



Child Support and Family Assistance Legislation Amendment (Budget and Other Measures) Bill 2010

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Glossary

Abbreviation	Definition
ATI	Adjusted taxable income
ATO	Australian Taxation Office
FAA	<i>A New Tax System (Family Assistance) Act 1999</i>
FAAA	<i>A New Tax System (Family Assistance) (Administration) Act 1999</i>
CCB	Child Care Benefit
CSA	Child Support Agency
CSAA	<i>Child Support (Assessment) Act 1989</i>
CSRCA	<i>Child Support (Registration and Collection) Act 1988</i>
CSS	Child Support Scheme
FTB	Family Tax Benefit

Child Support and Family Assistance Legislation Amendment (Budget and Other Measures) Bill 2010

Date introduced: 26 May 2010

House: House of Representatives

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

Commencement: The provisions of this Bill are to commence at a variety of times as set out in the Table in section 2. In summary the provisions either start on the date of Royal Assent or on 1 July 2010.

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

The primary purpose of the Child Support and Family Assistance Legislation Amendment (Budget and Other Measures) Bill 2010 (the Bill) is to give effect to several Government initiatives announced in the 2010 Budget in relation to the Child Support Scheme (CSS) and family assistance legislation.

Background

Schedule 1—Child support income estimates

2010–11 Budget initiative

The Government announced changes to the income estimate processes in the 2010–11 Budget.¹ The changed arrangements will provide improvements in terms of more accurate estimates of a parent's income under the *Child Support (Assessment) Act 1989* (CSAA).

Income estimates can be required for family assistance and for child support assessments

Under existing arrangements, the Government can require persons to provide estimates of their future income both for claims for Family Tax Benefit (FTB), Child Care Benefit

1. Australian Government, *Budget measures: budget paper no. 2: 2010-11*, Commonwealth of Australia, Canberra, 2010, p. 257, viewed 3 June 2010, <http://www.budget.gov.au/2010-11/content/bp2/html/index.htm>

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(CCB) and also in the assessment process for determining maintenance liabilities under the CSAA.

Under the CSAA, the amount of maintenance payable to a parent by another parent of a child is based on the 'income' of both parents. Under the CSAA, the relevant 'income' amount used is the parent's '*adjusted taxable income*' (ATI).² In many cases, especially for wage and salary earners, their income from employment is readily identifiable and also consistent so the process of providing an estimate of future income is relatively simple. However, in other cases, for instance where the parent is self-employed, a contractor, a part-time worker or commission worker their income is much more variable and an accurate estimate of their future ATI can be problematic.

In cases where income varies, the estimate is commonly based on past actual income and expected future employment situations. Using this estimate the Child Support Agency (CSA) can calculate the maintenance payable or receivable by a parent in respect of a child. At the end of the estimate period, the actual ATI received by the parent over the period is reconciled with the estimate so that the correct amount of maintenance that the parent was liable to pay or entitled to receive can be calculated. Any over or under payment of maintenance can then be calculated. The maximum estimate period can be up to 15 months.³ According to the Explanatory Memorandum this period may cover

... three financial years. This means that their estimate cannot be reconciled until tax returns for the three financial years have been assessed and the parent's actual adjusted taxable income for those years has been provided ... This can and does lead to long delays before the reconciliation process can occur.⁴

The amendments to the CSAA presented in Schedule 1 of the Bill will reduce the maximum estimate period from 15 months to 12 months, or to the end of the current financial year. This is consistent with the income estimate process that is applied for FTB and CCB. It will also have the benefit reducing the delay in calculating a parent's actual maintenance liability or entitlement for a period.

Costs

The financial impact statement in the Explanatory Memorandum details that there are no increased or reduced outlay costs for this initiative.⁵

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2. Adjusted taxable income refers to net taxable income plus several elements added back in including the value of net investment losses, employer provided fringe benefits, salary sacrificed into superannuation, foreign income and tax free pensions and benefits.
 3. Child Support Assessment Act 1998, subsection 60(5).
 4. Explanatory Memorandum, p. 2
 5. Explanatory Memorandum, Financial impact statement, viewed 3 June 2010, <http://parlinfo/parlInfo/search/display/display.w3p;adv=yes;db=:group=:holdingType=:id=:>

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Schedule 2—Percentage of care

Shared care of a child and payment of Family Tax Benefit—a time based approach

Two adults, who are not members of the same couple and who care for a child, can each be eligible for FTB for that child at the same time, providing each adult cares for the child between 35 per cent and 65 per cent of the time. Generally, shared care arrangements are made between the two parents of a child. However, another family member, or unrelated adult, may also care for a child and qualify for FTB.

