Family Assistance and Other Legislation Amendment Bill 2011

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Social Policy Section

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Family Assistance and Other Legislation Amendment Bill 2011

Date introduced: 2 June 2011

House: House of Representatives

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Commencement: Schedule 1: immediately after the commencement of item 6 of Schedule 2 to the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Election Commitments and Other Measures) Act 2011; Schedule 2: on 30 June 2011; Schedule 3: on 3 September 2011; Schedules 4 and 5: on the day of Royal Assent.

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/bills/. 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 purpose of the Family Assistance and Other Legislation Amendment Bill 2011 (the Bill) is to give effect to a number of unrelated measures, most of which were announced in the 2011–12 Budget. They are:

- lowering the maximum age at which a person can be a child for the purposes of Family Tax Benefit Part A (FTBA) from 24 to 21 years on 1 January 2012
- indexing the upper income thresholds under the FTBA, Family Tax Benefit Part B (FTBB), Paid Parental Leave and Baby Bonus income tests with effect from 1 July 2014
- indexing the rate of the FTBA and FTBB supplements to cease with effect from 1 July 2011 and not recommence until 1 July 2014
- introducing a requirement that people must test their future work capacity in order to qualify for Disability Support Pension (DSP)
- extending the welfare reform trial in the Cape York area for 12 months, and
- amending the Aboriginal Land Rights (Northern Territory) Act 1976 to clarify that Aboriginal Land Trusts are not subject to the Public Works Committee Act 1969.

As the matters which are the subject of this Bill are largely unrelated, they will be dealt with separately within this Bills Digest. Schedules 1 and 2—family payments addresses the first three dot points; Schedule 3—assessing qualification for Disability Support Pension covers the fourth dot

1. This item is due to commence on 1 January 2012.

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point; Schedule 4—extending the Cape York welfare reform trial relates to the fifth dot point; and Schedule 5—Aboriginal Land Trusts is covered by the final dot point.

Committee consideration

The Bill was referred to the House of Representatives Social Policy and Legal Affairs Committee (the House of Representatives Committee) for inquiry and report by 14 June 2011. That report was tabled on 14 June 2011 and recommended that the Bill be passed without amendment.

In addition, the Bill was referred to the Senate Community Affairs Committee (the Senate Committee) for inquiry and report by 20 June 2011. At the time of writing this Bills Digest the Senate Committee had not tabled its report.

Schedules 1 and 2—Family payments

Background

The 2011–12 Budget contained a package of changes to family assistance that gradually reduce assistance to those on higher incomes, and increases assistance to students in the 16—19 years age group. This can be seen as a continuation of well established reform directions that have been followed in the Labor Government’s first term. They combine a return of the Hawke/Keating Government’s emphasis on targeting payments to those most in need, with a newer emphasis on ensuring that family assistance supports young people in education and skills development at a time of skill shortages and few unskilled jobs. The total family assistance package will deliver savings of $2.8 billion, part of which will be redirected to these new priorities in family assistance.

Some of the measures in Schedule 2 to the Bill address the targeting of family assistance through a continuation, for two extra years, of the indexation freeze introduced after the 2009–10 Budget for the following income test thresholds:

- the Family Tax Benefit Part B (FTBB) primary earner income threshold of $150 000 per annum

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• the Baby Bonus (BB) income eligibility limit of $75,000 in the six months following the birth or adoption of a child, and
• the higher income test free threshold for Family Tax Benefit Part A (FTBA) of $94,316 plus $3,796 per annum per additional child after the first.

The Dependency Tax Offsets (DTO) income limit of $150,000 per annum was also frozen at that time. That limit will also be frozen for an additional two years. The 2011–12 Budget also contained a measure to phase out the Dependent Spouse Tax Offset (the main DTO) which is currently only available to spouses not caring for children, by limiting eligibility to taxpayers with a dependent spouse born before 1 July 1971. However these measures are taxation measures and are therefore not part of this Bill.

Schedule 2 to the Bill also contains amendments so that indexation of the primary carer income limit in the newly introduced Paid Parental Leave (PPL) scheme will not commence until 1 July 2014 to match the duration of the extended indexation freeze as set out above.

FTBB, the Dependency Tax Offsets, Baby Bonus and Paid Parental Leave all have ‘sudden death’ income tests. This means that once the threshold is reached, the entitlement can go from full payment to nothing. At any time (with or without the freeze) the impact on families whose income moves above the limit is quite significant. The impact of these measures will, however, be restricted only to those families with incomes that increase into the few thousands of dollars above the frozen thresholds, who would have retained access to payment if indexation of the threshold had gone ahead. In the case of FTBB, about 11,400 families would lose their entitlement in 2013–14, due to the indexation freeze. They represent only about one percent of estimated FTBB families at that time.6

The freeze on the higher income threshold for FTBA will affect families with incomes between the threshold and the point where payments cease altogether. That income range will vary according to how many children are involved, and their ages. It is estimated that about 39,000 families who would have received a part rate payment with indexation will cease to receive FTBA in 2013–14. They represent about 2.6 per cent of estimated FTBA families at that time.

