



Social Security and Indigenous Legislation Amendment (Budget and Other Measures) Bill 2010

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Social Security and Indigenous Legislation Amendment (Budget and Other Measures) Bill 2010

Date introduced: 18 March 2010.

House: House of Representatives

Portfolio: Families, Housing, Community Services and Indigenous Affairs.

Commencement: Schedules 1 and 3 commence on 1 July 2010. Items in Schedule 2 have a range of commencement data that are tied to the commencement of items in various other 2010 bills. See the table on pages 2-4 of the Bill for details.

Links: The [links](#) to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bills page, 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

To amend the process for assessing the eligibility of carers for Carer Allowance (Child) by extending the use of the *Disability Care Load Assessment (Child) Determination 2009* to the assessment of eligibility of that payment.

To make minor changes to the income management provisions of the Social Security Law.

To introduce a guaranteed annual payment to the Indigenous Land Corporation.

Background

Carer Allowance (child)

Carer Allowance (CA) is a payment of \$106.70 per fortnight for carers who provide daily care and attention at home to a person with a disability or medical condition. If the person being cared for is a dependent child aged under 16 years their disability must be:

- One that appears on a list of disabilities or conditions that automatically provide qualification for CA, or
- It must cause them to function below the usual level for their age.

In the first case conditions such as autism, spina bifida or cerebral palsy are examples of conditions that provide automatic eligibility for CA. In the second case the Child

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Disability Assessment Tool (CDAT) is used to assess whether or not the child's functional level would qualify their carer for CA.

Disability Care Load Assessment (Child)

A Carer Payment (Child) Review Taskforce headed by Anthony Blunn was established in March 2007 to examine the effectiveness of Carer Payment (CP) as a safety net for carers of children with profound disabilities or severe medical conditions.¹ The report of the review released in early 2008 concluded that CP did not provide such a safety net and recommended changes. Those changes introduced in 2009 were contained in the *Social Security Legislation Amendment (Improved Support for Carers) Act 2009*.²

One aspect of the changes introduced by that Act was of particular relevance to the assessment of eligibility for CA (child). That was the introduction of the Disability Care Load Assessment (Child) (DLCA) as the means for assessing the eligibility of carers of children with disabilities to receive CP from 1 July 2009. The present bills will extend the use of this assessment tool to the assessment of eligibility for CA (child).

The Guide to the Social Security Law describes the DLCA as follows:

The DLCA was developed in consultation with representatives of peak disability and carer groups, and with specialists in child disability from a range of medical and allied health professional backgrounds.

The DLCA is comprised of:

- a carer questionnaire (the Assessment of Care Load (ACL) questionnaire), and
- a Treating Health Professional (THP) questionnaire (the professional questionnaire).

ACL questionnaire

The ACL questionnaire is completed by the person claiming CP. It assesses the level of care required by and provided to the care receiver (care load) by the person claiming CP based on questions about the behaviour, functional ability and special care needs of the care receiver. A separate ACL questionnaire must be completed for each care receiver aged under 16 years in respect of whom CP is claimed.

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1. A Blunn, *Carer Payments (child): a new approach - report of the Carer Payment (child) Review Taskforce*, report prepared for Department of Families, Housing, Community Services and Indigenous Affairs, Canberra, 2008. Full text at: http://www.facs.gov.au/carers/carer_payment_review_report/
 2. For more information see D Daniels, *Social Security Legislation Amendment (Improved Support for Carers) Bill 2009*, Bills digest, no. 128, 2008-09, Parliamentary Library, viewed 20 April 2010, <http://www.aph.gov.au/Library/pubs/bd/2008-09/09bd128.pdf>.

