same period. This reflects the reduced numbers of unemployed and increased employment participation rates. It also reflects the fact that the rate and income test limits for FTB-A are indexed once a year to the CPI, whilst average weekly earnings (AWE) have been increasing at a greater rate over the period and so less persons are entitled to the maximum rate because their incomes have increased.

The numbers on the broken rate have increased by over 100 000 in the period 2001-02 to 2004-05, especially in the last year. The decline to the 2003-04 year reflects increased earnings by FTB-A recipients. The last year increase reflects the reduction in the FTB-A income test taper rate from 30 per cent down to 20 per cent, announced in the 2004-05 Budget, that took effect from the 2004-05 year.¹⁸

The numbers on the basic rate was increasing in the first three years reflecting the CPI and AWE relationship described above. The sharp drop in the 2004-05 year reflects the reduced taper rate to 20 per cent allowing more on to the broken rate.

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Who benefits from the raising of the FTB-A income test free area?

The proposed increase in the FTB-A income test free area will mainly see families who qualify for a part (broken) rate of FTB-A receive an increase in assistance. This is because the raising of the free area will see a greater amount of their income being disregarded. For those families on maximum rate FTB-A (as their income is below the free area), the raising of the free area does not provide any immediate increase in assistance.

There is the potential for families on maximum rate to benefit if they earn more income and their income exceeds the free area limit. These families will be able to earn more income and still receive maximum rate FTB-A and will also be able to receive more income before they reach the level where they are only entitled to the basic rate.

Schedule 2 – Large family supplement (LFS)

2006-07 Budget announcement

This initiative to expand access to the LFS to families with three or more children was announced by the government in the 2006-07 Budget.¹⁹

Estimated cost

The Budget papers anticipate an extra cost of \$496.7 million over four years from 1 July 2006.²⁰

Numbers affected

Currently, LFS is paid to 100 000 FTB-A eligible families with four or more children. The Budget papers estimate this initiative will expand access to the LFS to some 440 000 FTB-A families.²¹

Current LFS rate

Currently, to be eligible for the LFS a family must have four or more children for whom they receive FTB. LFS is paid at \$9.52 a fortnight for each child after the third and this is paid on top of any FTB-A paid.

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Table 4: Current LFS payment rates

Number of children	LFS each fortnight	LFS each year
4	\$9.52	\$248.20
5	\$19.04	\$496.40
6	\$28.56	\$744.60
7	\$38.08	\$992.80

Schedule 3 – Extension of eligibility for Utilities Allowance (UA)

2006-07 Budget announcement

This government initiative to expand access to the UA was announced in the 2006-07 Budget.²² It is proposed to pay the UA to those persons qualified to receive the Mature Age Allowance (MAA), the Widow Allowance (WA) and the Partner Allowance (PA) from 1 July 2006.

In addition, the initiative proposes a one-off payment of UA, to be paid at the maximum rate of UA (\$102.80), to each household with a person eligible for either the MAA, the WA or the PA on 9 May 2006.

Estimated cost

The Budget papers estimate the cost of the on-going access to the UA for MAA, WA and PA recipients from 1 July 2006 to be \$27.6 million over four years commencing from the 2006-07 year.²³ The extra cost for the one-off UA payment is estimated to be \$8 million.²⁴

What is UA?

UA was introduced with the passage of the *Family and Community Services and Veterans' Affairs Legislation Amendment (2004 Election Commitments) Act 2004*.²⁵ The government's justification for the UA was set out in their 2004 election policy platform, being:

older Australians on income support receive access to one of a number of concession cards that provide access to cheaper prescriptions and a range of other benefits. Nonetheless, the Coalition recognises that some older Australians who rely on income

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support payments can experience difficulty in saving up to pay regular household bills such as the gas or electricity bill.²⁶

The Explanatory Memorandum explains that MAA, WA and PA recipients are like age pension recipients in that they are required to meet a 'no recent workforce experience' requirement to qualify for payment.²⁷ They are therefore by inference probably long-term income support recipients and like age pensioners should receive the benefit of UA.

The number of MAA, WA and PA recipients by electorate is available at the Department of Human Services website.²⁸ There have been no more new grants of MAA or PA since 20 September 2003 and no more new grants of WA after 1 July 2005, unless the woman was born on or before 1 July 1955.

Schedule 4 – Australian Government Disaster Recovery Payment (AGDRP)

2006-07 Budget announcement

The government announced the initiative to introduce the new AGDRP in the 2006-07 Budget.²⁹

Estimated cost

The AGDRP is estimated to cost \$13.1 million over four years.³⁰ This is just a cost estimate for Budget purposes as the future incidence of disasters and the numbers affected is not known.

Amount of AGDRP for disasters in Australia

The AGDRP is to provide a one-off payment of \$1 000 per adult and \$400 per child in recognition of the trauma and distress experienced by those affected by a disaster and will be exempt from the pension/allowance income and asset tests.³¹ The Bill makes no provision for these payments to be indexed but the Explanatory Memorandum explains that the Bill empowers the Minister to increase the rate amounts by way of a legislative instrument.³²

Current Disaster Relief Payment (DRP)

The AGDRP Budget announcement detailed that the proposed new payment would be effected by amending and replacing the current provisions in the *Social Security Act 1991* (SSA) that provide for the current DRP.³³ This essentially means the AGDRP will replace the current DRP with different payment rates and different qualification requirements. Currently, the DRP is payable to a person who has, because of a disaster, suffered:

- severe damage to their principal place of residence, and/or

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- a significant interruption to their source of livelihood, and
- when the person was affected by the disaster, he or she:
 - was residing in Australia, and
 - was not an unlawful non-citizen within the meaning of the *Migration Act 1958*.

