2008-2009

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FAMILY ASSISTANCE AND OTHER LEGISLATION AMENDMENT
(2008 BUDGET AND OTHER MEASURES) BILL 2009

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon Jenny Macklin MP)
OUTLINE

This bill introduces one measure from the 2008 Budget on family tax benefit and two further non-Budget measures.

Streamlining payment of family tax benefit

From 1 July 2009, the administration of family tax benefit (FTB) will be streamlined by removing the Australian Taxation Office (ATO) from delivery of FTB. This will include removal of the option of claiming FTB for a past period through the ATO. However, individuals will continue to be able to claim FTB by instalment or FTB for a past period through Centrelink or Medicare.

Review of income management regime decisions

The bill contains an amendment to the Social Security (Administration) Act 1999 to enable the Social Security Appeals Tribunal to review a decision made under Part 3B of that Act relating to a person who is subject to the Northern Territory income management regime. As a consequence, the Administrative Appeals Tribunal will also be able to review such a decision.

Community Development Employment Projects Scheme

The bill contains amendments to the Social Security Act 1991 to implement part of the Government’s announced reforms to the Community Development Employment Projects (CDEP) program, improving employment participation for Indigenous Australians. The amendments will provide new CDEP participants, commencing on or after 1 July 2009, with access to the CDEP program while receiving income support payments, and will provide for continuing CDEP participants to continue receiving CDEP wages from CDEP providers and, in certain circumstances, the CDEP Scheme Participant Supplement.

Financial impact statement

Streamlining payment of family tax benefit

Total resourcing – net impact
2008-09  - $19.8 m
2009-10  - $25.0 m
2010-11  - $27.9 m
2011-12  - $28.5 m

Review of income management regime decisions

Negligible financial impact.
Community Development Employment Projects Scheme

Nil financial impact.
NOTES ON CLAUSES

Clause 1 sets out how the Act is to be cited, that is, the Family Assistance and Other Legislation Amendment (2008 Budget and Other Measures) Act 2009.

Clause 2 provides a table that sets out the commencement dates of the various sections in, and Schedules to, the Act.

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.
Schedule 1 – Streamlining administration of family tax benefit

Summary

From 1 July 2009, the administration of family tax benefit (FTB) will be streamlined by removing the Australian Taxation Office (ATO) from delivery of FTB. This will include removal of the option of claiming FTB for a past period through the ATO. However, individuals will continue to be able to claim FTB by instalment or FTB for a past period through Centrelink or Medicare.

Background

The Family Assistance Office (FAO) was established in July 2000 as a ‘virtual office’ with a presence in Centrelink customer service centres, Medicare Australia offices and ATO shopfronts. This partnership is reflected in the definition of agency in subsection 3(1) of the A New Tax System (Family Assistance) (Administration) Act 1999 (Family Assistance Administration Act), which is a concept used in provisions such as section 221 (delegation) and in the definition of officer, which is used in Part 5 of the Family Assistance Administration Act (review and appeals), in Part 6 (confidentiality) and other provisions.

Currently, families can choose to receive their FTB as fortnightly instalments by making a claim for FTB by instalment through Centrelink or Medicare Australia. Alternatively, families can choose to claim FTB as a lump sum following lodgement of the claimant’s tax return at the end of the relevant income year by making a claim for FTB for a past period through Centrelink or Medicare Australia, or through the ATO at the same time that the claimant lodges their tax return.

Section 7 of the Family Assistance Administration Act sets out the rules for claiming FTB. The types of claims that can be made by an individual or approved care organisation are set out in subsection 7(1). Subsection 7(2) then provides for the form and manner of a claim for FTB, with the Secretary having discretion as to the required manner and form of a claim. The discretion as to manner and form in section 7 provides the basis for claims through the ATO.

A past period claim made through the ATO is dealt with in a similar way to tax returns, based on a self-assessment approach. This approach to determining claims differs from claims determined by Centrelink or Medicare. For the latter claims, additional information or documents may be sought from the claimant before the claim is determined.

From 1 July 2009, the option of claiming FTB for a past period through the tax system will be removed. Removing the tax system option for delivery of FTB payments will simplify the system, reduce duplication in delivery of the payments, and improve consistency for claimants.
Until the end of 30 June 2008, customers could also choose to anticipate the future payment of FTB through a reduction of their ‘pay as you go’ (PAYG) tax withholdings. These customers could then claim for FTB for a past period after the end of the relevant income year, whereupon the claimant’s entitlement to FTB would be assessed and offset against any underpayment of tax due to the reduction of PAYG tax withholdings.

