Social Security and Other Legislation Amendment (2012 Budget and Other Measures) Bill 2012

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Social Policy Section

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## Glossary

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<tr>
<th>Abbreviation</th>
<th>Definition</th>
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<tr>
<td>ATI</td>
<td>Adjusted Taxable Income</td>
</tr>
<tr>
<td>FAA</td>
<td>A New Tax System (Family Assistance) Act 1999</td>
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<td>CSA</td>
<td>Child Support Agency</td>
</tr>
<tr>
<td>CSAA</td>
<td>Child Support (Assessment) Act 1989</td>
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<td>CSS</td>
<td>Child Support Scheme</td>
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<td>CEA</td>
<td>Clean Energy Advance</td>
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<td>CES</td>
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<td>FTB-A</td>
<td>Family Tax Benefit Part A</td>
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<td>LIS</td>
<td>Low Income Supplement</td>
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<td>NSA</td>
<td>Newstart Allowance</td>
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<td>SSA</td>
<td>Social Security Act 1991</td>
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<td>VEA</td>
<td>Veterans' Entitlements Act 1986</td>
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<td>YA</td>
<td>Youth Allowance</td>
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Social Security and Other Legislation Amendment (2012 Budget and Other Measures) Bill 2012

Date introduced: 24 May 2012

House: House of Representatives

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Commencement: Various dates which are set out in the table in section 2 of the Bill.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill's home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose

The Social Security and Other Legislation Amendment (2012 Budget and Other Measures) Bill 2012 (the Bill) provides for amendments to the Social Security Act 1991 (SSA) and other Acts to implement several initiatives announced in the 2012-13 Budget. The Bill also provides for other non-Budget amendments to several acts to provide for other minor changes.

Committee consideration

The Bill has been referred to the Senate Community Affairs Legislation Committee for inquiry and to report by 18 June 2012. Details of the inquiry are at the inquiry webpage.

Main issues and key provisions

Schedule 1—Excluded income

Background

The Government announced in the 2012–13 Budget the extension of the existing exemption of payments received under the Western Australian Country Fuel Card and the Cost of Living Rebate Schemes from the application of the income test. The original exemption from the income tests in the SSA and the Veterans’ Entitlements Act 1986 (VEA) was introduced in 2009.


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Country Fuel Card Scheme

The Western Australian Country Fuel Card scheme, which originated in 2009, is provided by the Western Australian Government to country-based pensioners as a part of that State’s Royalties for Regions scheme. The Country Fuel Card Scheme provides eligible pensioners with up to $500 a year towards the cost of fuel and/or taxi travel from participating providers. At the time of its introduction, the Western Australian Government estimated that approximately 35 000 pensioners would qualify for the fuel card. The Country Fuel Card Scheme has since been expanded to include up to another 15 000 pensioners.

Cost of Living Rebate Scheme

The Western Australian Cost of Living Rebate Scheme is an annual payment to eligible Seniors Card holders which also was introduced by the Western Australia Government in 2009 to assist with rising living expenses. The Cost of Living Rebate Scheme had approximately 260 000 applications processed for 2011. In 2012, singles can receive $155.25 and couples (where both members hold a Seniors Card and live together) can receive $232.90.

Income tests in legislation

Both the SSA and the VEA provide for a range of ‘means’ tested income support payments, with means testing referring to income and assets tests. Accordingly, there are definitions of what is income in both acts. In the SSA, income is broadly defined as:

an income amount earned, derived or received by the person for the person’s own use or benefit

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4. Eligible pensioners, in the context of the Royalties for Regions scheme, refers to recipients of Age Pension, Carer Payment, Disability Support Pension, Wife Pension, Widow B Pension or a Department of Veterans’ Affairs Service Pension or Income Support Supplement.
8. Ibid.

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This income definition is designed to catch all monies or valuable consideration received.\(^{10}\) Thereafter, the SSA lists certain payments which are excluded from the calculation of income for the purpose of calculating the amount payable. Unless an item is specifically listed as an exclusion, it is regarded as income. A similar definition of income, listed exemptions and method of calculating income for the purpose of the income test is also used in the VEA.\(^{11}\)

The amendments to the SSA and the VEA made in 2009, to exclude payments under the Western Australian Country Fuel Card and the Cost of Living Rebate Schemes from the definition of income, were initially intended to apply for three years, being the financial years beginning 1 July 2009, 1 July 2010 and 1 July 2011.