How DRP is paid

DRP is paid as a one-off lump-sum payment. A person who is receiving a pension or benefit and meets the criteria for DRP can receive DRP in addition to their regular pension/benefit payments.

The amount of DRP

The rate of DRP is equivalent to the sum of the fortnightly rate of the following components, as they apply to the claimant's family circumstances:

- basic pension rate - the rate for a single person or the combined rate of a couple, and,
- maximum rate FTB-A less base rate FTB-A for the claimant's children under 16 years, and
- the maximum rate of rent assistance (RA).

For example, based on payment rates as at May 2006, a married couple with 2 children aged 9 and 14 years would receive a DRP of:

- \$834.40 – maximum combined partnered rate of pension,
- \$222.60 – maximum FTB-A rate less the base rate of FTB-A for the two children aged 9 and 14 years, and
- \$118.30 – maximum rate of RA
- A total \$1 175.30

Under the proposed AGDRP, this same couple would receive \$2 800 made up of \$1 000 per adult and \$400 per child.

DRP is not income or asset tested. If a person is already receiving a pension or benefit and they qualify for DRP, the disaster payment is paid in addition to their regular payments.

DRP declaration of 'adversely affected' by the Minister

Under the SSA, for DRP to be paid, the Minister for FCSIA must declare, by notice in the Gazette, that a disaster is a major disaster for the purposes of the SSA.³⁴ There are guidelines in the SSA as to what circumstances a Minister should declare as a major disaster. DRP cannot be paid without this declaration. Under the current section 1061K in the SSA the important words are:

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- (i) a person's principal residence is severely damaged; or
- (ii) there is a significant interruption to a person's source of livelihood;³⁵

There have been criticisms with this current DRP qualification requirement that it is too narrow and not all persons adversely affected by a disaster have had either their residence severely damaged or a significant interruption to their livelihood.

AGDRP declaration of 'adversely affected' by the Minister

In the Bill the proposed new section 1061L inserts a different definition of 'adversely affected' than is in the current section 1061K of the SSA. The new section 1061L will essentially empower the Minister to determine the meaning of 'adversely affected' from disaster to disaster. This will potentially see a broader requirement than currently exists. Also, this will give greater flexibility to the Minister to declare that the AGDRP can be provided than has applied in the past with Ministerial declarations about DRP. The Bill does not describe what sort, or magnitude, or type of disasters will or will not be declared sufficient to provide for the AGDRP, rather it just states the person should be 'adversely affected' by a major disaster. However, there is some description in the Explanatory Memorandum as to which sort of events are to be regarded as 'adversely affecting' a person.³⁶

AGDRP declaration by which Minister?

In the Budget papers announcing the AGDRP, it states that the Prime Minister, in consultation with the Minister will determine if the AGDRP is to be paid.³⁷ In this Bill, there are no provisions providing for the declaration of the AGDRP to be made by the Prime Minister. Rather, the Bill refers to the 'Minister' as it currently does for DRP. Under the SSA this is the Minister for FCSIA. One must presume that the administrative process will be one of the Prime Minister and the Minister for FCSIA consulting but the legal power for declaring that the AGDRP can be paid under the SSA will remain with the Minister for FCSIA.

AGDRP can be paid to individuals not resident in Australia

For the current DRP legislation, section 1061K requires the person be an Australian resident to qualify for DRP.³⁸ The Bill proposes to allow a payment of AGDRP to an Australian citizen who is not a resident of Australia.³⁹ There is no description or definition of who these persons may be just an empowering of the description to be made by way of a legislative instrument.⁴⁰ In short this means the Minister will be able to make individual declarations of qualification by way of a legislative instrument (to be tabled in the Parliament) on a case-by-case basis. However, this legislative instrument is not subject to section 42 of the *Legislative Instruments Act 2003* and therefore is not disallowable by the Parliament.⁴¹ The amount of AGDRP for a person who is an

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Australian citizen but not an Australian resident will be determined by the Minister, again by way of a legislative instrument.

Comment

The provisions presented in **Schedule 4** for the new AGDRP provide for much more discretionary and flexible decision making by the Minister than the current DRP provisions in the SSA. Also for the first time there are provisions for payments to individuals adversely affected by disasters residing overseas.

Schedule 5 – maintenance income credit balances

2005-06 Budget announcement

This government initiative to allow resident parents access to unused maintenance income test credits from past years was announced in the 2005-06 Budget.⁴²

Estimated cost

The Budget papers estimate the cost of this initiative to be \$54.8 million over four years.⁴³

Overview of the maintenance income test

Income received in the form of maintenance from a non-resident parent (payer) by a resident parent (payee) is not lumped in with other sources of income, rather it is only counted against the more than minimum rate of FTB-A, with a special free area and taper rate. Income from maintenance has its own separate income test, see the section below on the maintenance income test. Maintenance is not regarded as income for pensions or allowance income support payments and therefore has no effect on the rate of these payments. There are a few minor exceptions to this and maintenance is regarded as income for youth allowance, ABSTUDY and Assistance for Isolated Children purposes.

Origins of the special income test for maintenance income

The origins of the special maintenance income test lies in the significant reductions in assistance that some payees used to suffer, when receiving large amounts of maintenance, especially non-cash maintenance. Prior to January 1993, maintenance income was included with all other income and applied under the general income test for pensions and allowances. This meant that in cases where a large amount of maintenance income was received (commonly non-cash maintenance), the payee could have their income support payment significantly reduced or even precluded. This was an undesirable result, with the maintenance recipient often left with no on-going means of support, having received a large amount of in-kind maintenance and little or no cash. Originally there were ceilings

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or caps allowed on the provision of non-cash maintenance, but later there were changes to the treatment of maintenance, in terms of the payments affected and how the income test was applied.