This level of income test tightening is relatively mild compared to that which occurred after the implementation of the income testing measures in the 2008 Budget. At that time, upper income thresholds were introduced for FTBB and the Baby Bonus, and the definition of ‘income’ under the income test was tightened. After those changes were implemented, the proportion of all families

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6. This and other estimates of the numbers affected are derived using the NATSEM micro-simulation model STINMOD 10.

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with dependent children aged under 16 years receiving FTB was about 75 per cent (1.87 million), a proportion similar to that which applied back in 1998 before the introduction of FTB.\(^7\)

Improving the targeting of assistance to low income people has been viewed by many as tackling ‘middle class welfare’. There has always been a tension in family assistance policy between two equity objectives in a climate of limited resources. On the one hand, assisting low income families and tackling child poverty is best done with payments for the poorest only. On the other hand, family assistance policies have additional objectives such as assisting families with the high costs associated with raising children, and aiding women making the transition between the workforce and the raising of children (and back again). For some, this implies the need for more universally available family assistance—in particular, one that avoids barriers to participation in the workforce as a result of high effective marginal tax rates. The balance between these two approaches continually shifts as government priorities change and economic circumstances fluctuate. This Budget is not the first, and it is unlikely to be the last, to contribute to the quest for the right balance in family assistance policy.\(^8\)

Schedule 2 also includes a measure that freezes the indexation of the FTBA and FTBB supplements for three years. It is indicative of the size of the FTB program (an estimated $18.1 billion in 2011–12) that stopping the growth of these supplements by quite small amounts (about $20 per child, per annum, for the FTBA supplement for example) can realise savings of $803.2 million over the coming four years. This measure is a savings measure which fits with the government’s emphasis on making family payments more sustainable.\(^9\)

Schedule 1 contains a measure to reduce the maximum age for eligibility for FTBA from 24 to 21 years. This change harmonises the FTBA age limit with the Youth Allowance age of independence which has been reduced from 25 down to 22. In 2011 it is 23 years but from 1 January 2012 it will be 22 years.

**Financial implications**

According to the Explanatory Memorandum, the following savings may be achieved in respect of the amendments in Schedules 1–2 to the Bill:

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Family Assistance and Other Legislation Amendment Bill 2011

- by lowering the maximum age at which a person can be a child for the purposes of Family Tax Benefit Part A (FTBA) from 24 to 21 years

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<tr>
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</thead>
<tbody>
<tr>
<td>Amount</td>
<td>$0.6 m</td>
<td>- $7.6 m</td>
<td>- $10.4 m</td>
<td>- $11.8 m</td>
</tr>
</tbody>
</table>

- by pausing the indexation of FTBA and FTBB for three years

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</thead>
<tbody>
<tr>
<td>Amount</td>
<td>$0.2 m</td>
<td>- $76.8 m</td>
<td>- $179.1 m</td>
<td>- $268.1 m</td>
<td>- $279.3 m</td>
</tr>
</tbody>
</table>

- by pausing the indexation of certain family assistance and Paid Parental Leave income threshold amounts for a further two years

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</tr>
</thead>
<tbody>
<tr>
<td>Amount</td>
<td>$0.1 m</td>
<td>- $230.9 m</td>
<td>- $471.6 m</td>
<td>- $489.0 m</td>
</tr>
</tbody>
</table>

Key provisions

Schedule 1 to the Bill amends the A New Tax System (Family Assistance) Act 1999 (FA Act). **Item 1 of Schedule 1** amends paragraph 22(6)(a) of the FA Act so that the maximum age for a person to be an FTB child is reduced from 24 to 21 years.

**Item 6 of Schedule 1** provides that the amendments in Schedule 1 apply from 1 January 2012. It also contains a savings provision that allows students who have turned 22 but are aged under 25 years who are already enrolled in, and undertaking, a course of full-time education, to continue to be FTB children while that course continues.

**Item 1 of Schedule 2** to the Bill amends subclause 3(7) of Schedule 4 of the FA Act to extend the present pause in indexation of the FTBA higher income free area (the basic threshold and additional amount for each child after the first), the FTBB income limit and the Baby Bonus income limit for another two years. The next indexation date for these limits will be 1 July 2014.

**Item 2 of Schedule 2** adds new subclause 3(8) to Schedule 4. It specifies that the maximum rate of the FTBA and FTBB supplements will not be indexed again until 1 July 2014. This would be an indexation pause for three years.

**Items 3–5 of Schedule 2** amend section 30, paragraph 41(a) and subsection 42(1) of the

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*Paid Parental Leave Act 2010* to defer the first indexation of the PPL income limit until 1 July 2014. This would be a deferral for three years.

**Schedule 3—Assessing qualification for Disability Support Pension**

**Background**

The Government announced in the 2011–12 Budget that it would bring forward part of a 2010–11 Budget initiative for the Disability Support Pension (DSP) program. This initiative was originally called the ‘Job Capacity Assessment—more efficient and accurate assessments for Disability Support Pension and employment services’ and was announced in the 2010-11 Budget. The DSP claim and work capacity assessment elements in the initiative were not originally intended to commence until 1 January 2012. However, the announcement in the 2011–12 Budget brought this forward to 3 September 2011.

