

The Senate

Community Affairs
Legislation Committee

Family Assistance and Other Legislation
Amendment Bill 2011 [Provisions]

June 2011

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43rd Parliament

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CHAPTER 1

FAMILY ASSISTANCE AND OTHER LEGISLATION AMENDMENT BILL 2011

The inquiry

1.1 On 2 June 2011 the Family Assistance and Other Legislation Amendment Bill 2011 (the Bill) was referred to the Community Affairs Legislation Committee for inquiry and report by 14 June 2011.

1.2 On 3 June 2011, the committee tabled an interim report stating:

In order to give proper consideration to this bill, the committee has agreed to present this interim report and intends to present the final report on Monday, 20 June 2011.¹

1.3 The Bill was also referred to the House of Representatives Standing Committee on Social Policy and Legal Affairs on 2 June 2011 for inquiry and report. The House of Representatives committee report was tabled on 14 June 2011.²

1.4 In accordance with usual practice, the committee advertised the inquiry on its website and in *The Australian*. The committee also wrote to relevant organisations and associations inviting submissions. The committee received seven submissions (listed at Appendix 1) and held one public hearing in Canberra on 15 June 2011 (see Appendix 2).

1.5 The committee notes the short period of time between referral of the Bill to the committee and lodgement of submissions. The committee appreciates the effort required to meet this timeframe, and thanks those organisations and individuals that made contributions to the committee's inquiry. The committee also thanks representatives of departments and agencies who made themselves available to the committee at short notice and out of hours to answer questions.

Overview of the Bill

1.6 On 2 June 2011, the Family Assistance and Other Legislation Amendment Bill 2011 (the Bill) was introduced into Parliament.

1 Community Affairs Legislation Committee, *Family Assistance and Other Legislation Amendment Bill 2011: interim report*, June 2011, p. 1.

2 House of Representatives Standing Committee on Social Policy and Legal Affairs, *Advisory report: Family Assistance and Other Legislation Amendment Bill 2011*, June 2011, available: <http://www.aph.gov.au/house/committee/spla/Bill%20Family%20Assistance/report/Report.pdf>. (accessed 15 June 2011).

Main provisions of the Bill

1.7 The Bill would make various amendments to the *A New Tax System (Family Assistance) Act 1999*, the *Paid Parental Leave Act 2010*, the *Social Security Act 1991*, the *Social Security (Administration) Act 1999* and the *Aboriginal Land Rights (Northern Territory) Act 1976*.

Age of child for family tax benefit

1.8 The amendments to the *A New Tax System (Family Assistance) Act 1999* in schedule 1 of the Bill would lower the maximum child age of eligibility for family tax benefit (FTB) Part A from 24 years old to 21 years old. This change would come into effect on 1 January 2012 and would 'align with the age at which a person becomes independent for the purposes of youth allowance'.³

1.9 These amendments are estimated to result in a total saving of \$29.2 million over four years to 2014-15.⁴

Indexation

1.10 Other amendments to the *A New Tax System (Family Assistance) Act 1999* would make changes to some indexation arrangements for family assistance income thresholds, FTB Part A and Part B supplements, and the paid parental leave (PPL) income limit.

1.11 Indexation would be paused until 1 July 2014 for the higher income free area for FTB Part A, the FTB Part B income limit and the baby bonus income limit.⁵ The indexation of FTB Part A and Part B supplements would be paused for three years from 1 July 2011.⁶

1.12 The *Paid Parental Leave Act 2010* provides that the income limit for PPL before 1 July 2012 is \$150 000 and subject to indexation. The Bill seeks to postpone indexation of the PPL income limit until 1 July 2014.⁷

1.13 The indexation pause for the FTB Part A and Part B supplements is estimated to generate a saving to government of \$803.1 million to 2014-2015.⁸

3 Explanatory Memorandum, p. 2.

4 Explanatory Memorandum, outline.

5 Explanatory Memorandum, p. 5.

6 Explanatory Memorandum, p. 5.

7 Explanatory Memorandum, p. 6.

8 Explanatory Memorandum, outline.

1.14 The indexation pauses for FTB income limits, the baby bonus income limit and the PPL income limit are expected to deliver total savings of approximately \$1.19 billion to 2014-15.⁹