A common example of non-cash maintenance received that precluded access to income support was expensive boarding school fees paid for several children. From January 1993, maintenance received had a special income test and only affected more than minimum rate of Family Allowance (FA), now more than minimum rate of FTB-A. The partial or total loss of more than minimum rate FTB-A, being income supplement not income support, is less of a problem than the loss of income support.

Maintenance income test

Maintenance may include payments of cash, including lump-sums, non-cash amounts and for example, payments made to third parties, such as payments of mortgage or rent or school fees. The maintenance income test only applies if the person is eligible for more than the base rate of FTB-A.

Maintenance income-free areas (per year)

Status	Maintenance Received (per year)
Single parent, or one of a couple receiving maintenance	\$1 182.60
Couple, each receiving maintenance	\$2 365.20
For each additional child	\$394.20

Maintenance over these amounts may reduce FTB-A by 50 cents in the dollar, until the base rate of FTB-A is reached.

Lump-sum arrears of maintenance

Currently, where arrears of several years of maintenance is paid in one year, the payee can only take advantage of one maintenance income test free area in the year they receive the lump-sum. This initiative proposes to alter the maintenance income test rules so that the payee can have the advantage of the maintenance income test free areas for each year that the arrears of maintenance is being paid.

There are many different examples of how the maintenance income test free area credit is designed to work in the Explanatory Memorandum.⁴⁴ A simple example is set out below.

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Example

If \$8 000 maintenance is paid (in the 2005-06 year) as a lump-sum being for four years maintenance arrears, the payee can only currently discount one free area of \$1 182.60 in the year the lump-sum is received. This leaves \$6 817.40 to reduce the annual rate of FTB-A (for the 2005-06 year) payable by \$3 408.70. This is different if the maintenance had been paid over each of the 4 years that it was owed, when the payee could take advantage of the maintenance income test free area for each year. The payee could take advantage of four years of free areas being \$1 182.60 for 05-06, \$1 149.75 for 04-05, \$1127.85 for 03-04 and \$1 095.00 for 02-03, a total of \$4 555.20. Then the \$8 000 arrears of maintenance received in 2005-06 would only reduce the FTB-A rate by \$1 722.40.

Who will be entitled to take advantage of the maintenance income balances?

To be able to gain access to the maintenance income test free areas for each year of arrears of maintenance received the payee will need to be:

- registered with the Child Support Agency (CSA), and
- eligible for FTB.

Comment

This is a beneficial initiative that has long been asked for by individual resident parents and resident parents representative groups.

Schedule 6 – Extension of carer payment for carers of severely disabled children

Government announcement

The government announced the expansion of access to the Carer Payment (CP) – caring for a disabled child on 12 September 2005.⁴⁵

Origins of the initiative

This announcement was in part due to a response to concerns being expressed about the capacity of parents to comply with their new mutual obligation requirements arising from the Welfare to Work changes introduced by the Government in the 2005-06 Budget.⁴⁶ Concerns were being expressed that parents caring for a child with a severe disability, might be asked to look for at least 15 hours a week work, and would be disadvantaged. Some of these concerns were expressed to the Senate Community Affairs Legislation Committee when it examined both the *Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Bill 2005*⁴⁷ and the *Family and Community Services Legislation Amendment (Welfare to Work) Bill 2005*. The Senate

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Community Affairs Legislation Committee reported on its examination of these Bills in November 2005.⁴⁸

Anticipated numbers to benefit from the expanded access to carer payment

The government detailed in an answer to a question on notice asked at Senate Estimates hearings for the 2005-06 Budget by Senator Claire Moore on 3 November 2005, that it anticipated the expanded access to the CP – caring for a child will see the extra number of recipients as 3 700 in 2006-07, 290 in 2007-08, 310 in 2008-09 and 340 in 2009-2010.⁴⁹

Estimates cost

The 2006-07 Budget papers estimated the extra cost for this initiative will be \$21.5 million in 2006-07, \$33.0 million in 2007-08, \$37.6 million in 2008-09 and \$42.4 million in 2009-10.⁵⁰

Current number of CP – caring for child recipients

The number of recipients of CP – caring for a child was 1 743 in 2003, 1 604 in 2004 and 2 155 in 2005.⁵¹ In 2004-05 there were 4 293 claims for CP – caring for a child of which 3,791 (88 per cent) were rejected.⁵² The reason there are so few recipients of CP – caring for a child and why so many claims are rejected is due to the very strict disability requirements and/or care needs for the child. See *Current requirements for CP – caring for a 'profoundly disabled child* below.

Origins of CP – caring for a child

CP – caring for a disabled child was introduced from 1 July 1998 with the passage of the *Social Security and Veterans' Affairs Legislation Amendment (Budget and Other Measures) Act 1997*.⁵³ With the introduction of CP – caring for a child, for the first time an income support payment was provided to a parent caring for a child. Hitherto, CP had only been payable to an adult caring for an adult. Governments have always been cautious about providing an income support payment to an adult caring for a child. They have recognised that it can be difficult differentiating between the care being provided for a very young child, because the child is young and the adult is performing the normal accepted parental care role, as opposed to the care being provided because the child is so disabled and/or in need of extra care. Governments have been cautious about setting a precedent of providing income support to an adult providing parental care duties.

However, when the CP – caring for a child was introduced in 1998, it was in recognition that there were some adults required to provide so much care for a disabled child that they could not otherwise support themselves by employment. The child care/disability requirements were deliberately made very strict to ensure the payment was targeted to

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those cases where the care/disability requirements were very onerous, that is a ‘profoundly disabled child’ – see *Child with a ‘profound disability’* below.