**Financial implications**

The financial impact statement in the Explanatory Memorandum which accompanied the Bill details that the changes to DSP contained in Schedule 3 to the Bill are estimated to see the following savings:

<table>
<thead>
<tr>
<th>Year</th>
<th>Savings (m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010-2011</td>
<td>$1.4 m</td>
</tr>
<tr>
<td>2011-12</td>
<td>- $52.9 m</td>
</tr>
<tr>
<td>2012-2013</td>
<td>- $159.2 m</td>
</tr>
<tr>
<td>2013-2014</td>
<td>- $204.5 m</td>
</tr>
<tr>
<td>2014-2015</td>
<td>- $207.5 m</td>
</tr>
</tbody>
</table>

Most of these savings will be realised from some DSP claimants being paid an alternative income support payment, mostly Newstart Allowance (NSA). NSA is paid at a lower rate than DSP, has less generous income and asset testing and provides a Health Care Card (HCC). For DSP, the Pension Supplement is also payable and the concession card is the Pensioner Concession Card.

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12. Ibid.
13. Newstart Allowance is more commonly known as the unemployment benefit.
14. In June 2011 the single DSP rate is $670.90 per fortnight (pf)—the single NSA rate is $474.90 pf.
15. The HCC provides access to concessional pharmaceuticals under the Pharmaceutical Benefits Scheme (PBS).
16. In June 2011, the Pension Supplement rate is $58.40 pf single or $88.00 pf combined.

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Other savings would also be achieved by more persons being directed into employment rather than being wholly, or partially, reliant on DSP or other income support payments.

**Changed Disability Support Pension claim processes**

The original 2010–11 Budget initiative referred to refinements to the work capacity assessments in several program areas—not just the DSP program. Work capacity assessments are not just applied to DSP claimants or recipients and may also be conducted for NSA recipients who claim they have a disability that affects their work capacity.

The 2010-11 Budget amended the existing DSP rules so that some DSP claimants, without sufficient evidence of future work capacity of less than 15 hours a week, were referred to an alternative income support payment and offered employment assistance through Job Services Australia or Disability Employment Services. At that time, the Government stated that while DSP eligibility would not be changed, applicants with some work potential would be required to provide evidence of being unable to work independently, even with assistance and support. In order to provide the relevant evidence, applicants would be required to spend some time on an income support payment and tested to see if they could obtain employment through employment services or vocational rehabilitation.

**Disability Support Pension qualification and assessment**

Section 94 of the *Social Security Act 1991* (SSA) provides that a person qualifies for DSP if the person has a disability, illness or injury that is assessed as having a minimum of 20 points of impairment, and, arising from this impairment, the person is unable to work for at least 15 hours a week.

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17. The PCC provides access to the PBS and also concessions on property and water rates and energy bills, a telephone allowance, reduced fares on public transport, reductions on motor vehicle registration, free rail journeys. These concessions vary between states and locations.

18. Most commonly, referrals would be to NSA.

19. Job Services Australia is the Australian Government’s national employment services which commenced from 1 July 2009.

20. Disability Employment Services was introduced from 1 March 2010 and targets services for people with disability, their families and carers and employers.

21. Most commonly, this will be NSA.

22. J Gillard (former Minister for Employment and Workplace Relations), J Macklin (Minister for Families, Housing, Community Services and Indigenous Affairs) and M Arbib (Minister for Employment Participation), *Assisting jobseekers and people with disability return to work*, media release, Canberra, 11 May 2010, viewed 14 June 2011, [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p?advisoryBy=customrank;page=0;query=Content%3A%22disability%20support%20pension%22%20Date%3A01%205%2F2010%20%3E%3E%3D01%205%2F2010%20Dataset%3Apressrel;rec=6;resCount=Default](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p?advisoryBy=customrank;page=0;query=Content%3A%22disability%20support%20pension%22%20Date%3A01%205%2F2010%20%3E%3E%3D01%205%2F2010%20Dataset%3Apressrel;rec=6;resCount=Default)

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**Impairment points**

The impairment points are derived from the ‘Tables for the Assessment of Work-related Impairment for Disability Support Pension’ which are contained in Schedule 1B of the SSA. The minimum requirement for DSP is 20 points impairment. The Tables consist of system based tables that assign ratings in proportion to the severity, or impact, of certain condition/s on normal function as they relate to work performance. The Tables are function-based rather than diagnosis-based. This means that the same condition may result in a different points rating for different persons, given that they are affected in different ways by the same condition. The rating is expressed as a number of points, and is indicative of the degree of loss of functionality, not a percentage figure attached to a medical condition. When more than one functional impairment is present, separate ratings are assigned from the appropriate Impairment Tables relevant to each functional loss, and the values are added together to obtain the total work-related impairment. For example, a person may have 30 points of impairment made up of two separate impairments ratings.

Just because a person has 20 points impairment does not automatically mean they are then qualified for DSP. They must also meet the continuing inability to work test (see below). There will be many claimants with high impairment ratings, who may also be able to do substantial levels of work and will therefore not qualify for DSP. For example, an accountant with the loss of two legs will have a high impairment rating (40 points) but may also be able to work full-time, so the continuing inability to work test is not met, and DSP is not payable.