Assessing qualification for the disability support pension

1.15 The Bill would introduce changes to the existing future work capacity assessment, to commence on 3 September 2011, whereby people must 'provide evidence that they have tested their future capacity by participating in training or work-related activities' in order to qualify for the disability support pension (DSP).¹⁰

1.16 The new requirement to have actively participated in a program of support to find employment would not apply to people with a "severe impairment". A severe impairment is defined as an impairment 'of 20 points or more under the Impairment Tables, of which 20 points or more are under a single Impairment Table'.¹¹

1.17 The work capacity assessment measure is estimated to generate savings of \$622.7 million to 2014-2015.¹²

Extending the Cape York welfare reform trial

1.18 The Bill would extend the Cape York welfare reform trial by a further 12 months to 1 January 2013 by amending the *Social Security (Administration) Act 1999*.¹³

1.19 The welfare reform trial is a partnership between the communities of Aurukun, Coen, Hope Vale and Mossman Gorge, the Commonwealth Government, the Queensland Government and the Cape York Institute for Policy and Leadership.¹⁴ A key feature of the trial is the management of an indigenous person's income (income management), as a result of a decision by the Family Responsibilities Commission¹⁵ made before 1 January 2012.¹⁶ The Bill would extend this date to enable income management to continue in Cape York for an additional year until 1 January 2013.¹⁷

9 Explanatory Memorandum, outline.

10 Explanatory Memorandum, p. 8.

11 Family Assistance and Other Legislation Amendment Bill 2011, subsection 94(3B).

12 Explanatory Memorandum, outline.

13 Family Assistance and Other Legislation Amendment Bill 2011, schedule 4.

14 Explanatory Memorandum, p. 13.

15 The Family Responsibilities Commission was established under Queensland state legislation. Local Family Responsibility Commissioners hold conferences with community members, refer people to support services and, when necessary, arrange income management.

16 Explanatory Memorandum, p. 13.

17 Explanatory Memorandum, p. 13.

1.20 Extension of the Cape York welfare reform trial is expected to have a total cost of \$16.2 million to 2013-2014.¹⁸

Aboriginal Land Trusts

1.21 Schedule 5 of the Bill would amend the *Aboriginal Land Rights (Northern Territory) Act 1976* to clarify that the *Public Works Committee Act 1966* (the PWC Act) does not apply to Aboriginal Land Trusts.¹⁹

1.22 To date, Aboriginal Land Trusts have not in practice been considered to be Commonwealth authorities.²⁰ The Bill seeks to provide a legislative basis for this by clarifying that Aboriginal Land Trusts are not authorities of the Commonwealth Government for the purposes of the PWC Act.²¹

Issues regarding the Bill

1.23 The committee received submissions both in support of and in opposition to the amendments proposed in the Bill.

1.24 Some submitters were supportive of the amendments to pause indexation of the high income thresholds for the FTB, the baby bonus and PPL.²²

1.25 However, these and other submitters and witnesses raised a number of issues regarding the Bill. These concerns included:

- The effects of differing residency requirements on age-based eligibility for benefits;
- The effects on the poorest families of the FTB supplement pauses;
- the appropriateness of the future capacity for work test for people with a disability, including putting people with a disability on the Newstart allowance rather than the DSP;
- the definition of a severe impairment and the requirement for a severe impairment to be scored as an impairment of 20 points from a single impairment table;
- the implementation date of 3 September 2011; and
- the lack of detail about what constitutes a program of support.

18 Explanatory Memorandum, outline.

19 Family Assistance and Other Legislation Amendment Bill 2011, schedule 5.

20 Explanatory Memorandum, p. 14.

21 Explanatory Memorandum, p. 14.

22 Australian Council of Social Service (ACOSS), *Submission 1*, p. 5; National Welfare Rights Network (NRWN), *Submission 4*, p. 7 and Northern Territory Council of Social Service (NTCOSS), *Submission 5*, p. 2.

1.26 The committee did not receive any submissions discussing the proposed amendments in schedule 4 that would extend the Cape York welfare reform trial. For this reason, the committee chose not to examine this section of the Bill and does not discuss schedule 4 in this report.