Current requirements for CP – caring for a ‘profoundly disabled child’

Currently, a person may get CP - caring for a child with a disability if they provide constant care in the home of the child and that child is/are:

- a child under the age of 16 with a profound disability or medical condition who has extremely high care needs, or
- two or more children under the age of 16 with severe disabilities or medical conditions who together require an extremely high level of care.

Where only one child is being cared for, the child must be one with a ‘profound disability’.

Child with a ‘profound disability’

For the purposes of CP, a child meets the definition of a child with a ‘profound disability’ if:

- the child has a severe multiple disability or the child has a severe medical condition, and
- because of that disability or condition, needs continuous personal care for a minimum of 6 months unless the child's condition has been certified by a medical practitioner as having a terminal illness for which palliative care has replaced treatment, and

the child's disability or condition must include at least 3 of the following:

- the child receives all food by nasogastric or percutaneous enterogastric tube,
- the child has a tracheostomy,
- the child must use a ventilator for at least 8 hours a day,
- the child has faecal incontinence day and night, and if the child is under 3 years old, is expected to have faecal incontinence day and night at the age of 3,
- the child cannot stand without support, and if the child is under 2 years old, is expected to be unable to stand without support at the age of 2,
- a medical practitioner has certified in writing that the child has a terminal condition for which palliative care has replaced active treatment, or
- the child requires personal care on 2 or more occasions between 10pm and 6am each day, and if the child is under 6 months old, is expected to need personal care between 10pm and 6am each day at the age of 6 months, or

a medical practitioner has certified in writing that:

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- the child has a terminal condition and is in the advanced phase of that condition, and
- the child has a life expectancy measured in weeks or months or it is possible that the child will live for more than 12 months but unlikely that he or she will live for a period substantially greater than 12 months, and
- because of the terminal condition the child will need continuous personal care for the remainder of his or her life.⁵⁴

Proposed expansion of access to carer payment – caring for a ‘profoundly disabled child’

The proposal in this Bill is to expand the requirements of caring for a ‘profoundly disabled child’ in sub-section 197(2) of the SSA to include a child with behavioural characteristics causing unsafe behaviour due to severe intellectual, psychiatric or a behavioural disability. This is to be achieved by inserting a new sub-section 197(2AA) in the SSA which will set out an additional set of circumstances where a carer of a ‘profoundly disabled child’ may qualify. In brief, the new set of requirements are:

- the child has a severe intellectual, psychiatric or behavioural disability, and
 - the child needs continuous personal care (which can include supervision) for 6 months or more, or
 - if the child’s condition is terminal and the child’s life expectancy is less than 6 months, for the remainder of the child’s life.
- the child is aged 6 or more and under age 16, and
- One of the following descriptions applies:
 - The child repeatedly engages in dangerous behaviour that poses a significant immediate or long term risk to the child’s own health or safety (including self-harming behaviours or absconding or behaviours of a similar extreme nature) that, without carer intervention, would result in the child suffering injury that is maintained or lasting or death, or
 - The child repeatedly engages in aggressive or violent behaviour that poses a significant risk to the health or safety of others or that results in significant property damage (including arson or repeated destruction of multiple household items or behaviours of a similar extreme nature) and, due to these behaviours, the child is regularly or permanently excluded from community programs, activities, services or facilities (such as a special education school or class or mainstream class, play group, pre-school, a local swimming pool or shopping centre), or
 - The child repeatedly engages in severe sexually deviant or sexually inappropriate behaviour and, due to this behaviour, the child is regularly or permanently excluded from community programs, activities, services or facilities.

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A further requirement is that the provision of continuous personal care by the carer (which is a new requirement under paragraph 197(2AA)(b)), severely restricts the carer's capacity to undertake paid employment.

Comment

As with the current 'child with a profound disability' requirements in the SSA, to qualify as a carer for CP – caring for a disabled child, this proposed new qualification category is very strict and only a few cases will meet the requirements. See '*Anticipated numbers to benefit from the expanded access to carer payment*' above. The requirements that the child is aged 6 to 16 and that the care requirements severely restricts the carer's capacity to undertake paid employment have their connections to the origins of this initiative arising out of the Welfare to Work initiatives and the new obligations for parents.

Schedule 7 – Special disability trusts

Government announcement

This initiative to allow the establishment of special disability trusts for the future care of a person with a severe disability was announced by the Prime Minister on 13 October 2005.⁵⁵

Special disability trusts initiative

From September 2006, parents or other immediate family members of a person with a severe disability, will be able to establish a private trust ('special disability trust') of up to \$500 000 to provide for the costs of the future care of the person. For these trusts the income and asset tests rules and the gifting rules normally applied under the SSA and the *Veterans' Entitlements Act 1986* (VEA) will not apply. This means the income from the trust will not affect the income support payment (commonly Disability Support Pension (DSP)) of the person requiring care. Also, gifts to the trust will not affect the gifting rules for the assets test that would normally apply to the gifting person's Age Pension or Service Pension. The \$500 000 trust limit will be indexed annually in line with the Consumer Price Index (CPI).

