



Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007

Dale Daniels
Social Policy Section

Kirsty Magarey
Law and Bills Digest Section

Contents

Purpose.....	1
Background.....	1
Child Support Amendments.....	1
Administrative Review	2
Adjusting the Child Support Formula for situations where parents have more than one child support case.....	2
Child Support collection from contractors.....	3
Family Assistance Amendments	3
Maintenance Income Test (MIT).....	3
Maternity Payment (Baby Bonus)	4

Portability of Family Tax Benefit (FTB).....	5
Social Security and Veterans Affairs Amendments.....	5
Remote Area Allowance (RAA).....	5
Assets Test.....	5
Financial implications.....	6
Main provisions	6
Endnotes.....	7

Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007

Date introduced: 28 March 2007

House: House of Representatives

Portfolio: Families, Community Services and Indigenous Affairs

Commencement: Item 3 of the Bill includes a table showing the commencement dates for each measure. There is no common commencement date but an array of dates and arrangements for Schedules and parts of Schedules, ranging from Royal Assent to consequential commencements and from 1 October 1997 to 1 July 2008.

Purpose

The Bill makes consequential amendments flowing from the passage of the *Child Support Legislation Amendment (Reform of The Child Support Scheme—New Formula And Other Measures) Act 2006*. It also includes minor refinements to that legislation.

In addition the Bill includes minor amendments to family assistance, the pension assets test and the means testing of income streams.

Background

The Bill was referred to the Senate Community Affairs Committee on 29 March 2007. The committee has received submissions and held hearings. It is due to report on 8 May 2007. Many of the issues raised related to broader issues that were dealt with in the 2006 legislation.¹

Child Support Amendments

The government announced major changes to the Child Support Scheme (CSS) on 28 February 2006. The changes were the Government's response to the Ministerial Taskforce Report on Child Support (the Parkinson Report).² The taskforce was announced on 16 August 2004 and the report was released on 14 June 2005. The Bills Digest for the Child Support Legislation Amendment (Reform of The Child Support Scheme—New Formula And Other Measures) Bill 2006 sets out the background to the reforms and gives details of the changes made to the scheme. This Digest, No. 43 of 2006–07, is at: <http://www.aph.gov.au/library/pubs/bd/2006-07/07bd043.pdf>.³

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.

The major legislation implementing the reforms passed into law in 2006. This Bill contains minor adjustments to the workings of the reformed CSS and picks up provisions of the Child Support Legislation Amendment Bill 2004 that are still required under the reformed scheme. Only the more significant of the measures in the Bill will be examined here. The Explanatory Memorandum to the Bill deals adequately with the other measures.

Administrative Review

Among a range of administrative changes is a change to the arrangement for out of time applications to the Social Security Appeals Tribunal (SSAT) for a review of a child support decision. Currently the Executive Director of the SSAT has 60 days to make a decision about allowing such an application, and if the decision is not taken in the time frame the application is deemed to have been refused. This deeming provision will be removed by the Bill and, according to the Explanatory Memorandum, the mechanism for ensuring timeliness in decision making will be left to 'other mechanisms, such as the SSAT's reporting requirements.'⁴ The inflexibility of the deeming provisions could clearly cause problems, however, relying on 'reporting requirements' does not necessarily adequately address the issue of delays (as is shown by other Tribunals and court processes where reporting requirements have failed to address such problems). The Bill also relaxes the requirements for the application for an extension of time to be made before the substantive application is made. The changes may allow oral applications to be made (depending on specifications to be established by the Registrar). The consequences of these 'time-management' amendments may need on-going monitoring.

Adjusting the Child Support Formula for situations where parents have more than one child support case

The new child support formula does not significantly differentiate child support between children where they are covered by different cases and their ages differ. The new formula relies on the age of a child to determine the cost of that child. This leads to some complicated situations where child support is paid to more than one former partner and the children are of differing ages. The level of care provided by each parent is a further complication. The new method provided in this amendment apportions child support between the children involved in the cases by relying on a range of factors involved, including a variation of costs for children of differing ages. The Explanatory Memorandum includes a lengthy explanation of the new method with examples.