**Provisions**

*Items 1 and 2 and items 3 and 4 of Schedule 1* to the Bill amend the SSA and VEA respectively by deleting references to amounts received in the financial years beginning on 1 July 2009, 1 July 2010 and 1 July 2011. This will ensure that the exclusion of payments under the Country Fuel Card and the Cost of Living Rebate Schemes from the definition of income in those Acts will be ongoing. These amendments commence from 1 July 2012.

**Cost**

The financial impact statement in the Explanatory Memorandum details that the estimated cost of the continuance of the income exclusions is $25.5 million over four years from 2012–13.\(^ {12}\)

**Comment**

The Country Fuel Card and the Cost of Living Rebate Schemes are financial assistance arrangements provided by the West Australian Government and are unique to that state. As a broad principle, it does not make much sense for the Federal Government to regard as ‘income’, the assistance provided by a state government. It can be seen as one hand giving while the other hand is taking. As both of the Western Australian Schemes involve some targeting to low income persons, this probably encouraged the Federal Government to decide to exclude amounts received as income.

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Schedule 2—Adjustments to portability and other periods

Background

The Government announced in the 2012–13 Budget changes to the portability arrangements for welfare assistance payments to be paid overseas. Essentially, the initiative involves the reduction of the temporary absence portability period from 13 weeks down to six weeks.

Savings

The financial impact statement in the Explanatory Memorandum details that the estimated savings from the reduction in the portability period is estimated to be $127.2 million over four years from 2012–13.

Portability

The term ‘portability’ refers to the continuation of Australian income support payments during a recipient’s overseas absence. Portability has been a feature of the Australian social welfare landscape in one shape or form since 1973. For most payments, portability applies to a person who is overseas only during a temporary absence and payment is made for a short period—mostly up to 13 weeks. There are few payments that can be paid where a person leaves Australia permanently to reside overseas. Where a person leaves Australia for an absence that is not temporary and their payment is not payable overseas, payment is stopped on departure. An example is Newstart Allowance (NSA) which is not normally payable at all where the person is absent overseas.

It is a requirement under both the Social Security (Administration) Act 1999 and the A New Tax System (Family Assistance) (Administration) Act 1999 that if a person intends to leave Australia they must notify Centrelink of their intention to do so.

The payments affected by the proposed portability changes are listed in the Budget announcement. These are the payments that are currently portable for temporary absences for a

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16. The only payments payable while a person is permanently resident overseas are the Age Pension, Wife Pension, Widow B Pension and a Disability Support Pension (in special cases).
19. The payments referred to in the Budget announcement are Disability Support Pension, Parenting Payment, Carer Payment, Carer Allowance, Widow B Pension, Wife Pension, Widow Allowance, Partner Allowance, Youth Allowance

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period of up to 13 weeks. This proposed initiative is similar to the previous reductions in the portability periods for temporary absences. The Howard Government reduced the portability of most income support payments from 26 weeks to 13 weeks from 1 July 2004. The amendments will apply to those payments, benefits and allowances where a person’s absence from Australia for a period of more than 13 weeks will affect whether the person continues to qualify. Also to be affected will be those payments, benefits and allowances which have a 13 week residency requirement before a person qualifies, or before the payment, benefit or allowance becomes portable.

Provisions

To a large extent the amending items presented in Parts 1 and 2 of Schedule 2 to the Bill are mechanistic—they amend a number of Acts by omitting references to the term ‘13 weeks’ and substituting the term ‘6 weeks’. All of the amendments in Part 1 of Schedule 2 commence on 1 January 2013. Part 3 of Schedule 2 contains application provisions for the changes in Part 1 so that the amendments will generally apply to absences from Australia starting from 1 January 2013.

Comment

Generally, income support and income supplement payments that are provided by the Australian Government have means testing (income and/or assets tests) to target persons with lesser means to provide for basic living costs. It could be argued that this refers to living costs incurred in Australia and therefore these payments should be targeted at persons who are physically present in Australia, rather than elsewhere. It could also be argued that for those receiving low-income government assistance, trips overseas should only be for exceptional events. The Minister said in presenting the Bill to the Parliament:

However, we believe that people of working age should be in Australia participating in the community and preparing to return to work if they can. Six weeks is a reasonable period of time for an Australian resident to manage family or personal matters that may arise from time to time overseas and have their overseas stay funded by the Australian taxpayer.

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There will be some payment recipients who may have the means to take a temporary absence from Australia for a period of more than six weeks. In such cases, payment will be able to be made for the initial six weeks and will then cease. The person may need to lodge a new application for the payment upon their return to Australia. Currently, for a few payments, there is the capacity to allow an extension of payment beyond 13 weeks on a case-by-case basis. This Bill does not change this aspect of current portability arrangements.