**Continuing inability to work**

The second part of the DSP qualification requirements is called the ‘continuing inability to work test’. ‘Work’ in this context means work:

- that is for at least 15 hours per week where wages are at or above the relevant minimum wage, and
- that exists in Australia, even if not within the person’s locally accessible labour market.

A person has a ‘continuing inability to work’ because of an impairment, if the impairment is, of itself, sufficient to prevent the person from doing any work independently of a program of support within the next two years, and either:

- the impairment is, of itself, sufficient to prevent the person from undertaking a training activity during the next two years, or
- if the impairment does not prevent the person from undertaking a training activity—such activity is unlikely (because of the impairment) to enable the person to do any work independently of a program of support within the next two years.

In summary, the three primary elements required for DSP qualification are:

- the person has an impairment
- the impairment results in a rating of 20 points or more, and
• the person has a continuing inability to work.

The continuing inability to work test is a subjective test. It is based on the opinion of the delegate under the SSA who makes this decision. It is not based solely on the opinion of the claimant’s doctor, or on the opinion of the Commonwealth Medical Officer.

Recent major Disability Support Pension reform

A background to the recent major reforms to the DSP program is set out in a Parliamentary Library paper.\(^\text{23}\) That paper highlights that, notwithstanding the major DSP changes made by the Howard government in the Welfare to Work (WtW) reforms of July 2006, the numbers of DSP recipients still continues to rise. There was a small hiatus in the increasing numbers in 2007, due to the WtW reforms, but the increase in numbers has resumed. The figures in the table below track growth over the last two decades and show the impact of the 2006 reforms.

<table>
<thead>
<tr>
<th>Year</th>
<th>DSP recipients</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>316 713</td>
</tr>
<tr>
<td>2000</td>
<td>602 280</td>
</tr>
<tr>
<td>2004</td>
<td>696 742</td>
</tr>
<tr>
<td>2005</td>
<td>706 782</td>
</tr>
<tr>
<td>2006</td>
<td>712 163</td>
</tr>
<tr>
<td>2007</td>
<td>714 156</td>
</tr>
<tr>
<td>2008</td>
<td>732 367</td>
</tr>
<tr>
<td>2009</td>
<td>757 118</td>
</tr>
<tr>
<td>2010</td>
<td>792 581</td>
</tr>
</tbody>
</table>

The bringing forward of one of the DSP reforms originally announced in the 2010–11 Budget is, in part, a response to concerns about these burgeoning DSP numbers. However, the increase in


numbers needs to be viewed in the context of an overall decline in the proportion of working-age people receiving welfare, population growth, the demographic changes which are the result of an ageing population and the impact on the DSP of the phasing out of other income support payments.\textsuperscript{25}

**Origins of Disability Support Pension claims**

A significant proportion of DSP claimants (55.8 per cent) are already in receipt of another income support payment when the DSP claim is lodged. Most of these are recipients of NSA as is shown in the table below.\textsuperscript{26}

<table>
<thead>
<tr>
<th>Origin</th>
<th>Count</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non Client</td>
<td>27,008</td>
<td>44.2%</td>
</tr>
<tr>
<td>Newstart Allowance</td>
<td>20,839</td>
<td>34.1%</td>
</tr>
<tr>
<td>Parenting Payments</td>
<td>4,471</td>
<td>7.3%</td>
</tr>
<tr>
<td>Youth Allowance</td>
<td>1,276</td>
<td>2.1%</td>
</tr>
<tr>
<td>Sickness Allowance</td>
<td>958</td>
<td>1.6%</td>
</tr>
<tr>
<td>Partner Allowance</td>
<td>617</td>
<td>1.0%</td>
</tr>
<tr>
<td>Other payments</td>
<td>5,894</td>
<td>9.7%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>61,063</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

This means, that for those transferring to DSP from another income support payment, it is likely that a significant proportion will have already been exposed to assistance from Job Services Australia and/or Disability Employment Services prior to lodging their claim.

**Some Disability Support Pension claimants will not be required to test their employability**

Not all DSP claimants will be required to test their employment capacity or capability by spending time on NSA and being asked to undertake employment assistance arrangements. Under the Budget initiative, this activity test will not be required of an applicant who is clearly unable to work due to, for example, a profound disability.\textsuperscript{27} Item 6 in **Schedule 3** to the Bill contains a new subsection 94(3B) of the SSA which provides a new definition of ‘severe impairment’.


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Severe impairment

DSP claimants who satisfy the new definition of ‘severe impairment’ will not be required to test their work capacity by actively participating in a program of support. A person will be considered to have a ‘severe impairment’ if they have at least 20 points or more under the Impairment Tables, and at least 20 points is a result of a rating under a single impairment table. In addition, the person will need to be assessed as not being able to undertake any work or training within the next two years.28

Disability Support Pension claimants not classified as ‘severely impaired’

Where a person is not classified as having a ‘severe impairment’, they will be required to spend some time on an alternative payment29 and to have actively participated in a program of support. Neither the Bill, nor the Explanatory Memorandum, provide any indication about the duration of the active participation. Instead, the Bill provides for the Minister to detail these requirements in a legislative instrument.