Estimated cost

The number of persons who might benefit from this initiative has not been provided by the government but the media release referred to a cost figure of \$200 million.⁵⁶

The 2006-07 Budget papers estimated the extra cost for this initiative will be \$19.7 million in 2006-07, \$69.7 million in 2007-08, \$104.1 million in 2008-09 and \$126.9 million in 2009-10 for the FCSIA portfolio.⁵⁷ The estimated extra costs for the Veterans' Affairs

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portfolio are \$1.6 million in 2006-07, \$4.6 million in 2007-08 and \$6.8 million in 2008-09.⁵⁸

Special disability trust

The provisions in **Schedule 7** insert into the SSA and the VEA a definition of a 'special disability trust'. Some of the requirements to be classified as a 'special disability trust' are:

- The beneficiary must otherwise qualify for DSP under the SSA or invalidity service pension under the VEA. This essentially confines the trusts to those providing for a person with a significant level of disability and inability for work.
- The beneficiary would otherwise qualify any carer to CP or carer allowance. This ensures that the trust refers to a person where the care requirements for the beneficiary are significant.
- The trust can only have one beneficiary.
- The sole purpose of the trust, as set out in the trust deed, is for the care and accommodation needs of the beneficiary.

The assets of the trust must not include assets transferred in by the beneficiary or compensation received for the beneficiary. This ensures the beneficiary is not using the trust to hide assets or monies they themselves have received to provide for their own care.

Gifting of assets - assets test and income test rules

The SSA and the VEA assets and income tests have rules to cater for situations where a person gifts or deprives themselves of an asset or income without adequate consideration. These rules are called the deprivation rules. For the deprivation rules to apply it must be shown that a person has destroyed or diminished the value of an asset, or a source of income. A person disposes of an asset or income when they:

- engage in a course of conduct that destroys, disposes of or diminishes the value of their assets or income, and
- does not receive adequate financial consideration in exchange for the lost asset or income.

For example, signing a document transferring legal title to land and gifting it to another person to register the transfer is a course of conduct that would be classified as deprivation.

The deprivation asset test rules are based on the principal that a person should use their own resources to support themselves first before calling on the taxpayer to provide them with assistance by way of income support payments. Where a person does deprive

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themselves of an asset without adequate consideration, the deprivation rules may see the value of the asset maintained for up to 5 years after the asset was disposed of.

There are provisions in **Schedule 7** of this Bill to not have the normal SSA and VEA deprivation rules apply where a person places assets into an approved 'special disability trust'. **Part 1 of Schedule 7** refers to the SSA and **Part 2 of Schedule 7** refers to the VEA. The limit for the asset test deprivation disregard will be \$500 000. Individuals can put assets to a value of greater than \$500 000 into a 'special disability trust', but the disregard for the deprivation provisions will be limited to \$500 000.

Schedule 8 – Australian Institute of Family Studies (AIFS)

Schedule 8 of the Bill proposes to change the governance of the AIFS in line with the recommendations of the Uhrig report, which was released on 12 August 2004.

The Uhrig report and corporate governance of statutory authorities and office holders

The Coalition had flagged its intention to examine statutory authorities and office holders in its 2001 election platform.⁵⁹ On 14 November 2002, the Prime Minister the Hon. John Howard, MP appointed Mr John Uhrig AC to review the governance practices of statutory authorities and office holders, particularly those agencies which impact on the business community. The objective of the review was to identify issues concerning existing governance arrangements and to provide policy options for Government to gain the best from statutory authorities and office holders and their accountability frameworks.⁶⁰

As part of the review process, Mr Uhrig found there was no universally agreed definition of corporate governance. The 2003 report provides the following definition:

in general terms, corporate governance encompasses the arrangements by which the powers of those who implement the strategy and the direction of an organisation are delegated and limited to ensure the organisation's success, taking into account the environment in which the organisation is operating.⁶¹

The Prime Minister was provided with the Uhrig report in June 2003. The Uhrig report was released by the Minister for Finance and Administration on 12 August 2004.

Uhrig report recommendations

The Uhrig report recommended two templates be applied to ensure good governance of statutory authorities:

agencies should either be managed by a Chief Executive Officer (CEO) or by a board structure. Both templates detail measures for ensuring the boundaries of responsibilities are better understood and the relationship between Australian government authorities, Ministers and portfolio departments are made clear.⁶²

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Uhrig recommended that the selection of the management template and financial frameworks to be applied should be based on the governance characteristics of a statutory authority:⁶³

The *Financial Management and Accountability Act 1997* (FMA) should be applied to statutory authorities where it is appropriate they be legally and financially part of the Commonwealth and do not need to own assets. This includes Budget-funded authorities.⁶⁴

Uhrig recommended that these organisations should be governed by a CEO.

Uhrig further recommended:

The *Commonwealth Authorities and Companies Act 1997* (CAC) should be applied to statutory authorities where it is appropriate that they be legally and financially separate from the Commonwealth.⁶⁵

Uhrig recommended that these organisations should be governed by a board.

In general Uhrig recommended that agencies which exclusively manage Commonwealth appropriations should be represented and governed by a CEO. A board structure is favoured if there is a strong commercial focus to the organisation, or if the agency is intergovernmental.

The FMA

The FMA applies to Budget-funded authorities managed by a Chief Executive Officer (CEO). The FMA establishes various management and reporting responsibilities for the CEO (sections 44–46, 49 and 51), as well as allowing the Minister to give guidelines to the CEO (section 64).⁶⁶ Furthermore, FMA provides an accountability framework for CEOs to manage agency resources.