CHAPTER 2

AGE OF ELIGIBILITY FOR FAMILY TAX BENEFIT PART A

Purpose

2.1 The first of the suite of measures in the bill would amend the *A New Tax System (Family Assistance) Act 1999* to lower the maximum age of eligibility for a child for Family Tax Benefit Part A (FTB A) from 24 to 21 years, commencing from 1 January 2012.¹

2.2 This change aligns FTB A with the age of independence used for access to Youth Allowance, which, commencing from 1 January 2012, changes from 24 to 22 years.² Both of these changes reflect that young people aged 22 and over are considered independent.³

2.3 Transitional arrangements will allow families with a young person who is already enrolled in a course of education which started before 1 January 2012 to continue to receive FTB A until that course finishes.⁴

Background

2.4 Family payments are designed to support families with the costs of raising children while they are dependent. In 2000, the government simplified a range of family payments, replacing them with:

- FTB (Part A) which provided income tested assistance for each dependent child;
- FTB (Part B) which provided a payment for parents who stayed at home to care for children; and
- Child Care Benefit to bring two existing child care fee subsidies into one payment.⁵

1 The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, Second Reading Speech, *House of Representatives Hansard*, 2 June 2011, p. 18.

2 Second Reading Speech, p. 18.

3 See *Social Security Act 1991*, subsection 1067A(4).

4 Second Reading Speech, p. 18.

5 Daniels, D., *Social Security Payments for People Caring for Children, 1912 to 2008: a chronology*, Parliamentary Library, Parliament of Australia, online 5 July 2006, revised 29 January 2009, www.aph.gov.au/library/pubs/bn/2008-09/children.htm, accessed 9 June 2011.

Who is eligible for FTB A?

2.5 FTB A assists families with the cost of raising children and is paid per child. Basic conditions of eligibility require that a parent, guardian, carer (including foster carer), eligible grandparents or approved care organisation must:

- have a dependent child aged under 16; or
- have a dependent child aged 16–20 years who has completed a Year 12 or equivalent qualification, or who is undertaking full-time education or training leading to a Year 12 or equivalent qualification, or who is exempt; or
- have a dependent full-time student aged 21 to 24; and
- have care of the child for 35 per cent of the time; and
- meet residential requirements; and
- have income under a certain amount (the amount varies depending on number and age of children).⁶

2.6 A child or student cannot be a dependant if they are:

- receiving a pension or benefit (such as Youth Allowance) or a labour market program payment; or
- aged five to 15, not studying full-time and their annual income is \$13,010 or more; or
- aged 16 to 24 and their annual income is \$13,010 or more or they are receiving a prescribed education scheme payment such as ABSTUDY.⁷

Alignment with age of independence for Youth Allowance

2.7 As part of an overhaul of Youth Allowance in 2010, the government revised the eligibility requirements to lower the age of independence to 22 from 1 January 2012.⁸

2.8 This 2010 reform will allow Youth Allowance to be accessed by young people aged 22 and over in full-time study. Eligibility is independent of their parents' income, although means testing and academic progress requirements do apply.

6 Family Assistance Office, *Guide to Payments*, 20 March 2011, www.centrelink.gov.au/internet/internet.nsf/publications/fpr006.htm, accessed 10 June 2011, p. 4.

7 Family Assistance Office, *Guide to Payments*, 20 March 2011, www.centrelink.gov.au/internet/internet.nsf/publications/fpr006.htm, accessed 10 June 2011, p. 4.

8 Department of Education, Employment and Workplace Relations, *More Students Will Be Eligible for Youth Allowance*, www.deewr.gov.au/HigherEducation/Programs/YouthAllowance/Pages/Overview.aspx, accessed 10 June 2011.

Financial impact

2.9 The government expects that this measure will deliver a saving of \$29.2 million over four years from 2011–12.⁹ Over the forward estimates, the yearly financial impact is set out below:¹⁰

2011–12	2012–13	2013–14	2014–15
\$0.6m	-\$7.6 m	-\$10.4m	-\$11.8m

Issues raised during the inquiry

2.10 Some submissions to the inquiry noted that the proposed amendment to the age of eligibility for FTB A could have flow-on effects on eligibility for other payments, including Youth Allowance. They were concerned that this could mean that a certain cohort of people could miss out on payments to which they would otherwise have been entitled had the amendment not been made.

2.11 Concerns raised by submitters to the inquiry included the potential for a discrepancy where different residency requirements for access to FTB A and to Youth Allowance may mean that some people 'fall through the gaps'. Other effects such as the potential impact of the change on eligibility for other family payments were also raised.