Schedule 3—Age/study rules for children for family assistance payments

Background

The Government announced changes to the age for a young person to be qualified as a Family Tax Benefit Part A (FTB-A) child in the 2012–13 Budget. From 1 January 2013, FTB-A will no longer be payable to a parent/guardian in respect of young persons aged 19 or over. A young person may still be a qualifying child for FTB-A in the calendar year they turn age 19, so long as this is in the same year they are completing secondary education or equivalent vocational education.

FTB-A is an income supplement payment aimed at helping families with the cost of raising children. It is paid to the primary carer in a family where the family has a qualifying FTB-A child. The upper qualifying age limit for a FTB-A qualifying dependent child was set at age 24 when FTB-A and was a carryover from the family assistance payments that preceded FTB. These payments were Child Endowment and then Family Allowance.

Changes to age access rules for government assistance

More recently the upper age limit for a FTB-A qualifying child has been reduced. The Family Assistance and Other Legislation Amendment Act 2011 saw the maximum age for a FTB-A qualifying child reduced from age 24 down to age 21. This change was also in line with like changes to the upper age limit for young persons to access Youth Allowance (YA) and the higher age at which a person could access NSA. The changes in the Social Security and Other Legislation Amendment (Income Support and Other Measures) Act 2012 raised both the age eligibility criteria for YA from age 23.

http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2F7b0b2bac -de69-42c1-8a98-2d16329f051f%2F0032%22


24. FTB-A was introduced from 1 July 2000.


20 to age 21 and the age eligibility criteria for NSA from age 21 to age 22. These changes meant young persons’ income support needs would be met by YA and not NSA up to age 21.

The emphasis is on young persons aged 19 or more qualifying for income support in their own right, rather than assistance being paid indirectly to their parent/guardian by way of FTB-A. Then, when accessing income support, the young person needs to be undertaking education/training.

Different payments and assistance have different rules and the transition from one assistance to another form of assistance is often not linear. If the changes to accessing FTB-A presented in Schedule 3 are applied, the greatest impact will be on young persons trying to access the only real alternative which will be income support by way of (YA), especially those who are not considered to be ‘independent’. Those ‘dependent’ young persons will have their entitlement to YA subject to parental means testing up to the age of 21. Once turning age 22, a young person’s income support as a full-time student will be in the form of YA, but thereafter they are considered independent and only personal means testing applies.

This rationalisation of age limits for young persons to access government assistance follows on from changes to the age of independence for YA recipients which occurred in response to the 2009 Bradley Review of Australian Higher Education. The lowering of the age at which a young person can be a qualifying child for the purposes of FTB-A to 18 years, accords with a recommendation of the Australia’s Future Tax System review (the Henry Review).

Savings

The financial impact statement in the Explanatory Memorandum details that the savings from the reduction in the qualification age for a young person to qualify as a FTB-A child to age 18 is estimated to be $360.9 million over four years from 2012–13.

Too old to access Family Tax Benefit Part A – accessing Youth Allowance

With the lowering of the FTB-A qualifying age which will be achieved by this Bill, the main alternative assistance available for young persons aged 18–21 will be YA—but only where both the parental

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31. Explanatory Memorandum, op. cit., p. 3.

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means test (if applicable) and the personal means test are satisfied. YA is income support whereas FTB-A is income supplement, which is why the former is paid at a higher rate. However, while the rate of YA can be higher than FTB-A, the means testing for YA is tighter than that which applies to FTB-A. Not all young persons for whom FTB-A was previously payable will be able to access YA or their YA rate may be less than their FTB-A rate. For some on very low personal and family incomes (family income below $46 355), there will be no difference as they are probably already accessing YA instead of FTB-A, as it is paid at a higher rate.

As referred to above, the parental means testing cut-out limits and taper rates for YA are more stringent than the means testing that applies to FTB-A. For an 18–21 year old living at home and considered entitled to the dependent rate of YA ($265.00 per fortnight), no YA would be payable where annual parental income exceeds about $80 900 a year. This contrasts sharply with the current FTB-A family income test cut-off limit of $102 870 (for one child), with higher levels applying if there are other FTB-A qualifying dependent children in the family.

Numbers affected

It is estimated that about 53 000 dependents of FTB-A parents/guardians who are currently receiving instalments will be affected by the lowering of the upper age limit from 21 years down to age 18 years for a young person to qualify as a FTB-A dependent. Of these, it is estimated that about 5500 would be able to access YA. This leaves an estimated 47 500 young persons whose parent/guardian will not be able to access FTB-A, and nor will the young person be able to access an income support payment.