The National Council of Single Mothers and their Children (NCSMC) in their submission to the Senate Inquiry expressed concerns over the approach of differentiating the cost of children by age. They reiterate their earlier argument that the costs of caring for younger children or providing child care is high, whereas, as they get older there is a reduced load of unpaid care (or child care costs), which means parents can more easily increase hours of paid work.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.

The Lone Father's Association also express concern regarding these amendments to the formula in the 2006 legislation. They question where the proposed amendment originates from and believe this amendment will create considerable 'further complexity' in the formula.⁶

Child Support collection from contractors

Ongoing child support can only be collected from employers if the payer is a wage or salary earner or they receive a Centrelink payment. This amendment will broaden the power to issue notices requiring the deduction of child support and the forwarding of that deduction to the CSA to include cases where the payer is under contract for service arrangements that are effectively substituting for wages. This change extends ongoing child support collection by employers to independent contractors.

Family Assistance Amendments

Only the more significant amendments are addressed below. The other amendments are minor and are adequately addressed in the Explanatory Memorandum.

Maintenance Income Test (MIT)

At present, income received in the form of maintenance is not lumped in with other sources of income, rather it is only counted against the more-than-base rate of Family Tax Benefit part A (FTB-A), with a special free area and taper rate. Maintenance received is not regarded as income for most pensions or allowances and therefore has no effect on the rate of these payments.

The origins of the special test that applies to maintenance income lie 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 lumped in with all other income and applied under the general income test for pensions and allowances. From January 1993, maintenance received has been subject to a special income test (MIT) and only affects more-than-base rate FTB-A. The partial or total loss of more-than-minimum rate FTB-A, is less of a problem than the loss of an income support such as Parenting Payment or Newstart Allowance. The MIT only applies if a person is eligible for more than the base rate of FTB. The current MIT has an annual free area of \$1 215 (plus \$405.15 for each extra child after the first) and thereafter income reduces the FTB rate by 50 cents in each dollar.

The Bill amends the workings of the MIT where part of the child support is paid under a child support agreement or a court order in the form of a lump sum or non-periodic payments and there has been an underpayment by the paying parent. The agreement or court order will specify how much of the lump sum and non-periodic payments can be

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.

offset against the child support otherwise payable under the Child Support Formula. The method for determining the amount under-paid will be adjusted to more adequately take account of this feature of these agreements and court orders.

The Bill also refines the provisions that ensure that FTB-A is reduced only for those children who attract child support. FTB-A can include rent assistance that may be reduced under the MIT. That rent assistance rate may be determined with reference to children who do not qualify for FTB because the claimant has care of a regular care child. The term 'regular care child' was introduced as part of the 2006 child support reforms. It refers to a child who is in the care of a parent for more than 14% and less than 35% of the time.

The changes ensure that only the rent assistance generated by the FTB children is affected by the MIT.

Maternity Payment (Baby Bonus)

Maternity Payment (MP) was introduced from July 2004 and replaced Maternity Allowance and the First Child Tax Offset (at that time known as the Baby Bonus). The new payment was a lump sum paid for each child born or adopted with no means test. The preceding payments were rather more complicated and had various rates and means tests that produced payments that varied according to family income or the workforce behaviour and tax paid by the mother.

One concern raised by commentators and in the media from the inception of the new payment related to the wisdom of providing lump sum payments to very young mothers who may not be sufficiently experienced to make the best decisions about managing the payment.⁷ The Bill addresses this issue by making it mandatory for the MP to be provided to mothers under the age of 18 years as 13 fortnightly payments. There appears to be no discretion to pay MP in any other way to this group. Current discretionary provisions will be superseded by this change.