Residency requirements

2.12 The National Welfare Rights Network (NWRN) noted that the proposed change could mean that a 'significant number of people' may miss out on payments as:

...they would have qualified for Family Tax Benefit, but would not qualify for Youth Allowance by reason of either their residency status or parental means.

...The largest group of our clients likely to be unable to access income support based on their residency status because of the proposed Bill will be New Zealanders, who meet the residential criteria for Family Tax Benefit but not for Youth Allowance. The second largest group is likely to be the families of provisional partner visa holders.

The proposed Bill effectively strips these families of three years' worth of payments in respect of each child, having a significant impact on those

9 The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, *Supporting Australian families through a sustainable family payment system*, media release, 10 May 2011.

10 Family Assistance and Other Legislation Amendment Bill 2011, *Explanatory Memorandum*, p. [ii].

families' ability to subsist and to provide for their families' basic needs during this time.¹¹

2.13 NWRN's submission went on to state that:

Welfare Rights Centres in each state and territory are contacted regularly by many families and young people from New Zealand who are unable to access Australian social security payments under the International Agreement with New Zealand who are in situations of extreme financial hardship ...

The changes included in the proposed Bill are likely to increase instances of extreme financial hardship as experienced by New Zealanders living permanently in Australia.¹²

2.14 The Welfare Rights Centre Inc also raised concerns about residency requirements that could affect:

...a great number of New Zealand Citizens and persons on visas such as Spousal visa, Temporary Protection, Humanitarian Protection and the many visas relating to application processing and pending statuses.¹³

2.15 The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) acknowledged at the hearing that this could be the case:

The family tax benefit is paid in respect of children regardless of their length of residence, whereas Youth Allowance is an income support payment, and income support payments are subject to a residency rule. The residency rule for Youth Allowance is two years residence.¹⁴

2.16 The bill itself does not however introduce new residency rules for each payment. The proposed change to the age of eligibility for FTB A may mean that some individuals could be unable to access Youth Allowance even if they meet the 'age of independence' limit (22 or over from 1 January 2012), because they have been in Australia for less than two years.

Income tests and flow-on effects to other family payments

2.17 Concerns were also raised about whether families would be able to qualify for FTB A but not for other payments:

In particular there are families who would be prevented from accessing Youth Allowance by reason of the Family Actual Means Test which would have previously been permitted to receive Family Tax Benefit.

11 National Welfare Rights Network, *Submission 4*, p. 7.

12 National Welfare Rights Network, *Submission 4*, p. 8.

13 Welfare Rights Centre Inc, *Submission 6*, pp 6–7.

14 Mr Andrew Whitecross, National Manager, Department of Families, Housing, Communities and Indigenous Affairs (FaHCSIA), *Proof Committee Hansard*, 15 June 2011, p. 30.

We are also concerned about the flow-on effect of alteration to the definition of Family Tax Benefit child to other payments. For example, currently a person qualifies for Double Orphan Pension in respect of a Family Tax Benefit child. There are potentially groups of people responsible for adult orphans in this situation likely to be left without payments as a result of the proposed changes.¹⁵

2.18 FaHCSIA responded:

...to receive FTB for a child aged 22 to 24, the child's income has to be less than the child income limit, which is about \$13,000. That is a sudden-death cut-off. For Youth Allowance, there is a free area and then a tapered means test so you may be able to qualify for Youth Allowance but not for FTB because of income, or you may qualify for a broken rate of Youth Allowance but qualify for the maximum rate of FTB. Other than that, because it is only a personal income test that applies in this situation, not a parental income test, there is no real group that is precluded.¹⁶

2.19 When asked specifically about the example of orphans, FaHCSIA indicated that they did not believe there would be flow-on effects for this group.¹⁷

2.20 The House of Representatives' Standing Committee on Social Policy and Legal Affairs, which also held an inquiry into this bill, noted:

...this amendment reflects the view that families do not require family payments for children who are no longer dependent. Independent children can instead receive direct support if they meet Youth Allowance eligibility requirements and are studying full-time.

Effectively, the Australian Government will be transferring benefits from the parents of 22–24 year old full-time students through FTB Part A directly to 22–24 year old full-time students through Youth Allowance.¹⁸

Committee view

2.21 The committee acknowledges concerns expressed by some submitters about the impact the decrease in the age of eligibility for FTB A might have on those young people who are non-citizens but are residents of Australia and on families in receipt of other payments such as the Double Orphan Pension. However, the committee is confident the government will resolve any such issues should they arise.