Provisions

Section 22 of the *A New Tax System (Family Assistance) Act 1999* (the FAA) sets out the circumstances in which an individual is an ‘FTB child’ of another individual. Items 2 and 3 of Schedule 3 to the Bill amend subsection 22(4) of the FAA so that an individual is an FTB child if the

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32. The maximum FTB-A rate for a dependent secondary student aged 16–19 years is $214.06 per fortnight and for a young person aged 18–21 years (not a secondary student) the maximum rate is $70.56 per fortnight. For a dependent young person aged 18 or over, the YA maximum rate is $265.00 per fortnight.
35. This is not the total number of FTB-A recipients. Approximately 8 per cent of all recipients claim FTB as a lump-sum at the end of the year whilst the remainder receive payment by instalments paid during the year.
37. Ibid.
38. Ibid., p. 15.

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person is aged 18, or is aged 19 and the calendar year in which the individual turned 19 is not ended; and the individual is a senior secondary school child.\textsuperscript{39} Items 5 and 9 contain consequential amendments to subsection 31(3) and subsection 65(2) of the FAA respectively. The amendments clarify when eligibility for Family Tax Benefit ends if an FTB child dies and how to calculate an instalment upon the death of an FTB child.

Item 17 contains applications provisions to put beyond doubt that the amendments contained in Schedule 3 to the Bill are to commence from 1 January 2013.

Comment

The Minister said in presenting this Bill to the Parliament:

This government is ensuring that the family payment system helps low- and middle-income families with the costs of raising children when they are young and while they are at school. We believe that young people (over the age of 18) leaving high school should embrace the opportunities that come from further education or getting a job. That is why we think it is reasonable that family assistance stops when a young adult turns 18 and leaves school. Of course, youth allowance is available to young people if they need financial support while they are studying or looking for work.\textsuperscript{40}

The reduction in the age qualification age for a young person to qualify for as a FTB-A child down from age 21 to age 18 will see some reduction in assistance to some families. It is estimated this will be for a little over 45 000 individuals. The proposed independent age for FTB-A at age 18 is closer to the common secondary school leaving age than age 21 or even the preceding age 24.

Schedule 4—Family tax benefit and reasonable maintenance action

Family Tax Benefit and the maintenance income test

The rate of FTB-A payable is subject to a family income test. The general FTB-A income test refers to Adjusted Taxable Income (ATI).\textsuperscript{41} Separate to this, is an additional income test which applies specifically to maintenance income received. The maintenance income test free area and taper rate are set out below. Maintenance income only affects the FTB-A rate under this special test.

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\textsuperscript{39} The term ‘senior secondary school child’ is defined in section 22B of the FAA.

\textsuperscript{40} J Macklin, ‘Second reading speech: Social Security and Other Legislation Amendment (2012 Budget and Other Measures) Bill 2012’, op. cit., p. 11.

\textsuperscript{41} Adjusted taxable income refers to net taxable income with some items added back in. These are reportable fringe benefits, reportable superannuation contributions (salary sacrificed into superannuation), total net investment loss, tax free pensions or benefits, foreign income, tax exempt foreign income but less child support paid.
<table>
<thead>
<tr>
<th>Status</th>
<th>Free Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child support received per year $</td>
<td></td>
</tr>
<tr>
<td>Single parent or member of a couple receiving maintenance</td>
<td>1401.60</td>
</tr>
<tr>
<td>Couple, both receiving maintenance</td>
<td>2803.20</td>
</tr>
<tr>
<td>For each additional child</td>
<td>467.20</td>
</tr>
</tbody>
</table>

An amount of maintenance received per year over the free area amount reduces the FTB-A rate by 50 cents in each dollar of excess income.

Maintenance received is not regarded as income under other payments a person may qualify for, like Parenting Payment – Single. Prior to January 1993, maintenance income received was applied to the income tests that apply to pensions and allowances. This meant that in those cases where a large amount of non-cash maintenance was being provided (for example by way of payment of private school fees), the recipient of the maintenance could have their income support payment significantly reduced or even precluded. This was an undesirable result, with the maintenance recipient left with no on-going means of support, having received a large amount of in-kind maintenance and little or no cash.

Reasonable action to pursue maintenance

Where the parents of a child are separated, one of the requirements for receipt of FTB-A is that a person who is eligible to receive maintenance for that child (the payee), must take reasonable steps to obtain maintenance from the other parent (the payer). Where a person does not take action that the Secretary considers reasonable to obtain maintenance, only the base rate of FTB-A is payable.  

These rules are designed to ensure that people who are eligible to receive maintenance take action to receive it. This, in part, is to ensure there is not an unnecessary call upon the public purse. The rationale for the rule is that it is the first responsibility of a parent to provide support for their child, not the taxpayer by way of paying FTB-A or a higher rate of FTB-A.