Subsection 10(5) of the Family Assistance Administration Act is a related provision, which prevents customers from being able to make a past period claim for FTB during the income year in which they reduced their PAYG tax withholdings on account of FTB. Instead, they can make such a claim after the end of that income year, to enable the offsetting arrangements noted in the previous paragraph. However, this provision has become redundant with the removal of this FTB delivery option.

Section 14 of the Family Assistance Administration Act applies where an individual claims FTB for a past period in the previous income year and provides that the claim cannot be determined until an assessment of the claimant’s taxable income for the past period income year has been determined under the Income Tax Assessment Act 1936. A similar rule does not apply in relation to the claimant’s partner. This means that a past period claim can currently be determined on the basis of a claimant’s actual adjusted taxable income (ATI) and an estimate of their partner’s ATI.

The use of a partner’s estimated ATI currently enables the lump sum payment of FTB to be paid to the claimant by the ATO as part of the income tax assessment notice issued by the ATO for the claimant’s income tax return. However, the removal of payment of FTB by the ATO from 1 July 2009 removes the need to make the lump sum payment at that time. Instead, it will be simpler and more efficient to finalise an end of income year lump sum FTB claim when both the claimant’s actual ATI and their partner’s actual ATI is known. This will avoid the need to recalculate the claimant’s FTB due to their partner’s actual ATI being different to the estimated amount.

Section 14 is amended by this Schedule so that a claim for FTB for a past period cannot be determined until an assessment is made of the taxable income of a claimant’s partner (as well as of the claimant).

The amendments made by this Schedule commence on 1 July 2009 with the exception of item 7, which commences on the day of Royal Assent.
Explanation of the changes

No new past period claims through the ATO

The option of allowing claims for FTB for a past period through the ATO can be removed using the discretion as to manner and form of a claim for FTB in section 7 of the Family Assistance Administration Act. However, there are maintenance income rules in the *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act) that refer to claims made through the ATO, and various provisions in the Family Assistance Administration Act that require amendment to remove the ATO from FTB delivery. The relevant amendments are outlined below.

Family Assistance Act

Maintenance income credit (MIC) balances, including rules around accruals and depletions, are dealt with in clauses 24A to 24EA of Schedule 1 to the Family Assistance Act. The amount by which a MIC balance is depleted in accordance with clause 24E is disregarded in working out the individual's annualised amount of maintenance income in accordance with paragraph (c) of step 1 of the method statement in clause 20 of Schedule 1.

Subclause 20(3) of Schedule 1 to the Family Assistance Act ensures that an individual will not have any arrears of child support disregarded under paragraph (c) of step 1 of clause 20 for a period in a particular income year if the person's claim for FTB for that period is a claim made with the ATO (in a form that has been approved by an officer of the ATO for the purposes of subsection 7(2) of the Family Assistance Administration Act).

As a consequence of ceasing claims for FTB for a past period through the ATO, **item 1** repeals subclause 20(3) of Schedule 1 to the Family Assistance Act.

**Item 13** is a related saving provision. This provision saves the effect of the current MIC rules in relation to a claim for FTB for a past period through the ATO made before 1 July 2009.

Family Assistance Administration Act

The FAO partner agencies (Centrelink, Medicare Australia and the ATO) are mentioned in a number of definitions in subsection 3(1) of the Family Assistance Administration Act, which are then used in various provisions throughout the Family Assistance Administration Act.

Subsection 3(1) of the Family Assistance Administration Act defines **agency** to include the ATO (paragraph (c) refers). **Item 2** repeals paragraph (c) of this definition.
The **head** of an agency is defined in subsection 3(1) of the Family Assistance Administration Act to include, in the case of the ATO, the Commissioner of Taxation (paragraph (c) refers). **Item 3** repeals paragraph (c) of this definition.

Paragraph (b) of the definition of **protected information** in subsection 3(1) of the Family Assistance Administration Act refers to information about a person obtained by an officer under the family assistance law that is or was held in the records of the ATO or Medicare Australia. The reference to the ATO in paragraph (b) of this definition is omitted by **item 4**.

When the ATO ceases to be involved in the delivery of FTB, there will be no further family assistance information added by officers of the ATO to their records (except in relation to pre-1 July 2009 claims). However, existing family assistance records held by the ATO should remain subject to the rules regarding confidentiality in Division 2 of Part 6 of the Family Assistance Administration Act. **Item 14** achieves this effect through a saving provision.

The parties to an SSAT review are specified in section 118 of the Family Assistance Administration Act. Where the relevant decision under review was made by an officer of the ATO, then the Commissioner of Taxation is a party to the review. As the ATO will not be involved in FTB decision making from 1 July 2009, reference to the ATO in section 118 is omitted by **item 11**.

