

# **FAMILY ASSISTANCE, SOCIAL SECURITY AND VETERANS' AFFAIRS LEGISLATION AMENDMENT (2005 BUDGET AND OTHER MEASURES) BILL 2006**

## **THE INQUIRY**

1.1 The Family Assistance, Social Security and Veterans' Affairs Legislation Amendment (2005 Budget and Other Measures) Bill 2006 (the Bill) was introduced into the House of Representatives on 16 February 2006. On 1 March 2006, the Senate, on the recommendation of the Selection of Bills Committee (Report No. 2 of 2006), referred the provisions of the Bill to the Committee for report.

1.2 In recommending the reference of the Bill to the Committee, the Selection of Bills Committee stated that the reason for referral was to examine the viability and operation of the provisions of the Bill and its impact on relevant groups.

1.3 The Committee considered the Bill at a public hearing on 14 March 2006. Details of the public hearing are referred to in Appendix 2. The Committee received 10 submissions relating to the Bills and these are listed at Appendix 1. The submissions and Hansard transcript of evidence may be accessed through the Committee's website at [http://www.aph.gov.au/senate\\_ca](http://www.aph.gov.au/senate_ca)

## **THE BILL**

1.4 This omnibus Bill gives effect to several 2005 Budget initiatives and several other measures that include:

- raising the income test free area for the income test that applies for the Family Tax Benefit Part A (FTB-A);
- indexing income estimates made by claimants for FTB-A and Family Tax Benefit Part B (FTB-B) and for Child Care Benefit (CCB);
- modifying the definition of 'returns to paid work' as described in the Family Assistance Act (FAA) for the FTB-B;
- providing for the recovery of CCB debts from the claimant's tax refunds as currently is provided for in the recovery of FTB debts from tax refunds;
- providing for the movement of unallocated child care places from area to area;
- providing for the backdating of Carer Allowance (CA) claims caring for either a child or an adult for a maximum of 12 weeks;
- clarifying the circumstances in which payments may be extended beyond 13 weeks to a person temporarily overseas seeking life-saving medical treatment overseas; and
- allowing for the extension of fixed term income streams and other minor changes to the treatment of income streams in line with similar tax treatment changes for income streams.

1.5 Details of the financial impact of each of these amendments can be found at Appendix 3.<sup>1</sup>

## **BACKGROUND**

### ***Changes to Family Tax Benefit Part A (FTB-A) income threshold***

1.6 The FTB income payments for families with dependent children (FTB-A and FTB-B) were introduced from 1 July 2000. They 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.

1.7 The initiative contained in the Bill aims to raise the FTB-A income test free area threshold, thus helping low income families to earn more money before they incur reduced tax benefit payments. The threshold increase is a part of the Welfare to Work initiatives announced in the 2005-06 Budget and is designed to address the barriers faced by families in attempting to increase their earnings from employment and at the same time seeing decreases in government assistance and having to pay more tax. Indeed, the Department of Families, Community Services and Indigenous Affairs (FaCSIA) submitted that around 400 000 families stand to see their entitlement increase by an average of \$24 under the changes, and that an extra 40 000 families would become newly eligible for a Health Care Card.<sup>2</sup>

### ***Indexing of estimates of adjusted taxable income for family tax benefit and child care benefit purposes***

1.8 These amendments allow for the use of an estimate of a claimant's adjusted taxable income that has been indexed to average weekly earnings (AWE). This income estimate could then be used to determine the rate of assistance received.

1.9 The Family Tax Benefit can be paid in two ways. First, by way of fortnightly payments during the year with the payment rate based on the claimant's estimate of their income for that year. Secondly, 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. 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. The majority, about 95 per cent, of FTB-A recipients take their payments fortnightly during the year, and as a result the accurate estimation of a claimant's income is important.

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1 Information relating to the content of the bills has been drawn largely from the relevant Explanatory Memorandum, available at [http://parlinfoweb.parl.net/parlinfo/view\\_document.aspx?ID=2246&TABLE=EMS](http://parlinfoweb.parl.net/parlinfo/view_document.aspx?ID=2246&TABLE=EMS), and from Bills Digest 104/2005/06, prepared by the Parliamentary Library, available at <http://www.aph.gov.au/library/pubs/bd/index.htm>

2 Department of Families, Community Services and Indigenous Affairs, *Submission 5*, p.2.

1.10 The benefits of an indexed-estimate model were described by the Minister for Families, Community Affairs and Indigenous Affairs, Mr Brough, as follows:

