



Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009

Dale Daniels
Social Policy Section

Diane Spooner
Law and Bills Digest Section

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Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009

Date introduced: 25 November 2009

House: House of Representatives

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Commencement: There are a variety of commencement provisions set out in the table on pages 2 to 4 of the Bill.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The Bill has no unifying theme. It contains a collection of disparate measures including:

- amendments to the *Aboriginal Land Rights (Northern Territory) Act 1976* to schedule land to be granted as Aboriginal land
- some minor amendments to the income management regime
- amendments to the operation of the Social Security Appeals Tribunal
- a beneficial amendment to the gifting provisions in the means test for pensions and benefits
- amendments to provisions relating to beneficiaries of discretionary trusts to address issues arising from a recent Federal Court case
- amendments to the notification provisions relating to the Baby Bonus, and
- amendments to correct minor anomalies and technical errors in the Family Assistance Law, the Social Security Law and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

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Background and Main Provisions

Schedule 1—Scheduling of land for grant to Aboriginal Land Trusts

Items 1 and 2 of Schedule 1 add several parcels of land to Schedule 1 of the *Aboriginal Land Rights (Northern Territory) Act 1976* so that they can be granted to Aboriginal Land Trusts. According to Minister Macklin in her second reading speech of 25 November 2009:

The Loves Creek parcel of land is subject to a partially heard land claim. Scheduling this land under the *Aboriginal Land Rights (Northern Territory) Act 1976* follows agreement between the Central Land Council and the Northern Territory government. The scheduling will resolve the claim and allow the land to be granted to the appropriate Aboriginal land trust.

Patta (near Tennant Creek) is also the subject of an agreement between the Central Land Council and the Northern Territory government. Granting this land will form part of an agreement for settling broader native title claims.

The Alice Valley Extension (East) parcel of land will be leased by the land trust to the Northern Territory as an extension of the West MacDonnell National Park.¹

The first two schedulings are thus a means to bring claims to an end though an agreement between traditional owners, the Central Land Council and the Northern Territory Government.

The third scheduling will clear the way for land which is presently Northern Territory government owned parkland, joining neighbouring lands which were last year scheduled as Aboriginal land, in becoming part an enlarged leased-back West MacDonnell (Territory) National Park. Although some tour guide companies have expressed concern about terms of access if and when the whole expanded park becomes Aboriginal owned, it is a process which has been gone through before and is part of a process which was provided for by the *Parks and Reserves (Framework for the Future) Act 2003* (NT). This Act followed the High Court decision in *Western Australia v Ward* (2002) 213 CLR 1 which raised the prospect of protracted and possibly successful land claims over Territory parks. The Act provided a framework for negotiations between the Territory and the traditional Aboriginal owners of certain parks and reserves for the establishment, maintenance and management of a comprehensive system of parks and reserves.

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1. J Macklin MP, (Minister for Families, Housing, Community Services and Indigenous Affairs), ‘Second Reading Speech: Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009’, House of Representatives, *Debates*, 25 November 2009, p. 12781.

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Schedule 2—Income management

Schedule 2 makes three changes to the income management provisions in the Social Security law. The second and third are minor administrative changes, but the first is slightly more significant. It enables the Family Responsibility Commission (FRC) to order income management in Cape York on someone whose income support is the age pension or carer payment.

The FRC was set up by Queensland legislation in 2008 and provided for a Commissioner, supported by subsequently appointed local commissioners, to advance the Cape York Welfare Reform objective in the four communities of Aurukun, Coen, Hope Vale and Mossman Gorge. The age pension and carer payment were not in the category of welfare payments originally scheduled as susceptible to an income management order in Cape York, even though they were included in income management arrangements elsewhere in Australia. This change to include these payments in the income management arrangements for Cape York has been requested by the FRC.²

Item 1 of Schedule 2 amends the definition of a ‘category P welfare payment’ in section 123TC of the *Social Security (Administration) Act 1999* to allow the application of income management to people receiving age pension or carer payment.

Item 5 inserts **new section 123WJA**. It provides that where a person:

- has been subject to income management, and
- has ceased to receive income support, but
- has not yet been paid the remaining money in their income management account, and,
- has returned to income support that is income managed,

the remaining money will stay in their income management account.

Item 6 replaces subsection 123WL(3) with a **new subsection 123WL(3)**. The new subsection expands the options for disbursement of residual funds in a person’s income management account after their death. This change is being made to clarify how funds should be disbursed where there is more than one person involved in carrying out activities relating to the deceased person’s estate.

Schedule 3—Social Security Appeals Tribunal

The main amendments in this schedule apply to the procedures and powers of the Social Security Appeals Tribunal (the SSAT).

2. *Ibid.*, pp. 12781–12782.

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The SSAT is the first level of external review of decisions made by Centrelink and the Child Support Agency (CSA) about social security, family assistance, education or training, and child support payments.

It is statutory body established under the *Social Security (Administration) Act 1999* to conduct merits review of administrative decisions made under the social security law, the family assistance law, child support law and various other pieces of legislation. The *Social Security (Administration) Act 1999*, the *A New Tax System (Family Assistance) (Administration) Act 1999* and the *Child Support (Registration and Collection) Act 1988* set out the powers, functions and procedures of the SSAT.