**Item 12** is a related saving provision that preserves the effect of the Family Assistance Administration Act in relation to claims for FTB for a past period through the ATO that are made before 1 July 2009 and in relation to decisions made in relation to past period claims by officers of the ATO. This will allow claims made before 1 July 2009 to be determined in accordance with the current rules, even though the relevant decisions on those claims are made after 1 July 2009, and will ensure that decisions on past period claims through the ATO continue to be reviewable under Part 5 of the Family Assistance Administration Act.

**Relationship between past period claims and tax instalment deductions**

**Family Assistance Administration Act**

Subsection 10(5) of the Family Assistance Administration Act restricts an individual’s capacity to claim FTB for a past period where a declaration was in force under section 15-50 in Schedule 1 to the Taxation Administration Act 1953 in relation to some or all of the past period and the claim is made in the income year in which the past period occurs. The effect is that, where reduced tax instalment withholdings are being made in lieu of FTB, the individual has to wait until the end of the relevant income year to make their past period FTB claim.
Until the end of 30 June 2008, customers could choose to anticipate the future payment of FTB through a reduction of their PAYG tax withholdings. As this is no longer a delivery option for FTB, subsection 10(5) is redundant and omitted by item 5.

**Past period claims cannot be determined unless actual ATI known**

Family Assistance Administration Act

Section 14 of the Family Assistance Administration Act ensures that a claim for FTB for a past period in the previous income year can be determined only after the claimant’s taxable income has been assessed under the *Income Tax Assessment Act 1936* where the claimant is required to lodge a tax return for the past period.

**Items 6 to 10** extend the scope of section 14 of the Family Assistance Administration Act to ensure that a past period claim cannot be determined until the taxable income of the claimant and their partner (at the time of claim) has been determined under the *Income Tax Assessment Act 1936*. The new rules would apply only in relation to the claimant’s partner if that person was also the claimant’s partner at any time during the past period covered by the claim.

Under amended subsection 14(1), a claim for FTB for a past period that falls in an income year that is one of the two income years before the one in which the claim is made, where either or both of new subsections 14(2) and (3) apply, can be determined only when the relevant assessments have been made.

The two-year rule referred to in new subsection 14(1) is consistent with the timeframe for claiming FTB for a past period and addresses an oversight in the existing provision.

New subsection 14(2) applies if the claimant is required to lodge a tax return and, at the time the claim is made, an assessment has not been made under the *Income Tax Assessment Act 1936* of the tax payable on the claimant’s taxable income for the past period.

New subsection 14(3) applies where, at the time the claim is made, the claimant has a partner who was their partner at any time during the past period, the partner is required to lodge a tax return and, at the time the claim is made, an assessment has not been made under the *Income Tax Assessment Act 1936* of the tax payable on the partner’s taxable income for the past period.

**Item 15** is an application provision, which provides that the amendments to section 14 of the Family Assistance Administration Act made by items 6, 8, 9 and 10 apply in relation to claims for FTB for a past period falling in 2009-10 or a later income year.
Item 16 is an application provision for the amendment made by item 7. This amendment applies in relation to claims made on or after commencement (Royal Assent).
Schedule 2 – Review of income management regime decisions

Summary

This Schedule contains an amendment to the *Social Security (Administration) Act 1999* (Social Security Administration Act) to enable the Social Security Appeals Tribunal (the SSAT) to review a decision made under Part 3B of that Act relating to a person who is subject to the Northern Territory income management regime. As a consequence, the Administrative Appeals Tribunal (the AAT) will also be able to review such a decision.

Background

The Northern Territory national emergency response (the NT NER) was announced on 21 June 2007 by the former Australian Government. A package of legislation in support of the NT NER was passed by the Australian Parliament in August 2007. That package included the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (the Welfare Payment Reform Act), which introduced new Part 3B into the Social Security Administration Act.

Part 3B of the Social Security Administration Act establishes an income management regime for recipients of certain welfare payments. If a person is subject to the income management regime, the Secretary will deduct amounts from the person’s relevant welfare payments and credit equivalent amounts to the person’s income management account. The Secretary may then debit amounts from the person’s income management account for the purpose of taking actions directed to meeting the priority needs of the person or his or her dependants.

A person is subject to the income management regime only if certain conditions set out in Division 2 of Part 3B are satisfied in relation to the person. Section 123UB (the NT NER income management measure), in Division 2, provides for the income management regime to apply to a person who, amongst other things, has been physically present overnight in a specified Northern Territory area.