Where a parent/adult cares for a child for less than 35 per cent of the time, no FTB is payable to that parent/adult and the full rate of FTB is payable to the other parent/adult caring for the child.

Shared care of a child and maintenance liability under the Child Support Scheme—a cost based approach

By comparison, the basis for the CSS maintenance formula is the costs of children. The formula adopts an ‘income shares’ approach to calculating the costs of a child and sharing these costs between parents according to their relative incomes. Where parents share the care of a child, they are considered to contribute to, or meet the costs of, the child by providing care for the child. The contribution a parent is making through care is determined by using steps 4, 5 and 6 of the basic CSS maintenance formula. These three steps are used to work out:

- the percentage of care a parent has of a child
- the cost percentage, and
- the child support percentage.

Percentage of care

A parent’s or non-parent carer’s care percentage is the percentage of care of the child the person is likely to have over the next 12 months.

Cost percentage

A parent’s cost percentage represents the percentage of a child’s costs the person meets directly through care. The cost percentage is determined according to the person’s percentage of care, using the cost percentages table below.

[orderBy=customrank;page=0;query=Content%3A%22child%20support%22%20Dataset%3AbillsCurBef,billsCurNotBef;querytype=:rec=0;resCount=Default](#)

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Percentage of Care	Cost percentage
0 to less than 14%	Nil
14% to less than 35%	24%
35% to less than 48%	25% plus 2% for each percentage point over 35%
48% to 52%	50%
more than 52% to 65%	51% plus 2% for each percentage over 53%
more than 65% to 86%	76%
more than 86% to 100%	100%

For example:

- a percentage of care of 11 per cent equates to a cost percentage of 0 per cent
- a percentage of care of 19 per cent equates to a cost percentage of 24 per cent
- a percentage of care of 81 per cent equates to a cost percentage of 76 per cent, and
- a percentage of care of 88 per cent equates to a cost percentage of 100 per cent.

Child support liability

A parent's child support liability represents the share of the costs of the child they are required to meet, based on their share of income, less their contribution to the costs of the child provided through direct care.

A formula is used to calculate whether a parent's child support liability is positive or negative. The formula takes into account each parents ATI, their allowable self-support amount⁶ and what percentage of care the parent provides. If a parent's child support liability is positive, that parent must transfer that positive amount to the other parent by paying child support maintenance. They are deemed to be not meeting their entire share of the costs of the child (based on their share of the income) through care. If a parent's child support liability is negative, they are already directly meeting, through care, more than their share of the costs of the child that they are required to meet, based on their share of the combined income. They are therefore entitled to receive child support maintenance, if they have at least 35 per cent care of the child.

6. In 2010, the self-support amount for a parent is \$18 252 per annum.

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Aligning care decisions

As can be seen above, for both FTB rate setting and also for working out the maintenance payable under the CSS maintenance formula, decisions need to be made about what percentage of care a parent is providing for a child.

The purpose of the amendments presented in Schedule 2 to the Bill is to align the decisions of care percentage between those made for FTB and those made for the CSS maintenance formula calculations.

Costs

The financial impact statement in the Explanatory Memorandum details that the estimated costs for this Budget initiative are \$9.3 million in 2009–10 and \$5.8 million in 2010–11, followed by savings of \$5.6 million in 2011–12 and \$10.0 million in 2012–13.⁷ The savings in the out years are probably achieved by having maintenance liabilities more closely aligned with actual incomes of parents and getting the income reconciliations done in shorter time-frames.

Schedule 3—non-payment of Family Tax Benefit for non-lodgement of tax returns

The Government announced in the 2010–11 Budget more flexible arrangements for the provision of FTB for some persons who do not lodge a tax return after having been paid FTB on the basis of an income estimate.⁸ The initiative was entitled ‘Family Tax Benefit Non-Lodger Fortnightly Payment Prohibition—more flexible arrangements’.

Payment of Family Tax Benefit is based on adjusted taxable income

The payment of FTB (and CCB) is based on the amount of ATI⁹ of the claimant (and partner) for a financial year. The definition of ATI used is the same as applies under the CSAA. In most cases, claimants apply for payment by way of fortnightly payments during the year, submitting an estimate of their ATI for the year in support of the claim. Based on this estimate, a rate of FTB is determined and paid. When the claimant’s tax return is lodged after the end of the tax year, the Australian Tax Office (ATO) assessment of their actual ATI for the year is reconciled with the estimate of income. Where the claimant has been underpaid, arrears are paid. Where the claimant has been overpaid, a debt is raised and recovered.