Comment

The purpose of this new extra step in the DSP claim process is to try and reduce the number of persons accessing DSP who have a demonstrated capacity for work—and thereby, put a check on the increasing numbers of DSP recipients. It remains to be seen whether the measure will have that effect.

Hitherto, DSP claimants have not been directly examined and tested as to what their actual work capacity is. Rather they have been tested on their incapacity for work arising from an impairment/s and whether they are unable to work for at least 15 hours a week. Given that 34 per cent of DSP grants are actually transfers from NSA, it appears that members of this group would already have been exposed to a period of work search and work related activities.

It seems simplistic to divide DSP applicants into two groups—those who are ‘severely impaired’ and those who are not—and to expect that only the latter group will contain persons with some work capacity. A person who is severely impaired (that is, with a 20 points impairment rating from one impairment) may have a work capacity. In that case, the continuing inability to work test requirements still apply, and some so classified will not pass this test and will not be qualified for DSP.

It remains to be seen how effective this new ‘severely impaired’ classification will be. The, then, tough DSP changes under the WtW programs of 2006, and their limited impact post 2006, suggest that where you set a test or a higher hurdle, DSP claimants will rise to meet the new test.

29. Most commonly, this will be NSA.

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What is also unknown is the reaction of those DSP claimants who are not classified as ‘severely impaired’ and are required to spend some time on NSA actively participating in a program of support. It is not possible to speculate about whether they will embrace the process positively or negatively—with a negative response being a way to enhance their prospects of being granted DSP. Much will rely on how this process is delivered.

**Key provisions**

Existing section 94 of the *Social Security Act 1991* (SSA) sets out the qualifications for DSP. In particular, subsection 94(1) provides that a person is qualified for DSP if:

- the person has a physical, intellectual or psychiatric impairment
- the person’s impairment is of 20 points or more under the Impairment Tables, and
- the person has a continuing inability to work.

Item 6 of Schedule 3 to the Bill inserts new subsections 94(3A)–(3E). The new definition of ‘severe impairment’ is contained in new subsection 94(3B). It provides that a person has a severe impairment if the person has an impairment of 20 points or more under a single Impairment Table.

Existing subsection 94(2) defines the conditions which constitute a ‘continuing inability to work’. Item 3 of Schedule 3 to the Bill inserts new paragraph 94(2)(aa) into the SSA. The amendment is directed to those persons who do not have a severe impairment. In that case the person must have ‘actively participated’ in a ‘program of support’ in order to satisfy the requirement that they have a continuing inability to work. The term ‘program of support’ is inserted by item 9 of Schedule 4 to the Bill as being a program designed to assist persons to prepare for, find or maintain work; and either funded (wholly or partly) by the Commonwealth, or of a type that the Secretary considers is similar to such a program. As already stated, those persons who have a ‘severe impairment’ will not have to satisfy this provision but will still have to satisfy the existing provisions of subsection 94(2) of the SSA and demonstrate that they have a continuing inability to work.

The term ‘actively participated’ is not defined in the Bill. Instead, new subsection 94(3C) allows the Minister to make a legislative instrument which will set out the relevant requirements.

**Schedule 4—Extending the Cape York welfare reform trial**

Schedule 4 to the Bill seeks to amend the *Social Security Administration Act 1999* (SSA Act) to enable income management to continue in Cape York for a further 12 months from 1 January 2012.
Income management

‘Income management’ is the term used by the Government to refer to arrangements whereby a percentage of the income support and family payments of certain people is set aside to be spent only on ‘priority goods and services’ such as food, housing, clothing, education and health care.\(^3\) While the total amount owing to a person subject to income management is not reduced, that person loses the discretion to spend a percentage of their welfare income on things other than those deemed to be priorities by the Government.

Income management was established by the Howard Government in 2007 as part of the legislation introducing the Northern Territory Emergency Response (NTER). Under the Social Security and Other Legislation (Welfare Payment Reform) Act 2007 (Welfare Payment Reform Act), the SSA, FA Act and the Veterans’ Entitlements Act 1986 were amended to include the provision that there will be circumstances where an individual qualified to receive a payment will not be provided with that payment, in whole or in part. The income management provisions were unprecedented in Australian social security law because they changed the principle that, where a person qualifies for a payment, the payment is regarded as a legal right and cannot be withheld from that person and/or provided to someone else—that is such a payment is ‘inalienable’.\(^3\)

Under the Welfare Payment Reform Act, a person receiving welfare payments may become subject to income management for one of the following reasons:

- the person is a resident of a specified area in the NT
- the person is subject to the jurisdiction of the Family Responsibilities Commission (FRC) (as part of the Cape York Welfare Reform Trial (CYWRT)) and the Commission requests that the income management provisions apply
- a child under the care of that person is at risk of neglect, or
- a child under the care of that person is not enrolled at school or does not attend school regularly.

Welfare payment recipients may also participate in income management on a voluntary basis through the Voluntary Income Management program.

Welfare reform in Cape York

The CYWRT is being implemented in the communities of Hope Vale, Coen, Aurukun and Mossman Gorge (‘the reform communities’) in the Cape York area of far north Queensland from 1 July 2008 to

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31 December 2011. It is a joint initiative of the Australian Government, the Queensland Government and the Cape York Institute for Policy and Leadership.