To take action that the Secretary considers reasonable to obtain maintenance the individual needs to do one of the following:

- apply for a child support assessment with the Child Support Agency (CSA) or


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• apply to the CSA for the acceptance of a child support agreement.\textsuperscript{43}

If an individual has one of the above actions in progress, they will meet the initial phase of the maintenance action test during the period of time their action is still in progress. Subsequent action to obtain maintenance may be required. This could include applying to the CSA for the CSA to collect maintenance; changing from collection under a private agreement, or taking legal action to prove parentage in order to seek maintenance.

Where a person claiming FTB-A who is also eligible to receive maintenance elects to receive their maintenance privately, they are deemed to be receiving the correct amount, as assessed by the CSA under the Child Support Scheme (CSS) maintenance formula. In such cases, the rate of FTB-A is calculated by taking into account that amount. Whether they are actually receiving that amount of maintenance from the payer is a matter for the payee, remembering a payee can apply to the CSA to collect the correct amount of maintenance on their behalf.

Penalty for not taking reasonable action to collect maintenance

Where a person has not taken action that the Secretary considers reasonable to obtain maintenance then, under the current FTB-A rules, their payment of FTB-A is reduced to the base rate.\textsuperscript{44} It is this element of the treatment of maintenance for payment of FTB-A that \textbf{Schedule 4} of the Bill will change.

The proposal is to deem the correct amount of maintenance is being received instead of paying just the base rate of FTB-A. This means in some cases a higher rate of FTB-A will be payable as the payee is entitled to more than the base rate of FTB-A when receiving their correct level of maintenance. For some cases it is a watering down of the current penalty of paying only the base rate but the incentive to collect the correct amount of maintenance remains.

Provisions

\textbf{Item 7} of \textbf{Schedule 4} to the Bill inserts \textit{proposed section 20D} into Schedule 1 of the FAA so that where a person is collecting maintenance under a private arrangement\textsuperscript{45} and it is considered reasonable for the payee to receive the maintenance, they are deemed to be receiving their full entitlement for the purpose of calculating the rate of FTB-A. \textbf{Item 11} is an application provision which makes clear that the amendments in \textbf{Schedule 4} apply for working out the rate of FTB-A on or after 1 July 2012.

The effect of this new provision is that for those persons who are not taking reasonable action to receive their full and correct entitlement to maintenance, the FTB-A rate will be calculated according

\begin{itemize}
  \item \textsuperscript{43} Child support agreements are defined in section 81 of the \textit{Child Support (Assessment) Act 1989}, \url{http://www.comlaw.gov.au/Details/C2012C00079}
  \item \textsuperscript{44} The FTB-A base rate for one child as at May 2012 is $52.64 per fortnight.
  \item \textsuperscript{45} A private arrangement means the payee is not having their maintenance collected by the CSA.
\end{itemize}

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to the amount of maintenance they should be receiving—even if they are not. This means that for those payees who are not actually getting their correct maintenance in a private arrangement, they are not unduly penalised and there is still an incentive to take steps to do so.

**Cost/Saving**

The financial impact statement in the Explanatory Memorandum details that this proposed change to the FTB-A rate calculations for maintenance income has no financial implications.\(^{46}\)

**Comment**

The original rationale for only paying the base rate FTB-A in the circumstances outlined above was to provide a sufficient incentive (by way of financial penalty) to encourage FTB-A claimants/ recipients, who were also payees, to take reasonable steps to obtain maintenance. The penalty to only pay the base rate of FTB-A where a payee has not taken reasonable steps to obtain maintenance does seem disproportionate when the rate of FTB-A otherwise paid, if full maintenance was received, would be more than the base rate.

Paying an FTB-A rate that deems maintenance is actually being received is still an incentive for a payee to obtain their correct level of maintenance. This same carrot/stick currently applies to private collection cases in which it is assumed the correct maintenance is being received.

The fact that it is estimated this beneficial change will have negligible financial impact indicates there will not be many cases involved where a higher rate of FTB-A will be payable.

**Schedule 5—Percentage of care for children**

**Background**

Schedule 5 to the Bill contains amendments to the FAA and also to the *Child Support (Assessment)* Act 1989 (CSAA). The changes are in respect of the calculation of the amount of FTB-A payable and also the calculation of the level of maintenance liable to be paid or received, where there is a shared care situation. The amendments refer to a change of care between the parents of a child and there are ‘special circumstances’ in respect of the care for the child. What is meant by ‘special circumstances’ is described in more detail below.