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Professional questionnaire

The professional questionnaire is completed by a THP for each child in respect of whom CP is claimed. It assesses the functional ability, behaviour and special care needs of the child to determine the total professional questionnaire score.³

The Parliamentary Secretary for Disabilities and Children's Services, Bill Shorten MP said in his second reading speech that:

This Disability Care Load Assessment (Child) Determination will now also be used for qualification purposes for carer allowance, bringing consistency to, and improving the overall efficiency and effectiveness of, assessments for carer allowance and carer payment paid in respect of children under 16. As is currently the case, the list of recognised disabilities will also continue in determining eligibility for carer allowance.⁴

Eligibility for CA when a child turns 16 years of age

Presently when a child for whom CA (child) is paid turns 16 years of age their carer ceases to qualify for CA and must apply for CA (adult) in order to continue to receive CA. This can result in carers missing out on payment if they do not complete the paperwork in time. This bill will allow three months after the child turns 16 years of age before eligibility for CA (child) ends. A similar provision exists for people receiving CP.

Income management

The Bill includes several minor changes to the administration of the income management system.

Howard Government system

Income management was introduced by the Howard Government under the *Social Security and Other Legislation (Welfare Payment Reform) Act 2007* (Welfare Payment Reform Act). Under income management, the welfare payments of certain individuals may be directly reduced and the amount diverted to be paid into a special account. Changes to establish income management were made to the *Social Security Act 1991* (Social Security

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3. Department of Families, Housing, Community Services and Indigenous Affairs, *Guide to the Social Security Law*, version 1.164, 3 May 2010, p. 1.1.D.170, viewed 3 May 2010, http://www.facs.gov.au/guides_acts/ssg/ssguide-1/ssguide-1.1/ssguide-1.1.d/ssguide-1.1.d.170.html
 4. B Shorten (Parliamentary Secretary for Disabilities and Children's Services), 'Second reading speech', *Social Security and Indigenous Legislation Amendment (Budget and Other Measures) Bill 2010*, House of Representatives, *Debates*, 18 March 2010.

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Act), *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act) and *Veterans' Entitlements Act 1986* (Veterans' Entitlements Act).

According to the Explanatory Memorandum for the Bill introducing the Welfare Payment Reform Act, the purpose of the changes was to 'help address child neglect and encourage school attendance'.⁵ Under the income management scheme the Government quarantines a specified amount of a person's welfare payments for use in paying for the 'priority needs of that person, their partner and their children'.⁶ Payments quarantined under income management may not be spent on alcohol, tobacco, pornography or gambling.⁷

Currently, a person receiving welfare payments may become subject to income management for one of the following reasons:

- the person is a resident of any of 73 specified Indigenous communities and associated outstations in the NT (established as part of the Northern Territory Emergency Response)
- the person is a resident of one of four Cape York Welfare Reform Trial communities and has been referred to the Family Responsibilities Commission for one of several specified reasons including failure to ensure a child under their care attends school regularly or being subject to a child safety report, or
- the person is a resident of Western Australia and has been referred by child protection authorities to Centrelink to have their payments managed because it is believed that this will assist the person in 'providing for the priority needs of [their] children'.⁸

Proposed new Rudd Government system

The Rudd Government is currently seeking to make substantial changes to the income management system through a bill currently before the Parliament, the *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009* (WRRDA Bill).

On 25 November 2009, the Rudd Government announced that it will replace the existing income management scheme for prescribed NT Indigenous communities with a broader scheme targeted at 'vulnerable regions' and 'individuals at risk'.⁹ From 1 July 2010, the

5. Explanatory Memorandum, *Social Security and Other Legislation (Welfare Payment Reform) Bill 2007*, p. i.

6. Ibid.

7. Centrelink, 'Income Management for Child Protection factsheet', Centrelink website, 10 November 2009, viewed 22 April 2010, <http://www.centrelink.gov.au/internet/internet.nsf/publications/co497.htm>

8. Ibid.

9. J Macklin (Minister for Family Affairs, Housing, Community Services and Indigenous Affairs) and W Snowden (Member for Lingiari), *Major welfare reforms to protect children*