The bill will help reduce family tax benefit and child-care benefit debts by improving the way customers' estimates of income are managed in working out their entitlements ... Income estimates will be updated at the beginning of each income year and in certain circumstances where actual income for the most recent income year becomes known. Importantly, however, customers will continue to have the option of providing a reasonable estimate of income that would then be used to calculate their family tax benefit entitlements or child-care benefit fee reductions instead of the automatically updated amount - that is, customers will continue to have responsibility for their estimate of income.<sup>3</sup>

1.11 This amendment aims to reduce the likelihood of payments being made to claimants based on inaccurate estimates. The Department estimated that around 150 000 families per annum would avoid overpayment or have a reduced overpayment due to the measure, and that the level of debt being carried by families due to overpayment would reduce by \$115.2 million over 4 years.<sup>4</sup>

### ***Returns to paid work***

1.12 The amendments propose to change the definition of 'returns to work' in the Family Assistance Act so that persons who have a child and take paid leave, then return to work, then take unpaid leave, then return to work for a second time should not gain the benefit of being entitled to FTB-B up until they start work for the second time. It is anticipated that only a small number of recipients will be affected by this change.<sup>5</sup>

### ***Recovery of child care benefit debts***

1.13 Debts can arise where payment of Child Care Benefit is based on an estimate of annual income and the estimate understates the level of income actually 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 known, if too much CCB was paid based on the income estimate, then the excess payment is an overpayment and a debt.

1.14 This amendment proposes to tap into tax refunds to clear CCB debts. Under the current family assistance legislation, tax refunds and end-of-year top-up payments cannot be drawn upon to offset CCB debts arising from previous year. At present only FTB debts owing from previous years can be offset using tax refunds and end-of-year top-up payments.

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3 Minister for Families, Community Affairs and Indigenous Affairs, the Hon. Mal Brough MP, *Second Reading Speech*, 16 February 2006.

4 *Submission 5*, p.2 (FaCSIA).

5 *Submission 5*, p.3 (FaCSIA).

### ***Increased flexibility in the distribution of child care places***

1.15 The number of subsidised child care places allocated to an individual service provider for family day care services, in-home services, occasional care services and outside school hours care services is based on use and demand of those services in the past. This sometimes results in an inefficient allocation of available spaces between providers from year to year.

1.16 The proposed changes are designed to provide greater flexibility to respond to changes in demand and use by allowing approvals for unused places to be transferred to other providers with excess demand.

1.17 The Department submitted that it is working with sector peak bodies on the implementation of this measure, and that they were supportive of it. Their support is derived from the improvement in efficiency which the amendment offers, and by the fact that the amendment merely formalises existing practice with little effect on the provision of existing services.<sup>6</sup>

### ***Carer allowance backdating provisions***

1.18 Carer Allowance (CA) is an income supplement payment provided to a person providing care to a child or an adult at home. The person being cared for must meet minimum disability requirements so that the care requirements are substantive. There are two main types of CA payments: CA - caring for a child and CA - caring for an adult. It is tax free and income and assets test free and the current rate is \$94.70 per fortnight.

1.19 Currently, the commencement date for the start of payment for CA – caring for a child can be backdated for up to 52 weeks prior to the date of claim. Likewise, the commencement date for the start of payment for CA – caring for an adult can be backdated for up to 26 weeks prior to the date of claim. The proposal in Schedule 6 of the Bill is to amend the Social Security Act (SSA) to reduce the commencement date for the start of payments to 12 weeks prior to the date of claim for both CA for children and for adults.

### ***Portability and Medical Treatment Overseas Program***

1.20 Under current legislation, a person may not be paid an income support or income supplement payment while overseas for more than 13 weeks, except in prescribed circumstances which can give rise to the exercise of an administrative discretion.

1.21 The Bill proposes to add to the circumstances to allow the discretionary payment for more than 13 weeks where the person is receiving financial assistance under the Medical Treatment Overseas Program provided for under the *National*

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6 *Submission 5*, p.6 (FaCSIA).

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*Health Act 1953*. This will remedy the lack of discretion over withdrawal of social security payments to those seeking medical care overseas, and their carers.

### ***Income streams***

1.22 These amendments, contained in Schedules 8 and 9, concern the treatment of income streams under income and assets tests. First, the amendments seek to extend the maximum allowable term over which life expectancy and market-linked investments can be paid. Under the amendments, payments may continue to the recipient up to the age of 100 years, and even longer where a life expectancy exceeding 100 years is calculated. This will reduce the likelihood that those with higher-than-average life expectancy will outlive their income entitlements under their chosen income stream arrangements.