**Shared care**

Under the FAA, where parents share the care of a child, each parent must provide at least 35 per cent or more of care in order to be paid a proportionate amount of the FTB-A for the child. The calculation of maintenance liability under the CSAA has similar rules in regards to care. Where a

\(^{46}\) Explanatory Memorandum, op. cit., p. 3.

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sufficient level of care is being provided by a parent/carer, this can be taken into account in determining the level of maintenance owed by one parent to the other.

**Shared care and the rate of Family Tax Benefit Part A**

When there is shared care, the rate of FTB-A paid to a parent/carer, is based on the care agreement, or where there is no care agreement, based on the assessment of the percentage of care. The rate of FTB payable based on the shared care percentage is worked out in the following way.

<table>
<thead>
<tr>
<th>No. of nights care (annually)</th>
<th>Percentage of Care</th>
<th>FTB shared care percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 to 51</td>
<td>0% to less than 14%</td>
<td>not eligible for FTB</td>
</tr>
<tr>
<td>52 to 127</td>
<td>14% to less than 35%</td>
<td>not eligible for child related components of FTB - eligible for rent assistance component and other government benefits</td>
</tr>
<tr>
<td>128 to 175</td>
<td>35% to less than 48%</td>
<td>25% plus 2% for each percentage point over 35%</td>
</tr>
<tr>
<td><strong>Example: Has care of child for 40% of the time, so FTB shared care percentage is 35%</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>176 to 189</td>
<td>48% to 52%</td>
<td>50%</td>
</tr>
<tr>
<td>190 to 237</td>
<td>more than 52% to 65%</td>
<td>51% plus 2% for each percentage point over 53%</td>
</tr>
<tr>
<td><strong>Example: Has care of child for 60% of the time, so FTB shared care percentage is 65%</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>238 to 365</td>
<td>more than 65% to 100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

**Shared care and impact on maintenance liability under the Child Support Scheme**

The amount of maintenance a parent is entitled to receive, or is required to pay, is based on several elements. These elements are:

- each parent’s child support income
- the parents’ combined child support income
- each parent’s income percentage
- each parent’s percentage of care for the child
- each parent’s cost percentage for the child
- each parent’s child support percentage for the child and
- the costs of the child.

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The care provided for a child by a parent is measured and this is then used to determine each parent’s cost percentage for a child. The cost percentage is determined according to the person’s percentage of care, using the cost percentages table which is set out below.

<table>
<thead>
<tr>
<th>Percentage of Care</th>
<th>Cost percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 to less than 14%</td>
<td>Nil</td>
</tr>
<tr>
<td>14% to less than 35%</td>
<td>24%</td>
</tr>
<tr>
<td>35% to less than 48%</td>
<td>25% plus 2% for each percentage point over 35%</td>
</tr>
<tr>
<td>48% to 52%</td>
<td>50%</td>
</tr>
<tr>
<td>more than 52% to 65%</td>
<td>51% plus 2% for each percentage over 53%</td>
</tr>
<tr>
<td>more than 65% to 86%</td>
<td>76%</td>
</tr>
<tr>
<td>more than 86% to 100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Examples:
- a percentage of care of 11% equates to a cost percentage of 0%
- a percentage of care of 19% equates to a cost percentage of 24%
- a percentage of care of 40% equates to a cost percentage of 35%
- a percentage of care of 50% equates to a cost percentage of 50%
- a percentage of care of 81% equates to a cost percentage of 76%
- a percentage of care of 88% equates to a cost percentage of 100%

This operates so that a parent providing care for 14 per cent of the time or more can have their maintenance liability reduced by this level of care.

**Changes in care and disagreements**

In some cases, the extent of the change in the level of care may be disputed, commonly by the parent whose care has reduced. Under the current rules, where there is a dispute, the pre-existing care percentage can continue to be used for up to 14 weeks while the dispute is resolved.

**Provisions**

The amendments to the FAA and the CSAA presented in Schedule 5 to the Bill are aimed at bringing about an earlier change to the care percentage in ‘special circumstances’. The wording used in the proposed amendments in items 2 and 16 of the Schedule is:

‘if the Secretary [or Registrar for item 16] is satisfied that special circumstances exist in relation to the child’

Section 23 of the FAA refers to changes of care where there is no consent. Item 2 provides for the Secretary to consider ‘special circumstances’ in such a case. Items 3 and 4 operate so that where the Secretary is satisfied that special circumstances exist in relation to a child, the Secretary may specify a shorter qualification period than the 14 weeks which currently applies under subparagraph 23(5)(b)(i) of the FAA. Item 13 is an application provision which provides that items 1–4 apply where the event of a child ceasing to be in a parent/guardian’s care occurs on or after 1 July 2012.
Item 7 inserts provisions allowing the Secretary to decide that a child is in one person’s care if the Secretary considers ‘special circumstances’ exist. As set out in the Background above, what cases the Secretary will consider have ‘special circumstances’ will be set out in guidelines. Notably the Explanatory Memorandum suggests that this refers to cases of violence or other unusual behaviour.\textsuperscript{47}