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new scheme will be introduced throughout the Northern Territory as a whole, including urban, regional and remote areas. According to the Government, this is to be the ‘first step in a national roll out of income management in disadvantaged regions’.¹⁰ It is intended that the income management reforms are to apply to people in the following categories:

- people aged 15 to 24 who have been in receipt of Youth Allowance (other), Newstart Allowance, special benefit or Parenting Payment for more than 13 weeks in the first 26 weeks (disengaged youth)
- people aged 25 and above (and younger than pension age) who have been in long-term receipt of specified payments, including Newstart Allowance and Parenting Payment (long-term welfare payment recipients)
- people referred for income management by child protection authorities, and
- people assessed by Centrelink social workers as requiring income management due to vulnerability to financial crisis, domestic violence or economic abuse.¹¹

Affected income support recipients will have 50 per cent of their regular payments and 100 per cent of lump sum payments quarantined in a separate account that may only be used for the purchase of ‘the essentials of life’, such as food, clothes and rent.

For a description and analysis of these changes, see the Parliamentary Library bills digest, no. 94, 2009-10, for the WRRDA Bill at: <http://www.aph.gov.au/Library/pubs/bd/2009-10/10bd094.pdf>.

Changes in this Bill

The proposed changes in this Bill are minor and administrative in nature and appear to be relatively uncontroversial. They are not directly related to those in the WRRDA Bill.

Income Management Record

The Bill replaces the term ‘Income Management Special Account’ with the term ‘Income Management Record’ in the social security law. The former term has a particular meaning under the *Financial Management and Accountability Act 1997* as an appropriation mechanism. This change is intended to clarify that the mechanism for recording and tracking a person’s welfare payment under the income management system is an *accounting mechanism, rather than an appropriation mechanism*.

Recovery of debts and mistakenly credited funds

and strengthen families, media release, 25 November 2009, viewed 22 April 2010, http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/welfare_reforms_protect_children_25nov2009.htm

10. Ibid.

11. Ibid.

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The Bill expands the methods available for the Government to recover income management debts. These methods would include those available to recover debts associated with other welfare payments under the *Social Security Act 1991*. Recovery methods available under the *Social Security Act 1991* include:

- deductions from the person's pension, benefit or allowance
- legal proceedings
- garnishee notice
- arrangement for payment of debt
- recovery of amounts from financial institutions, and
- deductions by consent from the social security payment of a third party.

The changes also allow for the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs (the Secretary) to waive or write off an income management debt in certain circumstances.

The Bill also makes it possible for the Government to recover funds wrongly credited to an income management account in circumstances where a person has died or where funds are otherwise mistakenly credited to a person's income management account.

Credit of income management accounts before debt recovery

The Bill provides for the Secretary to credit to a person's income management account the amount of any debt raised against a third party (such as a community store) prior to the debt actually being recovered from that third party. This is intended to protect the interests of a person subject to income management in situations in which a third party such as a community store ceases to operate. Currently, any income managed funds held by such a community store would become debts to the Commonwealth and the person would not be reimbursed until the debt recovery process is completed.

The changes in this Bill would mean that the income managed person would not have to wait for the funds to be recovered before their account can be credited with the funds in question.

Student scholarships

The Bill makes it possible for the Minister Families, Housing, Community Services and Indigenous Affairs to specify that an amount lower than 100 per cent may be deducted from a person's scholarship payment if the person is subject to income management and eligible for one of two new scholarships proposed by the Government.

The scholarships, the student start up scholarship payment and the relocation scholarship payment, were introduced by the Government as part of student income support reforms

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and commenced on 1 April 2010.¹² Currently, 100 per cent of each scholarship is subject to income management for those subject to the income management system. This Bill proposes to allow the Minister to specify a smaller amount than 100 per cent to be deducted from either of the above scholarships payable to those subject to income management.