7. Explanatory Memorandum, Financial impact statement, op. cit.

8. Australian Government, *Budget measures: budget paper no. 2: 2010-11*, Commonwealth of Australia, Canberra, 2010, op. cit., p. 175.

9. Adjusted taxable income refers to, op. cit.

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A lesser number of claimants claim FTB or CCB at the end of the year with Centrelink after their tax assessment has been completed by the ATO. In the 2006–07 year, 90 per cent of FTB claimants claimed their FTB as fortnightly payments during the year and 10 per cent claimed as a lump-sum payment at the end of the year.¹⁰

Requirement to lodge a tax return

Where FTB (and CCB) has been paid in a year, the claimant is required to lodge a tax return for that year. The time-frame for lodging a tax return is two years after the end of the year in which FTB was paid. For example, where FTB was paid in the 2009–10 year, the person has until the end of the 2011–12 year—that is, 30 June 2012—to lodge their tax return.

Originally, when FTB and CCB were introduced from 1 July 2000, the period for lodgement of the tax return was one year, but this was extended to two years in 2003 by amendments included in the *Family Assistance Legislation Amendment (Extension of Time Limits) Act 2003*.¹¹ The reason the period to lodge a tax return was extended to two years was because it was acknowledged that many persons do take some period to eventually lodge a tax return, often as a result of situations outside their control, like business arrangements.

Where the person does not lodge a tax return within the required time-frame there are two serious consequences. First, the whole of the amount of FTB that was paid becomes a debt which can be recovered. Secondly, the person is not entitled to be paid FTB by way of instalments based on an income estimate, for a subsequent year.¹² For example, if FTB was paid fortnightly on the basis of an income estimate for the 2006–07 year, and the claimant did not lodge a tax return for that financial year by the end of the 2008–09 year, FTB cannot be paid by instalments thereafter. FTB can only be paid for any subsequent year if claimed as a lump-sum at the end of the year, when the tax return is lodged and the ATO have then assessed the actual level of ATI. This subsequent period is called the non-lodgement debt prohibition period.

10. Department of Families, Housing, Community Services and Indigenous Affairs, *Annual Report 2007–08*, Canberra, 2008, FaHCSIA, Table 2.13, viewed 9 June 2010, http://www.fahcsia.gov.au/about/publicationsarticles/corp/Documents/2008%20Annual%20Report/07_1.htm

11. P Yeend, *Family Assistance Legislation Amendment (Extension of Time Limits) Act 2003*, Bills digest no. 38, 2003–04, Parliamentary Library, Canberra, 2003, viewed 9 June 2010, <http://www.aph.gov.au/library/pubs/bd/2003-04/04bd038.htm#Contact>

12. A New Tax System Family Assistance (Administration) Act 1999, section 32AA.

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2008–09 Budget initiative

These two serious consequences have their origins in the 2008–09 Budget.¹³ This initiative was provided for with the *Family Assistance Amendment (Further 2008 Budget Measures) Act 2009*.¹⁴

The rationale for not paying FTB by instalment, where a tax return was not lodged, was to encourage FTB claimants to lodge tax returns. Without a tax return a reconciliation of FTB paid against the actual amount of ATI cannot be made.

Slight modification to the 2008–08 Budget initiative presented in the 2010–11 Budget

This 2010–11 Budget initiative intends to make some amendments to the original 2008–09 Budget initiative by providing for a few exceptions to the non-payment of FTB where a tax return has not been lodged.¹⁵

The exceptions are to allow FTB payment where, notwithstanding the FTB claimant has not lodged a tax return, there should still be a FTB payment by instalment where the claimant does not have a FTB debt from being overpaid FTB in a previous year and also where non-payment of FTB by instalment would cause undue hardship.

Costs

The financial impact statement in the Explanatory Memorandum details that the estimated costs for the Budget initiative are \$0.3 million in 2009–10, \$1.6 million in 2010–11, \$0.2 million in 2011–12, \$0.2 million in 2012–13 and \$0.2 million in 2013–14.¹⁶ The Budget announcement details the initiative will cost \$2.6 million over five years and this is made up of administrative expenses for Centrelink to deliver. If the expenditure is to be only for administrative expenses, this suggests it is not anticipated there will be many persons who will benefit from this small change.