2.22 The committee supports the proposed change in the upper age limit for FTB A eligibility from 24 to 21 years as a way to ensure that the family payments system is

15 National Welfare Rights Network, *Submission 4*, p. 8.

16 Mr Whitecross, FaHCSIA, *Proof Committee Hansard*, 15 June 2011, pp 29–30.

17 Mr Whitecross, FaHCSIA, *Proof Committee Hansard*, 15 June 2011, p. 30.

18 House of Representatives' Standing Committee on Social Policy and Legal Affairs, *Advisory report: Family Assistance and Other Legislation Amendment Bill 2011*, Parliament of the Commonwealth of Australia, Canberra, June 2011, p. 4.

better targeted to support families while their dependent children are in study or training. Given that from 1 January 2012 the government will recognise that young people aged 22 and over are considered independent for the purposes of Youth Allowance, it is the view of the committee that aligning the FTB A eligibility age with this age is appropriate.

CHAPTER 3

INDEXATION

Purpose

3.1 The second of the suite of measures in the bill would amend the *A New Tax System (Family Assistance) Act 1999* and the *Paid Parental Leave Act 2010*. The amendments build on reforms introduced in the 2009–10 Budget that targeted the family payments system to focus on low and middle income families.¹ These earlier reforms put in place an indexation freeze for four years on:

- the higher income test free threshold for Family Tax Benefit A (FTB A) of \$94,316 plus \$3,796 per annum per additional child after the first;
- the Family Tax Benefit Part B (FTB B) primary earner income threshold of \$150,000 per annum;
- the Baby Bonus income eligibility limit of \$75,000 in the six months following the birth or adoption of a child; and
- the Dependency Tax Offsets income limit of \$150,000 per annum.²

3.2 The government proposes to extend indexation pauses on higher income limits for a further two years for FTB A and B and the Baby Bonus. It is also proposed that Paid Parental Leave, a newly introduced entitlement, will not be indexed until 1 July 2014.³

3.3 The bill also freezes indexation of FTB A and B supplements for three years from 1 July 2011.⁴

Background

Eligibility for FTB A

3.4 The previous chapter outlined basic eligibility for FTB A. The 'higher income free area' threshold is the income level at which the base rate of FTB A begins to reduce, until the benefit ends completely. The Minister's second reading speech noted that:

1 The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, Second Reading Speech, *House of Representatives Hansard*, 2 June 2011, p. 18.

2 Daniels, D., 'Family assistance retargeted', *Budget Review 2011–12*, Parliamentary Library, Parliament of Australia, p. 160.

3 Second Reading Speech, p. 17.

4 Family Assistance and Other Legislation Amendment Bill 2011, *Explanatory Memorandum*, p. [i].

The income level at which a family's benefit is completely withdrawn varies by family circumstance, depending on the number and age of the children.⁵

3.5 Depending on individual circumstances, as of 20 March 2011, the amount of family income may be \$45,114 a year before payment begins to taper off.⁶

Eligibility for FTB B

3.6 FTB B gives extra assistance to single parent families and to families with one main income where one parent chooses to stay at home or balance some paid work with caring for their children. Basic conditions of eligibility for FTB B require that a person and/or their partner must:

- have a dependent child aged under 16; or
- have a qualifying dependent full-time student up to the age of 18 (who doesn't receive Youth Allowance or a similar payment); and
- have care 35 per cent of the time; and
- meet residential requirements; and
- have income under a certain amount.⁷

3.7 As of 20 March 2011, that amount was \$4,745 per year for the lower income earner. For every dollar earned above \$4,745, the payment is reduced by 20 cents per dollar. The benefit cuts out altogether if the higher income earner receives an annual income of \$150,000.⁸

3.8 The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) advised that in 2008–09, around 1.6 million families received FTB B.⁹

5 Second Reading Speech, p. 17.

6 Family Assistance Office, *Guide to Payments*, 20 March 2011, www.centrelink.gov.au/internet/internet.nsf/publications/fpr006.htm, accessed 10 June 2011, p. 4.

7 Family Assistance Office, *Guide to Payments*, 20 March 2011, www.centrelink.gov.au/internet/internet.nsf/publications/fpr006.htm, accessed 10 June 2011, pp 6–7.