The NCSMC express concerns that this lack of flexibility (detailing situations where a lump sum could be appropriately utilised) and suggest that these arrangements should be able to be varied with the recommendation of a qualified social worker. They also suggest lump sums could be paid by direct credit in appropriate circumstances.⁸

The Bill will also provide for payment only after the birth has been registered with the relevant state or territory body. This provision has been welcomed by ANU demographers and the Australian Bureau of Statistics. It is regarded as a more effective mechanisms of ensuring registrations of birth take place, and has been recommended by them for some time.⁹

The name of the MP will also be changed by this Bill. MP and its predecessors have often been referred to as the baby bonus. That will become the official name.

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.

Portability of Family Tax Benefit (FTB)

Normally FTB is only payable at the full rate to people overseas for up to 13 weeks. A discretion to extend that period exists where certain prescribed events such as war or civil unrest prevent or delay their return. Members of the Australian Defence Forces and the Australian Federal Police who are deployed overseas are not presently covered adequately by this discretion. The Bill makes amendments to rectify this problem.

The amendments do not provide for those in comparable situations in other government agencies, for instance AusAid, to be considered for a similar latitude. Nor does it enable coverage of those in non-government agencies who may also be performing comparable tasks while deployed overseas.

Social Security and Veterans Affairs Amendments

Only the more significant amendments are addressed below. The other amendments are minor and are adequately addressed in the Explanatory Memorandum.

Remote Area Allowance (RAA)

RAA is a payment for income support recipients who receive no or little benefit from the Income Zone Tax Offset through the taxation system. It is income and asset test free and paid at single and couple rates with an additional rate for each dependent child.

The reforms to child support that take effect from July 2008 introduce the concept of a 'regular care child'. This is a child who is cared for by a parent for at least 14% and less than 35% of the time. The Bill provides for the rate of RAA to be increased by an additional allowance for each regular care child in a family in addition to each FTB child.

Assets Test

The assets test was introduced in 1985 to improve the targeting of pensions towards those with the greatest need. People with assets above certain thresholds receive a reduced rate of pension or if their assets are large enough no pension at all. People with sufficient assets to have their entitlement affected are able to generate income from their assets. Where this is not possible hardship provisions apply to modify the effect of the assets test. The assets test now applies to most income support payments but not to family assistance.

The principal home of a person receiving a payment subject to the assets test is an exempt asset. In addition the proceed from selling the principal home are exempt for a period of twelve months to allow for the sale of one home and purchase or construction of another. Similarly where a person is temporarily absent from their home for any reason, it is still regarded as their principal home for 12 months. There has been concern from people

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.

affected by this feature of the assets test that 12 months can be insufficient time in certain circumstances to complete transition from one home to another.

The Bill provides for these twelve month periods to be extended to 24 months in certain circumstances. These circumstances recognise that delays or events outside the control of the person can prevent the building or repairs needed to allow occupation of the new or repaired home within the present time limit. So where action has been started within a reasonable timeframe this extension of time will be available.

Financial implications

The financial impact of the Bill will be \$3.9 million over 4 years.

Main provisions

Part 2, Schedule 1, Item 28 adds **new section 65AA** to the *Child Support (Registration and Collection) Act 1988*. This change extends ongoing collection of child support by employers to independent contractors.

Part 4 of Schedule 1, Items 108 to 117 and 187 to 192 make amendments to the *Child Support (Assessment) Act 1989* implementing a new method for apportioning child support between children of different ages in situations where parents have more than one child support case.

Part 1 of Schedule 5 amends Schedule 1 of the *A New Tax System (Family Assistance) Act 1999* to adjust the workings of the Maintenance Income Test where child support is paid under the provisions of a child support agreement or a court order and there has been an underpayment.

Part 2 of Schedule 5 amends Schedule 1 of the *A New Tax System (Family Assistance) Act 1999* to adjust the workings of the Maintenance Income Test so that reductions to Family Tax Benefit only affect amounts paid with regard to children for whom child support is paid.