The CAC

The CAC applies to authorities that are corporate entities managed by a board. It requires the head of the board to report to the responsible Minister (sections 15-16), and to ensure that the authority's activities comply with government policies (section 28).⁶⁷

Effect of proposed Schedule 8 amendments on the AIFS

The amendments to the *Family Law Act 1975* (FLA) presented in **Schedule 8** are to make the AIFS no longer subject to the CAC but subject to the FMA. The functions of the AIFS will not be changed but the responsibilities for the proper carriage of these functions given to the director (CEO) of the AIFS. The amendments in **Part 1 of Schedule 8** remove the description of the AIFS board and insert the requirement that there be a director. The

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Minister is then provided with powers to appoint the AIFS director and to direct the director by way of a legislative instrument.⁶⁸

Comment

The proposed amendments to the governance rules for the AIFS are in line with other like governance changes that have taken place since the government's adoption of the recommendations in the Uhrig report. The main example was the *Human Services Legislation Amendment Act 2005*, which saw the governance rules for Centerlink and the Health Insurance Commission changed from boards to a director with the Minister having direct powers to appoint the director and to give specific directions to the director.⁶⁹

Certainly, the direct powers of the Minister about the running of the AIFS are enhanced with these changes having the power to appoint a director and to give specific directions to the director. In the past these powers substantially rested with the board.

Schedule 9 – FTB Part B quarantining

Introduction

The amendments to the FAA presented in **Schedule 9** follow from amendments passed by the parliament in 2005 regarding the treatment of FTB-B recipients returning to work.

Who may get FTB-B?

FTB-B is paid to a sole parent or to the lowest income earner of a partnered couple. The income test for FTB-B is based on only the claimant's income alone. So for a sole parent it regards the sole parent's income. For a partnered couple, the FTB-B income test is based on the lowest income earner of the couple and the highest income earner's income is disregarded.

FTB – income test – recipient starts work part way through the year

Where the FTB-B claimant lodges their claims in their tax return at the end of the year, their income for the year is known from the tax assessment and the correct amount of FTB-B can be paid. However, where the FTB-B claimant claims at the beginning of the year (to be paid by fortnightly instalments during the year), their FTB- rate is initially based on their income estimate when they claim. If they then return to or commence paid work part way through the year this can present problems. They could earn enough income in the rest of the year to create an overpayment or even preclude them from receiving FTB-B for the whole year and then end up having a debt for the amount of FTB-B already paid. This became a disincentive for partners to take up work opportunities.

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Commence or return to work – amendments to the FTB-B income test

Amendments were made to the application of the FTB-B income test with the passage of the *Family and Community Services Legislation Amendment (Family Assistance and Related Measures) Act 2005*.⁷⁰ These amendments to the *Family Assistance Act 1999* (FAA) in 2005 addressed the situation where a parent could face the prospect of a FTB-B debt if they commenced or returned to the workforce part way through a year. As said above, FTB-B eligibility is assessed on an annual basis in line with an estimate of income made at the start of the year. These 2005 changes ensured that the parent commencing or returning to work part way through the year retained their eligibility for FTB-B for the part of the financial year before they return to work. Their income only reduces entitlement for the period after they return to work. These changes significantly reduced the commence work or return to work financial disincentives faced by parents in this situation.

Further amendments to the FTB-B income test applied on return to work

Schedule 9 of the Bill presents further amendments to the FAA in regards to the FTB-B income test where a claimant returns to or commences work part way through the year. The Explanatory Memorandum states that the proposed amendments are made addressing the scenarios in a manner consistent with the changes made in the 2005 FAA amendments.⁷¹

The amendments in **Schedule 9** refer to FTB-B claimants in the following situations:

- Where an FTB-B claimant lodges their claim in the second year after the year for which the claim is being lodged. This refers to the fact that a claim for FTB-B can be made up to two years after the end of the financial year for the year being claimed. For example, a claim for the 2003-04 year can be made up to 30 June 2006.
- FTB-B partnered claimants with multiple partners in a year for which FTB-B is being claimed. The FTB-B return to work provisions are meant to target the lower income earner of a partnership. However, this can be complicated where a FTB-B claimant is the lower income earner for one partner but the higher income earner for the other partner in the same year. They should only be able to gain the advantage of the FTB-B return to work provisions if they return to work in the period when they are the lower income earner.
- Where a partnered FTB-B claimant was the lower income earner in a year but the main income earner in a second year, they should not be able to gain advantage of the return to work provisions for FTB-B, when they return to work in the second year.

Comment

In terms of the number of claimants affected, these amendments will not affect many FTB-B claimants.

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Schedule 10 – Technical amendments relating to income estimates

Background

Claiming FTB or Child Care Benefit (CCB) for the coming year requires an estimate of income

As discussed in **Schedule 9** above, FTB can be paid in two ways. One, by way of fortnightly payments during the year with the payment rate based on the claimant's estimate of their income for the coming year. Alternatively, FTB can also be paid at the end of the year by claiming in the tax return and the amount paid is based on the actual adjusted taxable income for the year past as provided by the tax assessment.

Obviously the second method does not require an income estimate as the year has passed and the actual adjusted taxable income is known. The fortnightly instalments payment method requires the claimant to make an estimate of their income for the coming year. Most parents claim their FTB by way of fortnightly instalments during the year, rather than claiming it in their tax return at the end of the year.

CCB can also be paid in two ways. One, the claimant can claim CCB as a lump-sum payment at the end of the year in their tax return (as with FTB) and the amount paid is based on the actual adjusted taxable income for the year past. Secondly, the claimant can claim the CCB to be provided during the year and this is done by way of reduced fees charged by the child care provider. The reduced child care fee method of receiving CCB requires the claimant to make an estimate of their income for the coming year. Based on this income estimate a CCB rate assessment is made and the entitlement is advised to the child care provider by Centrelink and the provider reduces their fee by that amount.

As it applies for FTB, most parents claim their CCB by way of payments direct to the child care provider, to be offset against their child care fees (fee reduction) during the year, rather than claiming CCB in their tax return at the end of the year.