In regards to the CSAA, the amendment contains the word ‘Registrar’ rather than ‘Secretary’ and this refers to the Child Support Registrar as defined in the CSAA. Item 16 of Schedule 5 to the Bill empowers the Registrar to determine a single percentage of care when the Registrar is satisfied that special circumstances exist in relation to a child.

As described in the Explanatory Memorandum, this is intended to refer to cases where there is evidence of violence or other unusual behaviour.\textsuperscript{48} The types of cases to which this discretion will apply will be set out in guidelines written by the Secretary.

Item 22 of Schedule 5 to the Bill is an applications provision which makes clear that the amendments to the CSAA come into effect on 1 July 2012—regardless of when the care arrangement was made.

The amendments to the CSAA mirror those presented to amend the FAA in items 1–13 of Schedule 5, but with references to the Child Support Registrar rather than the Secretary.

Cost/Saving

The financial impact statement in the Explanatory Memorandum details that this proposed change to the FTB-A rate calculations for maintenance income has no financial implications.\textsuperscript{49} This reflects the fact that the total amount of FTB-A paid is still finite for a child and change of care situations does not change this outlay. Likewise, as a proportion of the total number of change of care assessments made, there will not be many cases where ‘special circumstances’ may be considered to exist.

Comment

This is beneficial legislation and will allow the capacity to change the amounts of assistance provided to parents more quickly in special cases.

\textsuperscript{47} Explanatory Memorandum, op. cit., p. 20.
\textsuperscript{48} Ibid.
\textsuperscript{49} Ibid., p. 3.
Schedule 6—Low income supplement

Background

The Low Income Supplement (LIS) is due to commence from 1 July 2012 and its origin is in the household compensation arrangements for the introduction of carbon price from 1 July 2012. The LIS is to be paid as an annual, tax-exempt lump-sum of $300 per qualifying individual. Eligibility is based on the person’s income from the previous financial year. Applicants must make a new claim for the LIS each financial year, and only in the financial year for which the claim is being lodged.

Low Income Supplement

In order to qualify for the LIS, a person must meet the following criteria:

- their qualifying income is less than:
  - $30 000 for singles without a dependent child
  - $45 000 for couples without a dependent child
  - $60 000 for singles with a dependent child
  - $60 000 for couples with a dependent child.

and:

- they have not already received government assistance either through one of the clean energy payments or through other welfare payments
- their taxation liability would be less than $300 in the 2011-12 financial year; meaning (generally) that the person has an accepted taxable income for the income year that is less than $18 000 and
- they have:

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51. Subsection 916C(2) of the Social Security Act 1991 sets out what constitutes ‘qualifying income’ for the purpose of the Low Income Supplement. Qualifying income refers to ATI as is used in the FAA.
54. A person has an accepted taxable income for an income year if the Commissioner of Taxation has made an assessment of the person’s taxable income for the income year or the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs accepts an estimate of the person’s taxable income for the income year.

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- been an Australian resident or a special category visa holder living in Australia at all times during the year
- remained in Australia for at least 39 weeks of the year and
- not been subject to a newly arrived resident’s waiting period at any time during the year.

Claims for the LIS will be accepted from 1 July 2012.

Purpose of the LIS

The purpose of the LIS is set out in the Bills Digest to the Clean Energy (Household Assistance Amendments) Act 2011 that provided the original provisions for the payment of the LIS. The LIS recognises that there will be some persons on ‘low income’, who may miss the benefit of the Clean Energy Advance (CEA) payments and/or the Clean Energy Supplement (CES) payments, which are attached to receipt of welfare income support and supplement payments, and may not get much benefit from the tax changes. These are persons who are not in receipt of a welfare payment but have low income for the purposes of the LIS.

One of the main reasons why this may occur is the different income measures used for different government payments and assistance and also for measuring taxable income. The Income Tax Assessment Act 1997 (ITAA) applies a formula for calculating the amount of income tax that a person is liable to pay in a financial year based on annual income, exempt income and deductible amounts, whereas the income tests under the SSA (and VEA) refer more broadly to any monies or valuable consideration earned, derived or received with fewer allowable income deductions. The main example of the use of different income tests is the use of ATI under the FAA and the CSAA, whereas the income support payments provided under the SSA (and the VEA) use the broader income definition explained above. The net result is that a person’s level of ATI may be lower than their income measured under the SSA/VEA. There will be persons on low income, who are not qualified for a government income support payment and not qualified for FTB as they do not have a dependent child, who will therefore not gain the benefit of CEA and/or the CES, but will also not gain much benefit from the compensation provided under the carbon tax income taxation changes alone.