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13. Australian Government, *Budget measures: budget paper no. 2: 2008-09*, Commonwealth of Australia, Canberra, 2008, pp. 390-391, viewed 9 June 2010, <http://www.budget.gov.au/2008-09/content/bp2/html/index.htm>
 14. *Family Assistance Amendment (Further 2008 Budget Measures) Act 2009*, viewed 9 June 2010, <http://parlinfo/parlInfo/search/display/display.w3p;query%3DId%3A%22legislation%2Fbill%2Fhome%2Fr4149%22;rec=0>
 15. Australian Government, *Budget measures: budget paper no. 2: 2010-11*, Commonwealth of Australia, Canberra, 2010, op. cit., p. 175.
 16. Explanatory Memorandum, Financial impact statement, op. cit.

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Main provisions

Schedule 1—Child support income estimates

Child Support (Assessment) Act 1989

Items 1–11 of Schedule 1 to the Bill amend subsection 5(1) by inserting new definitions.

Section 55J contains a simplified outline of Division 7 of Part 5 of the CSAA which relates to assessments and estimates of adjusted taxable income. It currently provides that a parent can estimate the amount of his or her adjusted taxable income for days in a ‘child support period’.¹⁷ **Item 14** will change the wording in section 55J so that a parent can estimate the amount of his or her adjusted taxable income for the financial year. This is essentially the main change presented in Schedule 1 of the Bill, that is, changing the income estimate period from up to 15 months from the date of estimate to the 12 month financial year.

Item 17 substitutes a **new section 60** which allows a parent to elect to estimate his or her ATI for the purposes of a child support assessment.¹⁸ The new provisions refer to a financial year, rather than as currently, up to a 15 month period. The definition of ATI used for the CSS, which is contained in the CSAA, is the same as the definition ATI used for setting the rate of FTB (and CCB) which is in the *A New Tax System (Family Assistance) Act 1999* (FAA). **Proposed subsection 60(3)** contains a method statement for estimating income for only part of a year.

Item 23 inserts a **new section 62A** which allows a claimant to revoke and insert a new estimate of ATI. This most commonly occurs where there has been an event to change a claimant’s income for the year like losing a job, or starting a new job, or gains a promotion and is then paid a higher wage.

Item 28 inserts **proposed sections 63AA–63AF**. These provisions allow the CSA to refuse to accept a person’s ATI estimate. This is the same as applies under FTB and CCB claims. An ATI estimate might be not accepted where it is considered the estimate is at a significant variance from what the evidence supporting the claim indicates the probable level of ATI will be. Claimants can, on occasions, significantly under estimate their ATI to gain access to a higher rate of maintenance.

Item 45 inserts **new sections 64–64H** for the reconciliation of the ATI estimate for a financial year against the eventual actual ATI received as assessed by the ATO. These

17. ‘*Child support period*’ is detailed in section 7A of the CSAA.

18. Note that the Bill itself refers to ‘income election’ but for simplicity this Digest will refer to ‘an estimate’.

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provisions mirror those in the FAA which are used for income reconciliations for FTB and CCB.

In particular **new section 64AF** provides that where a person has made an estimate of ATI which was an underestimate, the person is liable to pay a penalty. An underestimate will occur where the person's actual ATI is at least 110 per cent of the estimate. For example, where a person estimates that his or her ATI will be \$30 000 but the actual ATI is \$33 000 or more, an underestimate will have occurred. However where a person estimates that his or her ATI will be \$30 000 but the actual ATI is \$32 700 or less, no underestimation will have occurred. The amount of the penalty is worked out in accordance with the terms of **new section 64AG** and is a debt due to the Commonwealth. The penalty may be remitted in certain circumstances.

Schedule 2—Percentage of care

Part 1—Amendments

A New Tax System (Family Assistance) Act 1999

Items 1–11 insert new definitions into the FAA. **Item 18** inserts a **new Subdivisions D, E and F** into Division 1 of Part 3 of the FAA. These new subdivisions align the provisions for the assessment of care in the FAA with those in the CSAA. Mirror provisions for the assessment of care are presented to amend the CSAA in **item 55** of this Schedule.

A New Tax System (Family Assistance) (Administration) Act 1999

Items 22–38 refer to reviews and appeals against decisions under the FAA. Essentially, the proposed amendments are to ensure that where a claimant for FTB (or CCB), who is also a claimant under the CSA, does want to challenge or appeal a decision about the level of care they are providing, they are not permitted to make duplicate appeals for the same care decision.

Child Support (Assessment) Act 1989

Items 39–70 contain amendments to the CSAA necessary to duplicate the care provisions proposed for the FAA also presented in Schedule 2 – see above.