Income estimates by Centrelink

In some cases, FTB or CCB claimants are unable to provide an income estimate or the estimate is so inexplicably different from the previous year's income that Centrelink considers the estimate unsatisfactory. Estimates by claimants are often not updated from year-to-year and are often inherently conservative. Inherently conservative, as a lower estimate can realise a higher rate of FTB or CCB payments during the coming year. In these cases, the power for Centrelink to set an income estimate from the previous year indexed against AWE was provided for with the passage of the *Family Assistance, Social Security and Veterans' Affairs Legislation Amendment (2005 Budget and Other Measures) Act 2006*.⁷²

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Minor amendments not provided for in the earlier income estimate Act

Schedule 10 of this Bill proposes minor amendments to the FTB and CCB income estimate powers for Centrelink, that were not provided for when the original legislation was passed earlier in 2006.⁷³ These amendments mainly concern the use of estimates situations where a claimant partners or re-partners and the rate setting based on the estimates of both their and their partner's income. The proposed provisions allow for Centrelink to provide an income estimate for the new or second partner.

Comment

In terms of the small number of claimants affected, these are relatively minor amendments.

Schedule 11 – Definition

Background

FTB or CCB debts

FTB and CCB debts can commonly arise where payment of FTB and/or CCB is provided during the year based on an estimate of annual income and the estimate understates the level of income actually received during the year. Where payment was received during the year, once the assessment of tax is done at the end of the year and the actual adjusted taxable income for the year is known, if too much FTB and/or CCB was paid during the year based on the income estimate, then the excess payment is an overpayment and a debt.

Overpayments of FTB or CCB can be recovered from arrears of tax owed

Overpayments of FTB or CCB can be recovered from an income tax refund owed to the claimant.

Proposal to alter the definition of 'income tax refund'

Schedule 11 of the Bill proposes to expand the meaning of 'income tax refund' in the *Family Assistance (Administration) Act 1999* (FAAA) to also include tax refunds arising from tax offsets and refunds arising from excess payments of tax like:

- an overpayment of income tax,
- an overpayment of the Medicare levy,
- an overpayment of repayments for debts arising from Higher Education Scheme or the Student Financial Loan Scheme,
- tax offsets arising from private health insurance rebates,

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- franking tax offsets, and
- tax offsets arising from qualification to the baby bonus.

This amendment makes the definition of ‘income tax refund’ in the FAAA refer to a wider range of events that can realise a tax refund or tax owed by the tax office to the individual claimant.

Comment

This is a further adjustment to the FAAA in regards to the recovery of FTB and CCB debts from tax refunds, like the adjustment earlier in 2006 allowing for the recovery of CCB debts from FTB arrears and tax refunds. This was provided for in the *Family Assistance, Social Security and Veterans' Affairs Legislation Amendment (2005 Budget and Other Measures) Act 2006*.⁷⁴

Schedule 12 – Shared parental responsibility

Schedule 12 proposes to amend some of the definitions in the FAA to reflect the recent changes to definitions and terms used made by the *Family Law Amendment (Shared Parental Responsibility) Act 2005*.⁷⁵ The amendments are to also correct terms that were misdescribed. The definitions to be amended in the FAA are:

- family law order,
- ‘to have contact’ to be changed to ‘spend time’, and

‘Court order’ is being amended in the *Child Support Assessment Act 1989* (CSAA) to refer to section 4 of the FLA.

Main provisions

Item 2 sets out the commencement dates for the various Schedules and Parts in the Bill.

Schedule 1 – FTB-A income free area

Item 1 sets the new FTB-A income test free area to \$40 000. **Item 3** sets the timing for the new income test free area to the 2006-07 year.

Schedule 2 – Large family supplement (LFS)

Items 1 and 2 alter the FAA to have qualification to the LFS to refer to families with 3 or more FTB–A qualifying children.

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Schedule 3 – Extension of eligibility for Utilities Allowance (UA)

Item 1 amends the SSA to add the receipt of MAA, WA and PA to the qualifying payments for access to the UA.

Schedule 4 – Australian Government Disaster Recovery Payment (AGDRP)

Part 1 – Main amendments

Item 1 inserts the term ‘adversely affected’ into the general definitions section in the SSA being section 23(1). **Items 2 and 3** insert the term AGDRP into the SSA.

Item 4 repeals the current section 36 in the SSA, the major disaster section and replaces it with a new section 36, empowering the Minister to define and describe a major disaster by determination and the determination is not a legislative instrument.

Item 5 places new sections in the SSA for the qualification for and rate of payment of AGDRP.

Part 2 – Other amendments

Items 6 exempts AGDRP as taxable income.

Item 19 inserts into the SSA amendments to provide for AGDRP qualification in reference to disasters outside Australia.

Item 20 inserts into the SSA amendments to provide for a time limit of 6 months on claims for AGDRP, unless special circumstances apply to a person.

Schedule 5 – Maintenance income credit balances

Part 1 – Amendments

Item 1 inserts a new term in the FAA being ‘maintenance income credit balance’.

Item 2 inserts a new term into the FAA being ‘registered entitlement’ meaning the maintenance liable to be paid to a registered person under the *Child Support (Registration and Collection) Act 1988* (CSRCA). This means that for maintenance to receive the benefit of the ‘maintenance income credit’ it must be maintenance registered to be collected under the CSRCA.

Item 8 inserts new provisions into the FAA setting out the accrual of a maintenance income credit balance and how much the balance is and how it can be depleted.

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Part 2 – Application and transitional provisions

Item 9 explains that the maintenance income credit applies to FTB from the 2006-07 year. **Item 10** explains what years prior to the 2006-07 year that can be used to accumulate a maintenance income credit.