The purpose of the trial is to address Indigenous disadvantage in the Cape York region ‘in a way that fosters personal responsibility and local leadership, and supports Indigenous people to effect change in their own lives through rebuilding positive social norms’. 32 This builds on the recommendations of the Cape York Institute’s welfare reform project report in which it was argued that Indigenous poverty and dysfunction in Cape York are not only a result of dispossession and racism but to a large extent are caused by negative social norms associated with a culture of ‘passive welfare’. 33

According to the report, From hand out to hand up:

To rebuild social norms in the Cape York Peninsula, incentives and laws must support the values of a community. A potentially powerful mechanism for doing this is through linking welfare payments to community members acting in the best interests of children in the community. The Institute is recommending that a number of obligations be attached to all welfare payments available in the Welfare Reform communities, and that a State statutory authority consisting of a senior legal officer and local elders be empowered to enforce the obligations. 34

The statutory authority recommended by the Institute (the FRC) was established under Queensland state legislation on 1 July 2008. The main objective of the FRC is to ‘support the restoration of socially responsible standards of behaviour and to assist community members to resume and maintain primary responsibility for the wellbeing of their community and the individuals and families within their community’. 35 In support of this objective, the FRC holds regular case conferences in each of the reform communities on a circuit.

Any person who is a welfare recipient living in one of the four CYWRT communities and who fits into any of the following categories, may be referred to the FRC:

- the person’s child is absent from school three times in a school term, without reasonable excuse
- the person has a child of school age who is not enrolled in school without lawful excuse
- the person is the subject of a child safety report
- the person is convicted of an offence in the Magistrates Court, or

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34. Ibid., p. 8.

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• the person breaches his or her tenancy agreement—for example, by using the premises for an illegal purpose, causing a nuisance or failing to remedy rent arrears.  

People referred to the FRC are required to attend a conference in order to discuss the issues that have led to their referral. The FRC attempts to link individuals to relevant support services including:

• case managers to help children attend school
• money management advisors, and
• counsellors for drug and alcohol addiction, family violence and mental health issues.

The Commissioners attempt to reach an agreement (known as a Family Responsibility Agreement) with individuals on actions they will take to assume greater responsibility, including attending support services and through personal actions such as putting children to bed early. People who have entered into a Family Responsibility Agreement are case managed by the FRC for the period of the agreement.

In addition to this support role, the FRC has the power to require that the person’s income be managed by Centrelink for a period of between three to 12 months. Under the CYWRT, this is known as Conditional Income Management. The FRC uses Conditional Income Management both as a mechanism for ensuring that welfare payments are spent on necessities and as an incentive for the individual to engage with social supports and undertake behavioural change.

If it is decided that a person should be subject to income management, the FRC notifies Centrelink and also provides information about what proportion of a person’s payment will be quarantined (generally, 60 to 75 per cent) and for how long.

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38. Ibid.
40. Ibid.
41. Department of Families, Housing, Community Services and Indigenous Affairs and KPMG, op. cit., p. 12.

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Outcomes

Notifications

As at 31 December 2010, the FRC had received 6336 notifications related to individuals within the reform communities (see table below). A further 2731 notifications were received for individuals who were not residents of the reform communities and hence were not able to be dealt with by the FRC.

<table>
<thead>
<tr>
<th>Notification Type</th>
<th>Number</th>
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<tbody>
<tr>
<td>School attendance</td>
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<tr>
<td>Child safety</td>
<td>822</td>
</tr>
<tr>
<td>Magistrate court</td>
<td>2844</td>
</tr>
<tr>
<td>Housing tenancy</td>
<td>130</td>
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</tbody>
</table>

Source: D Glasgow and T Sovenyhazi, op. cit.

That the combined adult population of the reform communities is around 1600, highlights the extent of multiple notifications relating to individuals in the communities. Seventy-eight per cent of clients have been the subject of multiple notifications—the FRC suggests that it is refusal of many of these clients to engage in case plans and related activities that has resulted in the relatively large number of income management orders made (see section below).

The proportion of the adult population to have been identified in at least one notification has been substantial. By January 2010, more than 80 per cent of the adult population of Mossman Gorge and 50 to 60 percent of the other reform communities had been named in a notification.

In the most recent quarter for which a disaggregated figure was available (July 2010 to September 2010), total notifications decreased to 975 from 992 in the previous quarter, of which 726 were within the FRC’s jurisdiction.