Currently under the *Child Support (Registration and Collection) Act 1988*, the SSAT has the ability to conduct pre-hearing conferences to assist in the conduct and consideration of a review³ and, if in the course of such a pre-hearing conference the parties reach agreement, then the SSAT can make a decision in the terms of the agreement that has been reached.⁴ The ability to make such a decision without any further hearings leads to a more speedy resolution of issues and disputes before the SSAT. As the SSAT states in its Annual Report:

The valuable experience the SSAT has now gained in conducting pre-hearing conferences in ‘Change of Assessment’ appeals in the child support jurisdiction has contributed to the improved timeliness in these cases. A pre-hearing conference aims to clarify the issues in dispute, explain the hearing process to the parties, identify addition (sic) information required for the hearing (which might require the issue of directions) and explore the possibility of an agreement between the parties, which may mean that there is no need for a hearing.⁵

Items 2 and 7 of Schedule 3 amend the *A New Tax System (Family Assistance) (Administration) Act 1999* and the *Social Security (Administration) Act 1999* respectively to allow the SSAT to conduct pre-hearing conferences and make decisions when agreements are reached, in social security and family assistance law appeals.

Amendments also will change the titles of the ‘Executive Director’ and ‘Director’ in the various governing laws to ‘Principal Member’ and ‘Senior Member’ ‘to bring the SSAT into line with other Commonwealth tribunals’.⁶ (See **Part 2** of Schedule 3).

3. *Child Support (Registration and Collection) Act 1988*, section 103.

4. *Ibid.*, section 103W.

5. Social Security Appeals Tribunal, *Annual Report*, Commonwealth of Australia, 2008–2009, p. 27.

6. Explanatory Memorandum, Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009, p. 7.

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New sections 128A, 128B and 128C of the *A New Tax System (Family Assistance)(Administration) Act 1999* give the Principal Member the ability to directly require from a person certain documents considered relevant, and allows members and staff of the SSAT to inspect, copy and retain documents. Similar amendments are made to the *Social Security (Administration) Act 1999*.⁷

It will be a new offence not to comply with a request from the Principal Member for information, and it is noted in the Explanatory Memorandum that the relevant provisions will not commence until 28 days after the amending Act receives Royal Assent:

Accordingly, there is sufficient time for individuals to become aware of the new offence created by this provision before it comes into effect.⁸

Schedule 4—Disposal of assets

The *Social Security Act 1991* contains provisions which penalise income support recipients who give away assets without adequate financial return. Where the value of assets disposed of exceeds \$10 000 in a year or \$30 000 in a five year period, the value of assets in excess of these limits is still counted among the assets of the person for a period of five years. This may result in a lower rate of payment than would otherwise be the case.

The amendments in this schedule ensure that it is clear that where disposed of assets are returned to the person, they will not be double counted when assets are assessed for means test purposes. The deemed asset value that resulted from the disposal could otherwise be counted as well as the value of the actual returned asset.

Item 4 of Schedule 4 inserts **new section 1126E** which gives effect to this change.

Schedule 5—Private Trusts

Following a Federal Court decision in 2008, the provisions of the *Social Security Act 1991* relating to income support recipients who are the beneficiaries of private trusts need to be clarified.⁹

7. Item 6 of Schedule 3, new sections 165A, 165B and 165C.

8. Explanatory Memorandum, op. cit., p. 10.

9. *Elliott v Secretary, Department of Education, Employment and Workplace Relations* [2008] FCA 1293 viewed on 29 January 2010, <http://www.austlii.edu.au/au/cases/cth/FCA/2008/1293.html> The decision was upheld on appeal to the Full Court of the Federal Court of Australia in *Secretary, Department of Families, Housing, Community Services and Indigenous Affairs v Elliott* [2009] FCAFC 37, viewed on 29 January 2010, <http://www.austlii.edu.au/au/cases/cth/FCAFC/2009/37.html>

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The mechanism for determining whether the income of the trust is income of the income support recipient for means test purposes was brought into question in the court case. The amendments in this schedule have the following rationale according to the Explanatory Memorandum of the Bill:

These amendments clarify that, where a social security customer or veterans' affairs pensioner is the beneficiary of a discretionary trust, and the trustee of that trust has a duty to provide for the maintenance of that customer or pensioner, even if the customer or pensioner receives a social security payment or veterans' affairs pension, then the trust should be assessed as being a controlled private trust in respect of that beneficiary. It should not be relevant that there are other future beneficiaries of the trust, when those parties are not currently receiving any benefits from the trust.¹⁰

Items 1–3 of Schedule 5 insert **new paragraphs 1207V(2)(c) and 1207V(2)(d)** and **new subsections 1207V(2A)–(2E)** into the *Social Security Act 1991* to clarify the operation of the control test for private trusts.

Items 4 to 6 insert new paragraphs and subsections into the *Veterans' Entitlements Act 1986* with the same effect.

Schedule 6—Baby Bonus

In 2008 the Baby Bonus paid for new births and adoptions was converted from a lump sum payment to a series of 13 fortnightly payments. This raised the possibility that in some cases the person with care of the child concerned could change over the period of payment. This would require the payment to be made to the new carer. The amendments in this schedule introduce a new requirement for the carer of a child for whom Baby Bonus is being paid to notify Centrelink as soon as practicable if that child leaves their care. This will help to ensure that the initial carer will not receive an overpayment of Baby Bonus.

Item 1 of Schedule 6 adds **new sections 47B and 47C** which provide for the notification requirement. The manner in which the notification is to occur is to be determined by the Secretary.

Financial implications

According to the Explanatory Memorandum, the Bill has a negligible financial impact.

10. Explanatory Memorandum, op. cit, p. 22.

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