1.23 Second, they seek to prescribe the amount of flexibility that will be allowed for a one-off extraordinary withdrawal from the standard regular withdrawal amount prescribed in investment - plus or minus 10 per cent from the standard regular withdrawal amount – while still being able to claim concessional income and asset test treatment. This amendment is mainly aimed at countering the use of large one-off withdrawals from a self-managed income stream product to avoid income test rules for income stream products which attract concessional tax and asset-test treatment.

1.24 The Bill makes other minor amendments in this area, including to improve or enhance the operation of the income stream rules and to allow certain non-supernnuation annuities to be split as part of a divorce property settlement.

## **ISSUES**

1.25 Aspects of the inquiry touched on during the Committee's deliberations were varied, and included discussion of the provisions relating to welfare payments to a carer who is caring for a patient seeking medical treatment overseas, as well as the administration and allocation of government-subsidised childcare places.<sup>7</sup>

1.26 However, the majority of submissions singled out the proposed reduction in the allowable number of weeks an application for Carers Allowance may be backdated as the amendment of primary concern.<sup>8</sup> Typical of the concerns expressed were those contained in the submission from Vision Australia:

Vision Australia is concerned by the proposed reduction in the maximum backdating period for the claim lodgement date by carers of both children and adults. The proposed reduction in both circumstances is both unrealistic and unreasonable. Standardizing backdating periods should not mean reducing time periods in such a way that individuals and families, facing

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7 *Committee Hansard*, 14.3.06, pp.15-22.

8 See, for example, Vision Australia, *Submission 4*, p.2; Carers Australia, *Submission 7*, p.1; National Welfare Rights Network, *Submission 8*, p.1.

massive emotional and physical challenges, are also then deprived of their rightful financial assistance.<sup>9</sup>

1.27 Witnesses submitted that this lack of realism and reasonableness was derived from the fact that carers are very often preoccupied with the care of their patient, and less focussed on complying with bureaucratic demands. This point was made by a parent as part of a submission by the Australian Association for Families of Children with Disability (AAFCD):

... My daughter was one month off 3 years old before doctors were able to ascertain her disability of cerebral palsy. Prior to that, there were a myriad of appointments ... that we had to go through as well as we tried all sorts of aids and facilities trying to get a finger on the problem. We were too worried about trying to determine our daughter's problem without getting through the social security support system discovery problem ...<sup>10</sup>

1.28 Other witnesses gave evidence on a kind of denial which they entered when their child's disability began to make itself apparent. This causes further delays on lodgement of a claim. Another member of AAFCD put it this way:

[my child] was 2 years old before we applied and we had a diagnosis at 9 months but it took me that long to begin to accept it. Denial is a complex and valuable defence mechanism that needs to be considered for families in these situations. Back payment for up to one year should be available. Anything less is cruel and stingy.<sup>11</sup>

1.29 FaCSIA indicated that backdating provisions operate in addition to provisions which allow for between 2 and 13 additional weeks for a claim to be lodged after an initial 'intent to claim' has been communicated to Centrelink. The Department stated that:

Current legislation allows two weeks for a claim to be lodged from notification of 'intent to claim'. Up to an additional 11 weeks may be granted if the claimant was caring for a person suffering from a medical condition that had an adverse effect on the claimant's ability to claim earlier or in special circumstances where it was not reasonably practicable for the claimant to lodge earlier.<sup>12</sup>

1.30 FaCSIA pointed out that while only new applicants for Carer's Allowance will be affected by the changes as the measure will not impact on existing recipients, the need for extensive backdating provisions is mitigated by the fact that eligibility for Carer's Allowance is determined by application of the Child and Adult Disability Assessment Tools, which look to actual functional ability and care needs rather than strict medical diagnoses. The changes to the eligibility criteria, combined with reform

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9 Vision Australia, *Submission 4*, p.2.

10 *Submission 9*, p.3 (AAFCD)

11 *Submission 9*, p.3 (AAFCD)

12 *Submission 5*, p.7 (FaCSIA).

of Centrelink's processing regimes, have further streamlined the application and approval process for carers.<sup>13</sup>

1.31 The Department stated that around 42 000 new customers each year will be eligible to access the backdating provisions though 'for some, this measure may mean a reduced amount of backdating will be payable'.<sup>14</sup> The Committee acknowledges the concerns expressed in evidence and considers that in a small proportion of cases, particularly those in which claimants are suffering particular hardship, there should be some capacity to provide for the backdating of the Carer's Allowance over a longer period than 12 weeks.