8 Family Assistance Office, *Guide to Payments*, 20 March 2011, www.centrelink.gov.au/internet/internet.nsf/publications/fpr006.htm, accessed 10 June 2011, p. 7.

9 Mr Andrew Whitecross, Branch Manager, Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), *Proof Committee Hansard*, 15 June 2011, p. 32.

Eligibility for the Baby Bonus

3.9 The Baby Bonus assists with the costs associated with a newborn or the adoption of a child. It was introduced in 2002 and has been income-tested since January 2009.¹⁰ It is payable to:

- a parent of the newborn child; or
- families who have care of a newborn child within 26 weeks of the child's birth, and are likely to continue to have care of the child for no less than 26 weeks; or
- families who have a child entrusted to their care for adoption before the child is 16 years of age.¹¹

Eligibility for Paid Parental Leave (PPL)

3.10 PPL is paid to working parents of children born or adopted on or after 1 January 2011. To be eligible, a parent must:

- be the primary carer of a newborn or recently adopted child;
- be an Australian resident;
- have met the PPL work test before the birth or adoption occurs;
- have received an individual adjusted taxable income of \$150,000 or less in the financial year prior to the date of birth or date of claim; and
- be on leave and not working from the time the parent becomes the child's primary carer until the end of the PPL period.¹²

FTB A and B supplements

3.11 FTB payments may include a supplement which is paid after the end of a financial year when payments are being reconciled. End of year supplements were originally introduced to address overpayments due to under-estimation of income. They are generally paid as a lump sum.¹³

10 Daniels, D., *Social Security Payments for People Caring for Children, 1912 to 2008: a chronology*, Parliamentary Library, Parliament of Australia, online 5 July 2006, revised 29 January 2009, www.aph.gov.au/library/pubs/bn/2008-09/children.htm, accessed 9 June 2011.

11 Family Assistance Office, *Guide to Payments*, 20 March 2011, www.centrelink.gov.au/internet/internet.nsf/publications/fpr006.htm, accessed 10 June 2011, p. 3.

12 Family Assistance Office, *Guide to Payments*, 20 March 2011, www.centrelink.gov.au/internet/internet.nsf/publications/fpr006.htm, accessed 10 June 2011, p. 1.

13 Second Reading Speech, p. 18.

3.12 The supplements may be used to top-up the payment or to offset an overpayment. The amounts are indexed on 1 July each year in accordance with movements in the Consumer Price Index.¹⁴

3.13 The maximum FTB A supplement is currently \$726.35, which is paid per child. The maximum FTB B supplement is \$354.05, which is paid per family.¹⁵

Indexation pauses

3.14 The substance of the proposed amendments is to pause indexation of:

- the higher income free threshold for FTB A for a further two years until 1 July 2014;
- the maximum income limits for eligibility for FTB B (\$150,000 for the primary earner) for a further two years until 1 July 2014; and
- the Baby Bonus eligibility limit of \$75,000 family income in the six months following the birth or adoption of a child until 1 July 2014 (equivalent to \$150,000 per year).¹⁶

3.15 The proposed amendments also freeze the income limit for PPL for the primary carer (\$150,000) for a further two years until 1 July 2014.¹⁷

3.16 The FTB A and B supplements would also be frozen at current levels until 1 July 2014.¹⁸

Financial impact

3.17 The government expects that these measures will deliver savings of \$1.2 billion over the forward estimates.¹⁹ The yearly financial impact of the proposed indexation pauses for FTB A, FTB B and the Baby Bonus for a further two years until 1 July 2014 is set out below. Table 1 also includes the projected savings from the freeze on the indexation of PPL until 1 July 2014.

14 *Explanatory Memorandum*, p. 5.

15 *Explanatory Memorandum*, p. 5.

16 Second Reading Speech, p. 18.

17 Second Reading Speech, p. 18.

18 Second Reading Speech, p. 18.

19 The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, *Supporting Australian families through a sustainable family payment system*, media release, 10 May 2011.