Schedule 6 – Extension of carer payment (CP) for carers of severely disabled children

Item 2 inserts a new and additional description of a ‘profoundly disabled child’ in the SSA that may qualify a carer for CP – caring for a child. **Item 4** inserts a provision into the SSA stipulating that if the description of the child in the new section 197(2AA) are met then also the care requirements must severely restrict the carer’s capacity to undertake paid employment.

Schedule 7 – Special disability trusts

Part 1 – Amendment of the Social Security Act 1991

Item 1 inserts a description of ‘immediate family member’ in the definitions section of the SSA – section 23(1) for the purposes of the proposed special disability trusts provisions. **Item 3** follows this up with a description of ‘sibling’. **Item 2** inserts a definition of ‘principal beneficiary’ in the definitions section of the SSA – section 23(1) for the purposes of these proposed special disability trusts provisions. Likewise **Item 4** inserts a definition of ‘special disability trust’ in the definitions section of the SSA – section 23(1) for the purposes of these proposed special disability trusts provisions.

Items 7, 8 and 9 insert provisions providing for the annual indexation of the maximum value allowed in a ‘special disability trust’.

Item 13 inserts new provisions into the SSA describing what a special disability trust must comprise of and also the requirements for the trust beneficiary rules, the trust purpose, the trust deed, the trustee, the trust property, trust reporting and the trust audits. **Item 13** also inserts provisions for the attribution of trust income, the treatment of income and assets and the treatment of transfers to special disability trusts. There are also provisions dealing with the exceeding of the current \$500 000 limit and also transfers to the trust by immediate family members and by trust beneficiaries or partners.

Part 2 – Amendment to the Veterans’ Entitlement Act 1986

The provisions in **Part 2** basically mirror the provisions in Part 1 but they are for the VEA. The income and asset test rules for means tested income support payments provided under the VEA (service pension, invalidity service pension and income support supplement) are identical to the tests that are applied to the means tested income support

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payments provided under the SSA. Every attempt is made to align the tests to ensure there is equity and parity of treatment across like means tested income support payments. That is why the proposed amendments to the income and assets tests in the SSA in **Part 1** are mirrored to the like VEA payments in **Part 2**.

Schedule 8 – Australian Institute of Family Studies (AIFS)

Part 1 – Amendments

Items 1 to 7 remove references to the AIFS board from the FLA and inserts references to the position of Director of the AIFS.

Item 9 inserts new sections empowering the Minister to give the director directions by way of a legislative instrument and the power to appoint the director for a period not exceeding 5 years. The Minister is also empowered to dismiss the director.

Part 2 – Transitional provisions

Part 2 contains provisions transferring the assets, powers and responsibilities of the AIFS with a board to the AIFS agency with a director.

Schedule 9 – FTB Part B quarantining

Items 1 and 7 inserts a new sub-section 3B(3)(c) of the FAA which refers to what constitutes a ‘return to paid work’ in an income year. This new provision allows a claimant to claim for the ‘return to paid work’ provisions to apply when they lodge their FTB-B claim in the second year.

Item 5 inserts provisions to cover situations where there is more than one return to work in one year for a secondary income earner with one child.

Item 8 applies provisions explaining that the commencement of the application of the provisions in Schedule 9 will apply from the 2005-06 year onwards, subject to the application of 29A(4A) and a return to work.

Schedule 10 – Technical amendments relating to income estimates

Item 1 inserts provisions empowering references to an indexed estimate of the claimant and/or their partner in determining a rate of FTB. **Item 3** makes like amendments to the FAAA for CCB.

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Schedule 11 – Definition

Item 1 amends the FAAA references to an income tax refund arising from refunds of tax offsets and also refunds of tax overpayments.

Schedule 12 – Shared parental responsibility

Item 1 amends the FAA definition of ‘family law order’, which is currently linked to section 60D of the FLA, to linking it to section 4 of the FLA.

Item 2 replaces the reference to ‘have contact’ in the FAA to ‘spend time’ in the FAA.

Item 3 amends the CSAA definition of ‘court order’, which is currently linked to section 60D of the FLA, to linking it to section 4 of the FLA.

Concluding comments

This Bill presents proposed amendments to several different acts, being the SSA, the FAA, the FAAA and the VEA. Generally, almost all of the proposed Schedules will be seen as beneficial, especially the one-off raising of the FTB-A income test free area in **Schedule 1** and the extension of access to the LFS in **Schedule 2**.

The amendments presented in **Schedule 4** to introduce the AGDRP are a long overdue rationalisation of Commonwealth disaster relief payments and will probably see greater flexibility in providing for people who are adversely affected by disasters, including for the first time, disasters occurring overseas. The amendments presented in **Schedule 5** to the application of the maintenance income test allowing the accumulation of unused income test free area balances will be welcomed by residential parents.

Likewise, the amendments presented in **Schedule 6** to allow the expansion of access to the carer payment for carers of severely disabled children to include behavioural characteristics of the child causing unsafe behaviour due to severe intellectual, psychiatric or a behavioural disability will be welcomed.

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34. Major disaster

36.(1) The Minister may declare that a disaster that:

(a) caused a significant number of deaths, serious illnesses or serious injuries; and

(b) caused severe and widespread damage to property;

is a [major disaster](#) for the purposes of this Act.

35 Qualification for disaster relief payment

1061K. A person is qualified for a disaster relief payment if:

(a) because of a [major disaster](#):

(i) a person's principal residence is severely damaged; or

(ii) there is a significant interruption to a person's source of livelihood; and

(b) when the person was affected by the disaster, he or she:

(i) was residing in [Australia](#); and

(ii) was not an unlawful non-citizen within the meaning of the *Migration Act 1958*.

Note: for "major disaster" see subsection 23(1).

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