1.32 The other substantial criticism levied on the changes by respondents referred to the extent to which potential recipients are aware of their entitlements. Typical of the experiences relayed to the Committee was that of Ms Clark, a parent of a child living with severe intellectual disability:

... Even though I am a well-educated member of the community and even though my child was diagnosed as having a disability from 3 months of age, I was not made aware of the [Carers] Allowance until my daughter was about 4 years of age and, even then, I was never advised that it could be back-dated.<sup>15</sup>

1.33 The Department submitted that care payments are much more widely publicised than in past years. However, the majority of submissions received by the Committee reported that community awareness of carer entitlements was less than adequate, and made the obvious point that awareness of a benefit being available was a natural prerequisite to a claim being lodged.<sup>16</sup>

1.34 A number of witnesses, including the Department, also submitted that ignorance by many potential recipients about the existence of the Carer's Allowance was difficult to remedy.<sup>17</sup> It was suggested by some witnesses that this was due to the fact that many carers are not in receipt of other welfare payments and were therefore 'unknown' to Centrelink.<sup>18</sup>

1.35 Other witnesses, such as those representing Vision Australia, made the point that, although their clients are often in receipt of benefits through Centrelink such as aged care or disability support pensions, they are not queried by the agency on the status of their carer or whether their carer is in receipt of the Carer's Allowance or

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13 *Submission 5*, pp6-7 (FaCSIA).

14 *Submission 5*, p.8 (FaCSIA).

15 Katrina Clark, *Submission 1*, p.1. See also, for example, *Submission 3*, p.3 (NCID); *Submission 8*, p.2 (NWRN).

16 See, for example, Katrina Clark, *Submission 1*, p.1; Older Women's Network NSW, *Submission 2*, p.1; National Welfare Rights Network, *Submission 8*, pp.2,3.

17 *Committee Hansard*, 14.3.06, pp.28-29, (Mr Barson). See also *Committee Hansard*, 14.3.06, p.8 (Mr Raper).

18 *Committee Hansard*, 14.3.06, pp.28-29, (Mr Buston)

other forms of assistance such as respite.<sup>19</sup> This lack of knowledge, combined with a feeling amongst many carers that caring was a private and often a family matter, works against an effective and targeted identification campaign.

1.36 It is evident to the committee that medical professionals, particularly general practitioners, are a critical source of information for patients and their carers in relation to their entitlements. This is in no small part due to the fact that GPs commonly conduct the assessment of the functional ability and care needs of their patient, which is then relied on by carers seeking to claim the Carer's Allowance. It was widely submitted that both patients and doctors suffer under the misapprehension that a medical diagnosis is necessary before Centrelink will approve Carer's Allowance. As outlined above, the assessment criteria go to actual care needs rather than medical diagnosis. Such a misapplication of the assessment criteria often serve to slow the lodgement of a claim by a carer.

1.37 In a situation where the backdating of claims was being restricted, the Committee agrees with the widespread observation by witnesses that the need for potential claimants to be aware of their entitlement assumes particular importance. The committee therefore encourages the Government to develop and implement an education program for GPs and other health professionals charged with attesting to the care needs of their patients. The program should aim to achieve two primary objectives. First, it should accurately convey the assessment criteria used by Centrelink for those seeking Carer's Allowance. Second, it should assist in reminding doctors of the existence of the Carer's Allowance in the expectation that knowledge about the entitlement will be passed on to patients and their carers in appropriate cases.

### **Recommendation 1**

**1.38 The Committee recommends the development and implementation of a comprehensive education campaign aimed at medical practitioners and others charged with assessing the care needs of individuals in order to improve awareness of, and the dissemination of information about, the availability of assistance for carers. This campaign should emphasise the existence of the Carer's Allowance entitlement, and the correct application of the Centrelink care assessment criteria.**

### **Recommendation 2**

**1.39 The Committee recommends that the legislation be amended to allow a discretion for the backdating of Carer's Allowance for a period in excess of 12 weeks where:**

- (a) it would have been unreasonable in all the circumstances for a claimant to have made an earlier claim for the Carer's Allowance, and**
- (b) a failure to backdate would occasion significant financial hardship.**

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19 *Committee Hansard*, 14.3.06, p.14, (Mr Simpson)

**Recommendation 3**

**1.40 The Committee reports to the Senate that it has considered the Family Assistance, Social Security and Veterans' Affairs Legislation Amendment (2005 Budget and Other Measures) Bill 2006 and recommends that, subject to recommendation 2, the Bill be passed.**

Senator Gary Humphries

Chairman

March 2006