The amendments made to the Social Security Administration Act by the Welfare Payment Reform Act expressly prevented merits review, by the SSAT, of a decision made under Part 3B in relation to a person who is subject to the income management regime under the NT NER income management measure. As a consequence of this limitation on review by the SSAT, no application could be made for merits review through the AAT in relation to such a decision. (Section 179 of the Social Security Administration Act provides that an application can be made to the AAT only for review of a decision that has been considered by the SSAT.)
In June 2008, the Australian Government convened a Board (the Review Board) to examine evidence, assess the overall progress of the NT NER and recommend any required changes to improve each measure.

The Review Board delivered its report on 13 October 2008. Amongst other recommendations about welfare reform and the income management regime, the report recommended that all welfare recipients subject to income management should have access to the full range of merits review.

On 23 October 2008, in response to this recommendation of the Review Board, the Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon Jenny Macklin MP, announced that the Government would legislate in the first half of 2009 to ensure that people subject to the income management regime in the Northern Territory have access to the full range of appeal mechanisms, including through the SSAT and the AAT.

The amendments made by this Schedule commence on Royal Assent.

**Explanation of the changes**

**Item 1** amends section 144 of the Social Security Administration Act. Section 144 contains a list of decisions that the SSAT cannot review. Existing paragraph (ka) in that list refers to a decision under Part 3B of the Social Security Administration Act that relates to a person who is subject to the income management regime under section 123UB. **Item 1** removes existing paragraph (ka) from the list in section 144.

**Item 2** clarifies that paragraph 144(ka) of the Social Security Administration Act (as in force immediately before the amendment made to it by this Schedule) continues to apply in relation to relevant decisions made under Part 3B of the Social Security Administration Act before the commencement of **item 2** (before Royal Assent).
Schedule 3 – Community Development Employment Projects Scheme

Summary

This Schedule contains amendments to the Social Security Act 1991 (Social Security Act) to implement part of the Government’s announced reforms to the Community Development Employment Projects (CDEP) program, improving employment participation for Indigenous Australians. The amendments will provide new CDEP participants, commencing on or after 1 July 2009, with access to the CDEP program while receiving income support payments, and will provide for continuing CDEP participants to continue receiving CDEP wages from CDEP providers and, in certain circumstances, the CDEP Scheme Participant Supplement.

Background

On 19 December 2008, the Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon Jenny Macklin MP, announced that the Government would implement reforms to the CDEP program on 1 July 2009.

The announcement stated that, as part of the reforms, incentives and participation requirements of CDEP participants and other Indigenous job-seekers would be aligned.

It was announced that there would be continuing CDEP participants until 30 June 2011 (that is, those participants commencing the CDEP program before 1 July 2009) and new CDEP participants (that is, those participants commencing the CDEP program on or after 1 July 2009).

Part 3.15A of the Social Security Act reduces a person’s social security entitlement when a person is a CDEP Scheme participant and provides, in certain circumstances, for entitlement to the CDEP Scheme Participant Supplement for a person who is a CDEP Scheme participant.

In view of the operation of Part 3.15A, amendments are required to distinguish between new CDEP participants (who will receive income support) and continuing CDEP participants (who will receive CDEP wages from CDEP providers and, in certain circumstances, the CDEP Scheme Participant Supplement).

Section 1188B of the Social Security Act defines a CDEP Scheme participant. For the purpose of implementing the reforms, the definition in section 1188B needs to be amended to exclude new CDEP participants.
The amendments will mean that new CDEP participants will be able to receive income support payments, but they will not be able to receive the CDEP Scheme Participant Supplement. The amendments will allow continuing CDEP participants to receive CDEP wages from CDEP providers and the CDEP Scheme Participant Supplement until 30 June 2011, when continuing participants will transfer to income support.

The amendments made by this Schedule will commence on 1 July 2009.

**Explanation of the changes**

**Item 1** repeals subsections 1188B(1) and (2) of the Social Security Act and substitutes a new subsection 1188B(1).

Subsection 1188B(1) currently prescribes when a person is, or is taken to have been, a CDEP Scheme participant on or after 20 March 1999. Subsection 1188B(2) currently states when subsection (1) does not apply.

The new subsection 1188B(1) prescribes when a person is a CDEP Scheme participant on or after 1 July 2009. This applies if the person was, immediately before that date, receiving a CDEP Scheme payment under an agreement mentioned in the definition of *CDEP Scheme provider* in subsection 23(1) of the Social Security Act, and is entitled to be paid such a payment for a day on or after that date (in essence, a continuing CDEP participant). The operation of the new subsection in conjunction with such an agreement that will be in force on 1 July 2011 will automatically result in continuing CDEP participants being transferred onto income support.

Subsection 1188B(3) of the Social Security Act, containing definitions for the current subsections 1188B(1) and (2), will become redundant and is therefore repealed by **item 2**.