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44. Department of Families, Housing, Community Services and Indigenous Affairs and KPMG, op. cit., p. 187

45. Family Responsibilities Commission, op. cit., p. 18.

46. Department of Families, Housing, Community Services and Indigenous Affairs and KPMG, op. cit., p. 191.

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Case management

As at 30 September 2010, 296 people were being case managed by the FRC, a large reduction from the 496 clients being case managed in the previous quarter—the reduction in case management is attributed by the FRC to ‘client’s case plans coming to an end’; and the redirection of clients ‘who are non-compliant and resistant to case plans and personal responsibility’ to Conditional Income Management.48

Income Management

By May 2011, 458 people had been subject to Conditional Income Management.49

According to the FRC, increasing numbers of clients are requesting placement on Conditional Income Management ‘as they view [this] as a means to stabilise the household and ensure bills are paid and children are fed’.50 Further, it is reported that ‘these clients ask that the Commission order the income management rather than request Voluntary Income Management ... due to pressures from spouses and family members associated with power balances and domestic violence’.51

As at 30 September 2010, 28 clients and community members had successfully applied for Voluntary Income Management.52

Operation of the FRC

According to a review of the FRC conducted by KPMG (the KPMG review) for the Department of Families, Housing, Community Services and Indigenous Affairs:

Despite numerous challenges and the complexity of operating within a remote environment, the FRC has been implemented as intended in all four communities. Its structures and processes conform to good practice principles, and during its first 18 months of operations, the FRC has established its own foundations and enablers which contribute to supporting individuals in behaving in ways consistent with community values and expectations of acceptable behaviour. Although many challenges remain, the FRC is addressing a number of these as it continues to strengthen its role within participating communities.53

Challenges for the FRC identified in the report include the need for:

• improved linkages between the FRC, notifying agencies and support services

47. Family Responsibilities Commission, op. cit., p. 21.
48. Ibid., pp. 6-7.
49. D Glasgow and T Sovenyhazi, op. cit.
50. Family Responsibilities Commission, op. cit., p. 18.
51. Ibid.
52. Ibid.

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• better planning and resourcing for the volume of clients likely to be referred to the FRC (including repeat clients), and
• ongoing communication with community members about the role of the FRC.  

Impacts

The KPMG review found that the CYWRT had had the following impacts during its first 18 months of operation:

• the FRC ‘appears to be contributing to restoring Indigenous authority by supporting local and emerging leaders in Local Commissioner roles to make decisions, model positive behaviour and express their authority outside of the FRC’
• ‘with average attendance rates of around 60-70 percent at conferences, which compares favourably with other conditional welfare initiatives, and the majority of clients reaching agreements with the FRC about what action they should take to improve their lives, there are signs of individuals responding to the drivers and incentives created by the FRC’
• ‘there is growing awareness in the communities that the FRC is operational and will hold people accountable for certain behaviour, although this understanding is not yet broad or deep’
• ‘story telling through face-to-face interviews with FRC clients reveals that some people have experienced an improvement in their lives and the lives of their families, although there are also signs that individual change is fragile, with many people breaching another social obligation after being in the FRC system’, and
• ‘indicators of positive community-level change around school attendance, alcohol and violence in two communities (Aurukun and Mossman Gorge) may be associated with the FRC and other initiatives, and underpin a higher level of acceptance of the FRC in these communities’.  

The KPMG review makes the important point that:

Progress is not even across communities and individual behaviour changes are fragile. Such a situation is to be expected considering the complexity of the changes being implemented and the very great support needed for individuals as they move to align behaviour with community values.  

The fragility of change is highlighted by the most recent data showing that school attendance actually fell in Term 4 2010 when compared with Term 4 2008 and 2009 in all communities except Aurukun (see table below).

54. Ibid., p. 6.
55. Ibid.
56. Ibid., p. 8.

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School attendance rates, Cape York reform communities

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</thead>
<tbody>
<tr>
<td>Aurukun</td>
<td>46.1</td>
<td>37.9</td>
<td>44.5</td>
<td>43.5</td>
<td>56.1</td>
<td>63.2</td>
<td>66.0</td>
<td>61.6</td>
<td>65.9</td>
<td>57.7</td>
<td>54.1</td>
<td>64.8</td>
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<td>Coen</td>
<td>91.3</td>
<td>96.8</td>
<td>87.4</td>
<td>94.1</td>
<td>95.3</td>
<td>93.6</td>
<td>92.9</td>
<td>90.4</td>
<td>94.9</td>
<td>92.2</td>
<td>89.0</td>
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</tr>
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<td>Hope Vale</td>
<td>80.6</td>
<td>87.6</td>
<td>83.3</td>
<td>81.5</td>
<td>88.2</td>
<td>86.9</td>
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<td>87.3</td>
<td>85.5</td>
<td>80.8</td>
<td>80.6</td>
</tr>
<tr>
<td>Mossman Gorge</td>
<td>N/A</td>
<td>60.9</td>
<td>75.8</td>
<td>78.7</td>
<td>80.1</td>
<td>81.6</td>
<td>78.0</td>
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<td>82.3</td>
<td>77.7</td>
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</tbody>
</table>

Source: D Glasgow and T Sovenyhazi, op. cit.

Change proposed in the Bill

As noted above, the Bill seeks to extend income management in Cape York for a further 12 months.

This requires an amendment to the SSA Act to extend the date up to which decisions by the FRC can result in a person being subject to income management to 1 January 2013. Currently, only decisions made before 1 January 2012 can result in a person’s income being managed by Centrelink.

In support of this change, the Government argues that:

To date, the Trial has made a real difference in the lives of Indigenous people in the Cape. Since it began in July 2008, the Cape York Welfare Reform communities have seen improved school attendance, care and protection of children and community safety.57

However, as noted in the previous section, changes that have taken place in the reform communities have been uneven and are fragile. This is not necessarily an argument against extending the trial. Indeed, it may be argued that it highlights the need for a continuation of the reform process (underpinned by income management). Nevertheless, it does suggest the need to continue to monitor the progress of the CYWRT.