Part 1 of Schedule 6 amends the *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999* to make payment by instalments of the Baby Bonus to mothers aged under 18 years compulsory rather than discretionary.

Part 2 of Schedule 6 amends **subsection 36(2)** of the *A New Tax System (Family Assistance) Act 1999* to require registration of the birth of a child before the Baby Bonus can be paid.

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.

Part 3 of Schedule 6 amends the *A New Tax System (Family Assistance) Act 1999*, the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* to change the name of the ‘Maternity Payment’ to the ‘Baby Bonus’.

Schedule 7 amends **section 63A** the *A New Tax System (Family Assistance) Act 1999* to allow the application of a discretion to extend the period of portability overseas of Family Tax benefit to members of the Australian Defence Forces and the Australian Federal Police who are deployed overseas.

Schedule 8 amends the *Social Security Act 1991* and the *Veterans’ Entitlements Act 1986* to ensure that the rate of Mobility Allowance paid takes account of ‘regular care children’ in addition to ‘Family Tax Benefit children’.

Schedule 10 amends the *Social Security Act 1991* and the *Veterans’ Entitlements Act 1986* to allow for a 24 month asset test exemption for the proceeds of the sale of a principal home or absence from a principal home in certain circumstances.

Endnotes

1. For submissions and transcripts of hearings see:
http://www.aph.gov.au/Senate/committee/clac_ctte/child_support07/index.htm
2. *In the Best Interests of Children - Reforming the Child Support Scheme: Report of the Ministerial Taskforce on Child Support*, 2005. The full text of the report is available at: [http://www.facs.gov.au/internet/facsinternet.nsf/via/childcare/\\$file/best_interests_children_full-20report.pdf](http://www.facs.gov.au/internet/facsinternet.nsf/via/childcare/$file/best_interests_children_full-20report.pdf)
3. Peter Yeend, Child Support Legislation Amendment (Reform of the Child Support Scheme - New Formula and Other Measures) Bill 2006, *Bills Digest* No. 43, 2006–07:
<http://www.aph.gov.au/library/pubs/bd/2006-07/07bd043.pdf>
4. Explanatory Memorandum, p. 3.
5. Submission No. 5 to the Senate Community Affairs Committee Enquiry into the Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007, April 2007, Appendix 1, p. 12.
6. Lone Fathers' Association Australia Inc (ACT), Submission No. 8 to the Senate Community Affairs Committee Enquiry into the Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007, April 2007, p. 5.
7. For examples of press coverage see: Grattan M., ‘Baby Bonus tempts teens, claims labor’, *The Age*, 24 May 2004.
http://parlinfoweb.aph.gov.au/piweb/TranslateWIPILink.aspx?Folder=PRESSCLP&Criteria=CITATION_ID:TRMC6%3B and ‘Teen mothers to get bonus in instalments’, *Canberra Times*, 13 November 2006.

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.

http://parlinfoweb.aph.gov.au/piweb/TranslateWIPILink.aspx?Folder=PRESSCLP&Criteria=CITATION_ID:R6FL6%3B

8. Submission No. 5 to the Senate Community Affairs Committee Enquiry into the Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007, April 2007, pp. 7-8.
9. McDonald, Professor Peter & Kippen, Dr Rebecca (ACT), Submission No. 3 to the Senate Community Affairs Committee Enquiry into the Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007, April 2007 and Australian Bureau of Statistics (ABS) (ACT), Submission No. 4 to the Senate Community Affairs Committee Enquiry into the Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007, April 2007.

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.

© Copyright Commonwealth of Australia 2007

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 Parliamentary Services, other than by senators and members of the Australian Parliament in the course of their official duties.

This brief has been prepared to support the work of the Australian Parliament using information available at the time of production. The views expressed do not reflect an official position of the Parliamentary Library, nor do they constitute professional legal opinion.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2410.

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.