Other amendments

The Bill also makes amendments aimed at addressing situations in which the processing of a transaction has been delayed from being credited to an income management account and the balance of the account has fallen below the value of a delayed debit transaction. First, the Bill provides the Secretary with the option of either debiting the transaction to the person's income management account (the current mechanism) *or* to raise a debt against the person that can be recovered by using any of the debt recovery mechanisms outlined above. The Government argues that this is 'beneficial to the customer and allow[s] an affected customer to pay off a debt owed to the Commonwealth in a more flexible manner than simply having his or her income management account debited'.¹³ Second, in order to assist with this process the Bill makes it clear that that a person's income management account is only credited or debited at such time as the corresponding accounting entry is made, rather than by force of law at the time of the transaction.

The Indigenous Land Corporation

The Indigenous Land Corporation (ILC) is a Commonwealth statutory authority established in 1995 to assist Indigenous people with land acquisition and land management. The body was originally set up under the *Land Fund and Indigenous Land Corporation (ATSCI Amendment) Act 1995*, but now functions under the subsequently enacted *The Aboriginal and Torres Strait Islander Act 2005* (the Act). The Act also now governs the functioning of the Aboriginal and Torres Strait Islander Land Account (the Land Account). The Land Account provides the ILC with funds. The Act and funding mechanism will be amended by some of the provisions of the *Social Security and Indigenous Legislation Amendment (Budget and Other Measures) Bill 2010* (the Bill).

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12. For further information on the scholarships see Department of Employment, Education and Workplace Relations (DEEWR), 'Student income support scholarships—fact sheet', DEEWR website, March 2010, viewed 22 April 2010, <http://www.deewr.gov.au/HigherEducation/Programs/YouthAllowance/Documents/FS3Scholarships.pdf>
 13. Explanatory memorandum, *Social Security and Indigenous Legislation Amendment (Budget and Other Measures) Bill 2010*, p. 11.

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To date, the ILC has received an annual payment from the government equivalent to the ‘realised real return’ on the investments of the Land Account in the previous year. The realised real return is the difference between (a) what the Land Account is able to earn through the investment of its capital and (b) what the income would be if it had risen in line with inflation where inflation is measured by the implicit price deflator for gross non-farm product trend index. The government appropriates the difference to the ILC. The ‘realised real return’ has fluctuated markedly as shown in the following table from page 19 of the ILC’s *Annual Report 08-09*.

Table 1: Funding Received from the Land Account Since 1 July 2004.

Financial Year	Method Amount	(\$m)
2004–05	Realised real return on the investment of the Land Account	4.0
2005–06	Realised real return on the investment of the Land Account	23.8
2006–07	Realised real return on the investment of the Land Account	96.4 ³
2007–08	Realised real return on the investment of the Land Account	0
2008–09	Realised real return on the investment of the Land Account	44.8m

³ This payment included a correction of an underpayment from 2004–05 and 2005–06 of \$24.5m.

The fluctuations in appropriations have presented the ILC with planning difficulties, and the ILC has been seeking changes. In each of its last two annual reports, the ILC has sought a legislative change to provide a minimum level of annual funding to the ILC from the Land Account and a widening of the investment powers of the Land Account. The Bill addresses the first of the above.

The Bill provides for the ILC to receive from the Government two possible amounts starting on 1 July 2010.

The first is a guaranteed annual payment. In 2010-11, this amount will be \$45 million. In following financial years, this amount will be indexed to changes in the consumer price index. The effect of indexation will be to maintain the real value of the guaranteed annual payment. These indexed payments will even be made in years when they would effectively reduce the real capital value of the Account. i.e. when the guaranteed sum exceeds the Fund’s realised real return.

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The ILC may receive a second payment from the Land Fund in addition to the first payment. The additional payment will be made if the actual capital value of the Land Account exceeds its real capital value. The amount of the additional payment is the difference between the two values. In a year when the Land Account's actual capital value is less than its real capital value (i.e. the value it would need to be at to be keeping up with inflation) no additional payment would be made, and none would be made until actual capital value again exceeds the real value.