Table 1: Indexation pauses for certain FTB A, FTB B, Baby Bonus and PPL²⁰

2011–12	2012–13	2013–14	2014–15
\$0.1m	-\$230.9m	-\$471.6m	-\$489.0m

3.18 The yearly financial impact of freezing of FTB A and FTB B supplements until 1 July 2014 is set out below.

Table 2: Indexation pauses for FTB A and B supplements

2012–13	2013–14	2014–15	2015–16
-\$76.8m	-\$179.1m	-\$268.1m	-\$279.3m

How many families would be affected?

3.19 The government estimates that in the first year of the reforms, fewer than two per cent of families would no longer be eligible for family payments as a result of all of the proposed changes.²¹ The Minister's Second Reading Speech also stated that 'no family will lose any family payments unless their income rises.'²²

3.20 The *Budget Review 2011–12* briefing noted that 'the level of income test tightening proposed is relatively mild compared to that which occurred after the implementation of income testing measures in the 2008–09 Budget.'²³

FTB A

3.21 The National Welfare Rights Network noted that the freeze to the higher income threshold for FTB A would affect 39,000 families, whose part-rate payments would cease by 2013–14.²⁴

FTB B

3.22 Based on data from the National Centre for Social and Economic Modelling, Parliamentary Library analysis estimated that the proposed pauses to the indexation of the FTB B threshold would affect around 11,400 families, who would lose their entitlement in 2013–14. This is equivalent to around one per cent of families who would be eligible for FTB B.²⁵ However, the government's estimate is greater: that in

20 *Explanatory Memorandum*, p. [ii].

21 Second Reading Speech, p. 18.

22 Second Reading Speech, p. 18.

23 Daniels, D., 'Family assistance retargeted', *Budget Review 2011–12*, p. 161.

24 National Welfare Rights Network, *Submission 4*, p. 6.

25 Daniels, D., 'Family assistance retargeted', *Budget Review 2011–12*, p. 161.

2012–13, 9,000 families would be affected, and in 2013–14, about 19,800 would be affected.²⁶

FTB A and B supplements

3.23 FaHCSIA stated that in 2011–12 it would be likely that the foregone amount for families receiving FTB A would be \$18.25 per child, and in 2012–13, \$43.40 per child. For FTB B, families would forego \$11 in the 2011–12 and \$22 in 2012–13.²⁷

Issues raised during the inquiry

3.24 Submissions to the inquiry generally supported better targeting of the family payments system, particularly pausing indexation of the income thresholds for FTB A and B, the Baby Bonus and PPL. However, most submitters also expressed concern about the proposed changes to FTB A and B supplements.

3.25 The National Welfare Rights Network (NWRN) stated:

At around \$18 billion in 2011–12, it is vital that the family payment system provide greater support to those families in need of greater levels of financial assistance. A more highly targeted family payments system ensures that sufficient funds are available to meet other important community needs, in mental health, transport and disability and children's services.²⁸

3.26 Commenting on the family payments system in general, FaHCSIA stated:

When this family payment system came into existence in 2000, the design of it was to try to maximise the benefits paid to those on the lowest incomes and then to ... maximise the amounts paid to those on the kind of lowest incomes and then gradually taper off after that.²⁹

3.27 Savings from these amendments will be re-targeted to enhance payments for families with teenagers aged 16 to 19. The 2011-12 Budget's biggest family assistance spending measures was the increase in the FTB A maximum rates for 16 to 19 year old full-time students. This rate will now match that paid to 13 to 15 year olds (currently \$6,161.20 per annum). These changes are estimated to cost \$771.9 million over the next five years.³⁰

26 Mr Whitecross, FaHCSIA, *Proof Committee Hansard*, 15 June 2011, p. 31.

27 Mr Whitecross, FaHCSIA, *Proof Committee Hansard*, 15 June 2011, p. 31.

28 National Welfare Rights Network, *Submission 4*, p. 5.

29 Ms Liza Carroll, Deputy Secretary, FaHCSIA, *Proof Committee Hansard*, 15 June 2011, p. 27.

30 Daniels, D., 'Family assistance retargeted', *Budget Review 2011–12*, p. 163.

Indexation pauses to FTB A and FTB B income thresholds and the Baby Bonus

3.28 Witnesses and submitters expressed general support for the indexation pauses to the income thresholds for FTB A, FTB B and the Baby Bonus. The Australian Council of Social Services (ACOSS) stated:

...we believe that this is a better targeted approach to restoring the federal budget to surplus. This has nothing to do with assertions over whether families above a certain income level are rich or not. It has more to do with targeting family assistance towards those in the greatest need of support.³¹