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56. Income for the LIS is Adjusted Taxable Income (ATI) as is used in the FAA, which refers to net taxable income with several items added back in – salary sacrificed into superannuation, employer provided fringe benefits, foreign income, negatively geared property or investment losses, and tax free pension/benefit, but less any maintenance paid.
57. Ibid.
58. Ibid.
http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2F1183005%22

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Enhanced access to the Low Income Supplement

The amendments in **Schedule 6** to the Bill expand access to LIS for some low income families. Under the current rules for accessing LIS, where a person has access to FTB and then therefore the CEA and the CES they cannot otherwise access the LIS. The amendments will allow some restricted access to the LIS for some FTB families. It will be for FTB families:

- with a FTB qualifying child for 39 weeks or more in a year
- where both partners have a notional tax liability of less than $300 a year and
- where the family meets the other LIS qualifications which are listed above.

Provisions

**Item 5** inserts new provisions into the SSA to ensure only one LIS is paid to a household in a year.

There are already provisions in the SSA to ensure a household can receive only one CEA or payment of a CES in a year. **Item 7 of Schedule 6** to the Bill inserts **new subsection 916D(1A)** to allow a LIS in cases where a household has not received a CEA or CES. These cases will be where:

- there were at least 92 days in the year were a CEA or CES was not paid to the person
- there were at least 39 weeks in the year in which the person had a FTB-A qualifying child and
- there were at least 13 weeks in the year when the person did not receive a SSA income support payment, a VEA income support payment or other government payment that attracts a CEA or a CES.

Essentially these provisions target the payment of LIS to families who did not receive a CEA or a CES and meet the low income requirements of the LIS.

**Item 9** inserts **new subsections 916E(1A) and (1B)**, which place conditions on qualifying for the LIS in regards to meeting some tax requirements—that is, the applicant has taxable income of less than $18 000 in an income year or, if more than $18 000, an amount that is less than the LIS income thresholds.

Cost

The financial impact statement in the Explanatory Memorandum details that the estimated cost of the this slight expansion of access to the LIS is estimated to cost $90.1 million over four years from 2012–13.

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60. The LIS income thresholds are $30 000 for singles without a dependent child, $45 000 for couples without a dependent child, $60 000 for singles with a dependent child, or $60 000 for couples with a dependent child.


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Comment

There are some discrepancies between measuring income for the purpose of the ITAA and for calculating welfare targeted payments like pensions and allowances paid under the SSA and also family assistance provided under the FAA. This slight expansion of access to the LIS has its origins in the Government trying to ensure some low income families, who might otherwise have missed out, receive adequate compensation for the introduction of a carbon price from 1 July 2012.

The LIS is new territory for any government. The Government cannot be certain that all the low income persons/families they want to see provided with some compensation for the cost impact of the carbon tax will get that compensation. So Schedule 6 of this Bill is some housekeeping for the original LIS legislation of 2011.

Concluding comments

The amendments presented in Schedule 1 to exclude some Western Australian state Government assistance as income under the SSA and the VEA is beneficial legislation. The Country Fuel Card and the Cost of Living Rebate Scheme are financial assistance arrangements provided by the West Australian Government and are unique to that state. As both schemes involve some targeting to low income persons, this probably encouraged the Federal Government to decide to exclude these amounts received as income.

The amendments in Schedule 2 are to reduce the portability period under which welfare payments can continue while a person is temporarily overseas from 13 weeks down to six weeks. Generally, income support and income supplement payments that are provided by the Australian Government have means testing (income and/or assets tests) to target persons with lesser means to provide for basic living costs. It could be argued that this refers to living costs incurred in Australia and therefore these payments should be targeted to persons in Australia rather than elsewhere. It could also be argued that for those receiving government assistance, trips overseas should only be for exceptional events. Currently, there is the capacity to allow an extension of payment beyond 13 weeks on a case-by-case basis and this facility will continue to apply to this proposed reduced portability period.

The reduction in the age for a young person to qualify as a FTB-A child down from age 21 to age 18 will see some reduction in assistance to some families. It is estimated this will be for a little over 45 000 individuals. The proposed independent age for FTB-A at age 18 is closer to the common secondary school leaving age than age 21 or even the preceding age 24.