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Financial implications

According to the Explanatory Memorandum, the amendments proposed in Schedule 4 to the Bill will have the following financial impact:

<table>
<thead>
<tr>
<th></th>
<th>2010-2011</th>
<th>2011-2012</th>
<th>2012-2013</th>
<th>2013-2014</th>
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<tr>
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<td>$8.4 m</td>
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</tbody>
</table>

Key provisions

Item 1 of Schedule 4 to the Bill amends paragraphs 123UF(1)(g) and 123UF(2)(h) of the SSA Act to omit references to 1 January 2012 and to substitute references to 1 January 2013.

Schedule 5—Aboriginal Land Trusts

Role of the Public Works Committee

Under the Public Works Committee Act 1969 (the Public Works Committee Act), the Parliamentary Standing Committee on Public Works (the Public Works Committee) is required to inquire into and report on public works referred to it through either House of Parliament. Referrals are generally made by a delegate of the Minister for Finance.

The Public Works Committee receives notification of all ‘public works’ with a proposed cost over $2 million. Those works estimated to be over $15 million are referred by Parliament in order for the Public Works Committee to undertake a full public inquiry. In that case, the works cannot be commenced until the Public Works Committee has made its report to Parliament; and the House of Representatives receives that report and resolves that it is expedient to carry out the work.

Those works undertaken on behalf of the Commonwealth with a proposed cost over $2 million and under $15 million are notified to the Committee as ‘medium works’. Agencies are required to notify the Committee of medium works prior to tenders being called for the works.

Section 6A of the Public Works Committee Act provides that it applies to ‘every authority of the Commonwealth’ unless that authority is specifically exempted.

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58. A ‘public work’ includes matters such as the construction, alteration, repair, refurbishment or fitting-out of building and other structures; and the undertaking, construction, alteration or repair of landscaping and earthworks (whether or not in relation to buildings and other structures).

59. The term ‘authority of the Commonwealth’ is defined in section 5 of the Public Works Committee Act as (a) a body corporate, or an unincorporated body, established for a public purpose by, or in accordance with the provisions of an enactment; (b) a body established by the Governor-General or a Minister otherwise than in accordance with an

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Aboriginal Land Trusts

Aboriginal Land Trusts in the Northern Territory are statutory bodies established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA). They hold the title to land handed back to the traditional Aboriginal owners under one of the mechanisms outlined in the ALRA. An Aboriginal Land Trust exercises certain functions in relation to the land held by it as set out in the ALRA, but cannot exercise those functions except in accordance with a direction given to it by the Land Council for the area in which that land is situated, and the Land Council is required to take account of the wishes of traditional owners.

Application of the Public Works Act

For some 30 years, relevant Commonwealth Government departments have operated on the understanding that Aboriginal Land Trusts are not subject to the Public Works Committee Act and for that period no projects have been referred to the Public Works Committee for consideration and approval. The basis for this understanding was that Aboriginal Land Trusts were not ‘an authority of the Commonwealth’.

That understanding is now in doubt. The Bill amends the ALRA to put beyond doubt that the Aboriginal Land Trusts are not subject to the Public Works Committee Act.

Arguments for the amendment

One of the reasons for the amendment is that it is unclear whether the ALRA was originally intended to make Land Trust projects subject to the Public Works Committee Act—for more than 30 years the Act was not applied to Aboriginal Land Trusts projects.

In support of the amendment, it could be argued that:

- most Aboriginal Land Trust projects are only small budget ones
- referral to the Public Works Committee could cause delays in addressing urgent needs
- being subject to Public Works Committee Act might create a sense that the Indigenous owners do not have full rights to determine what happens on their land, and
- Aboriginal Land Trust projects are subject to Northern Territory building regulations irrespective of whether or not they are referred to the Public Works Committee.

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Arguments against the amendment

On the other hand, it would appear that the Public Works Committee Act does, and has, applied to Aboriginal Land Trusts, even though the law has not been complied with.

There are few grounds for Commonwealth funded projects being exempt from Public Works Committee oversight. The Public Works Committee already has the legal and administrative capacity to forgo consideration of projects worth less than $2 million so that progress of small budget projects is not affected. In addition, projects valued between $2 million and $15 million are not subject to a full public inquiry by the Public Works Committee.

Infrastructure needs on Aboriginal Land Trust land in the Northern Territory need not only to be urgently addressed, but appropriately and successfully addressed, which Public Works Committee oversight achieves.

Public Works Committee oversight implies only that the project is being funded by a statutory Commonwealth agency and does not imply anything about ownership of the land on which the project is to be carried out. There would seem to be a need to further consider the implications of amending the ALRA as provided for in Schedule 5 to this Bill. This might involve soliciting the views of the Department of Finance, Public Works Committee, Land Trusts, Land Councils and other stakeholders.

Financial implications

According to the Explanatory Memorandum, this aspect of the Bill will have no financial impact.

Key provisions

Schedule 5 to the Bill inserts new section 5A into the ALRA to put beyond doubt that the Public Works Committee Act 1969 does not apply to a Land Trust.
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