Child Support (Registration and Collection) Act 1988

Items 71–97 contain amendments to the *Child Support (Registration and Collection) Act 1988* (CSRCA). These proposed amendments are very much like the amendments to the *A New Tax System (Family Assistance) (Administration) Act 1999* (FAAA) in **Items 22 to 38** – see above. That is, they rationalise the review and appeal processes where a claimant wants to object to, or appeal against, a decision about the level of care they are assessed as providing. Like the amendments to the FAAA (see above), there will be two acts in which

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the one care assessment decision will have affect and the provisions rationalise the appeals processes to ensure a person cannot appeal one decision under two different acts at the same time.

Part 2—Application and transitional provisions

The items contained in **Part 2 of Schedule 2** are essentially transitional provisions for this Bill. The Schedule 2 provisions are to start from 1 July 2010 and these transitional provisions allow any care decision made under the CSAA or the FAA prior to 1 July 2010 to carry over after 1 July 2010.

The same applies for a claim made prior to 1 July 2010 but a care decision in respect of that claim has not been made before 1 July 2010. In these cases, the care decision, when it is made, is be made in accordance with the provisions in place before 1 July 2010 and then the decision is carried over by the other transitional provisions in Part 2 of this Schedule 2 – see above.

Schedule 3—non—payment of Family Tax Benefit for non—lodgement of tax returns

A New Tax System (Family Assistance) (Administration) Act 1999

Items 1, 3, 4 and 6 insert amendments which will allow the payment of FTB by instalment where the FTB claimant would otherwise be serving a FTB prohibition period for non-lodgement of a tax return. The payment would be allowed where the claimant does not have a FTB debt from a previous period. **Item 7** operates in the same manner as **items 1, 3, 4 and 6** allowing the payment of FTB by instalment where the FTB claimant's partner is serving a prohibition period for non-lodgement of a tax return but there is no outstanding FTB debt. The main way a debt referred to above would no longer be outstanding would be in cases where the debt was repaid, or where the other evidence of the case suggests that the amount of FTB that was paid was less than the amount of FTB the person would probably be entitled to. For example, the claimant became unemployed during the payment year.

Item 14 repeals the current subsections 32AE(2) and 32AE(3) and provides replacement subsections 32AE(2)–(11). Proposed **new subsections 32AE(8)–32AE(10)** provide the discretion to the Secretary to determine that FTB can be paid by instalments notwithstanding a tax return has not been lodged in 'special circumstances'. This links back to the Budget initiative outline which detailed there would be discretion to exempt persons from the non-payment of FTB by instalment provisions in cases of hardship.¹⁹ What constitutes 'special circumstances' will probably be spelt out in policy guidelines and will probably be consistent with other hardship guidelines currently used for other jurisdictions. The proposed **new subsection 32AE(11)** details that any determination by

19. Australian Government, *Budget measures: budget paper no. 2: 2010-11*, Commonwealth of Australia, Canberra, 2010, op. cit., p. 175.

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the Secretary under new subsections **32AE(8)** – **32AE(9)** will not be in a legislative instrument.²⁰

Schedule 4—Other amendments

Schedule 4 provides for minor miscellaneous amendments to the FAA and the CSAA arising out of the proposed amendments in Schedules 1, 2 and 3.

Concluding comments

The amendments presented in this Bill to family assistance and CSS legislation are beneficial.

The amendments in Schedule 1 to have income estimates for the CSS confined to the 12 month period of the financial year make sense, as it is the same income estimate period used for FTB and CCB. The 12 month period for an income estimate will be less than the current allowable 15 month period but it will also more closely align income estimates to current and actual income received for parents/adult carers of a child. There are no cost or savings implications for this change as the CSS is essentially about the exchange between parents of monies to provide for the care of a common child. It will, for a few cases, require the CSA to conduct more frequent reviews of ATI but in most cases, the income estimate period is commonly less than the maximum 15 months allowable now.

The Schedule 2 amendments to align the assessments of care provided for a child between the CSAA and the FAA make sense and are a proper rationalisation of these processes. It could be argued that these care assessment decisions should always have been aligned and standardised but the CSS and the family assistance arrangements have had different origins, gestation and development paths.

The Schedule 3 amendments to allow some FTB claimants access to being paid FTB by way of fortnightly instalments, even where they (or their partner) have not lodged a tax return, probably arises from the fact that the current rules are too inflexible. It is probable that the number of cases where the Secretary will exercise their discretion to allow payment of FTB periodically in hardship cases will exceed the number of cases where the FTB claimant can access periodic payments as they do not have a FTB debt.

20. M Coombs, *Acts Interpretation Amendment (Legislative Instruments) Bill 2005*, Bills digest, no. 11, 2005–06, Parliamentary Library, Canberra, 2005, viewed 10 June 2010, <http://www.aph.gov.au/library/pubs/bd/2005-06/06bd011.pdf>

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