The Bill also provides for an independent review of the effectiveness of the new funding arrangements.

Financial implications

The Carer Allowance changes are part of a broader 2008 Budget measure addressing broader carer issues. The impact of the measures in this bill is not separately identified, but is not likely to be large.

The income management changes in this bill are also likely to have nil or negligible financial impact.

The Indigenous Land Corporation changes may, in some circumstances reduce the real capital value of the Indigenous Land Fund Account, but as that money has already been set aside, the financial impact of these changes might rightly be put, as they have in Government budget papers, as nil.

Main provisions

Schedule 1: Carer Allowance

Item 7 inserts **new paragraph 953(1)(e)** into the Social Security Act 1991. This provides that for a carer to be eligible for CA (child) the care receiver must have a recognised disability or have been given a rating of 'intense' under the Disability Care Load Assessment (Child) Determination.

Item 10 inserts **new section 953A** which provides for eligibility for CA (child) to continue after a child turns 16 years of age until they have been assessed under the Adult Disability Assessment Tool or 3 months has elapsed since their birthday.

Schedule 2: Income Management Regime

Items 2–36 amend the *Social Security Administration Act* to establish the Income Management Record by replacing the term 'Special Account' with the term 'Income Management Record'.

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Item 37 establishes transitional arrangements ensuring that the balance of a person's 'Income Management Special Account' is credited to their 'Income Management Record'.

Items 38–44 amend the *Social Security Act* and **Items 45–48** amend the *Social Security Administration Act* to expand the methods available for the Government to recover income management debts to include those available to recover debts associated with other welfare payments.

Items 49–50 amend the *Social Security Administration Act* to provide for the Government to be able to recover funds wrongly credited to an income management account in circumstances where a person has died or where funds are otherwise mistakenly credited to a person's income management account.

Items 51–57 amend the *Social Security Administration Act* to allow the Secretary to credit to a person's income management account the amount of any debt raised against a third party (such as a community store) prior to the debt actually being recovered from that third party.

Item 61 amends the *Social Security Administration Act* to provide that where the processing of a transaction has been delayed from being credited to an income management account and the balance of the account has fallen below the value of the delayed debit transaction, the Secretary may either debit the transaction to the person's income management account (the current mechanism) *or* raise a debt against the person that can be recovered by using any of the debt recovery mechanisms established in **Item 39**.

Item 62 assists with the process established in the previous item by making it clear that a person's income management account is only credited or debited at such time as the corresponding accounting entry is made, rather than by force of law at the time of the transaction.

Schedule 3: Aboriginal and Torres Strait Islander Land Account

The provisions in Schedule 3 amend the *Aboriginal and Torres Strait Islander Act 2005* to give effect to the Government's intention to provide a minimum level of annual funding to the ILC. Most pertinent are the following items in the schedule.

Item 6 of the amending schedule provides for a **new section 192Y and 193**. These new sections will provide for the annual payment of \$45 million from the Land Account to the ILC (even if that payment reduces the Land Account's actual capital value to less than its real capital value), for the indexation formula which will be applied annually to that sum, and for an additional payment in years when the actual capital value of the Land Account exceeds its real capital value, this payment being the difference between these two values.

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Item 15 provides for a **new subsection 193L(3) to (8)**, which in turn provides a formula for calculating the amount of money the ILC may borrow in any financial year. So that the ILC may borrow only so much as that for which Commonwealth will offer loan guarantees, **Item 20** provides a **new subsection 193N(2) to (7)** to reset the formula for calculating the ILC's annual guarantee limit.

Item 22 provides for a **new section 193U**. This new section will require Regulations to be made to establish independent reviews of the effectiveness of the new funding arrangements. The Regulations must state the purpose, timing and content of the review, and provisions are made for reports from the reviews to be given to the Minister.

Item 24 specifies the base from which the amounts mentioned in item 15 and 20 shall be calculated (being the specific sum of \$294,170,517).

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