3.29 The Northern Territory Council of Social Service Inc also stated the amendments were 'appropriate, as they target families on above-average incomes who are less likely to experience financial hardship as a result.'³²

Indexation pauses to FTB A and FTB B supplements

3.30 Some submitters expressed concern about the proposed indexation pauses to the FTB A and B supplements. ACOSS opposed the changes on the grounds that supplements provide important support for families at risk of poverty:

People use them to pay their car registration, they use them to pay for new refrigerators and other major expenses. And although the effective reduction in the real value of those supplements amounts to a few dollars a week, a few dollars a week or a hundred dollars or so a year do make a difference to the poorest families.³³

3.31 For families who live on less than \$30,000 a year, ACOSS argued, the indexation freeze would hit hard:

They particularly struggle with bulky expenses such as car registration, fridges breaking down, having to move house, which frequently happens if you rent privately, and finding the bond. These unavoidable expenses often come up as lump sums and the feedback we have received from members is that people find those supplements particularly useful to meet those kinds of expenses and also to repay debts that they have incurred to meet those expenses in the past including, for example, Centrelink debts. Bear in mind that the part A supplements are per child supplements, so if you have a large family it does make more of a difference, as it should, so it is more than a few dollars a week, on average, in those cases.³⁴

3.32 The NWRN was 'very concerned' about the potential effects on families who rely on the supplements:

31 Mr Peter Davidson, Australian Council of Social Services (ACOSS), *Proof Committee Hansard*, 15 June 2011, p. 4.

32 Northern Territory Council of Social Service Inc, *Submission 5*, p. 2.

33 Mr Davidson, ACOSS, *Proof Committee Hansard*, 15 June 2011, pp 3–4.

34 Mr Davidson, ACOSS, *Proof Committee Hansard*, 15 June 2011, p. 4.

The freezing of indexation is quite small on an individual basis, and will result in low income families missing out on increased benefits of about \$20 per child, per year.

The FTB Supplements were initially introduced, in part, to assist with extensive numbers of overpayments which were a common feature of the family payments system. Debts are still at disturbing levels within the family payments system. Despite attempts in recent years to reduce the endemic incidence of overpayments, one in 12 families had accrued an FTB debt, with the average debt around \$1,291 per annum.³⁵

3.33 To address this concern, the NWRN offered the following suggestion:

...consideration could be given to capping the annual supplements that are available to higher income earners. We can see no rationale for paying the ... supplement of \$726 to a family on \$50,000 and providing the same benefit to a family on three times this income. Another option could also be to allow for just one annual FTB supplement per high income family.³⁶

3.34 In response to concerns such as these, FaHCSIA provided a history of the FTB supplements:

There is a range of measures that successive governments have put in place to try and assist families to avoid debt. For example, families under More Choice for Families arrangements, families can elect to defer receipt of part of their payment, so, rather than receiving it all as fortnightly instalments, they can receive some of it at the end of the year. Families also have the option of claiming the whole amount at the end of the year. They are also able to work with Centrelink to negotiate an adjustment to their fortnightly rate where they have had a change of circumstances during the year to ensure that the overpayment is recovered during the year so that they do not have an overpayment at the end of the year at reconciliation. There are also arrangements where they can meet their overpayment out of a tax return or some other monies at reconciliation so that they do not end up with a debt to the Commonwealth as a result of reconciliation.

...

Some of the changes are more recent, so the impact of those is harder to assess. But there is a significant number of families electing to use More Choice for Families options to defer some or all of their payments....About 12 per cent of families elect to defer all of their payment to the end of the year. Another 10 to 12 per cent claim only lump sums at the end of the year and another 12 per cent defer part of their payment but not all of their payment.³⁷

35 National Welfare Rights Network, *Submission 6*, p. 6.

36 National Welfare Rights Network, *Submission 6*, p. 6. See also ACOSS, *Submission 1*, p. 6.

37 Senator Sue Boyce and Mr Whitecross, FaHCSIA, *Proof Committee Hansard*, 15 June 2011, p. 33.

3.35 Mr Andrew Whitecross of FaHCSIA also stated the department was not 'anticipating that the scale of the change is one which would cause families to be in financial hardship'.³⁸

3.36 In correspondence received by the committee, Minister Macklin referred to evidence from ACOSS, that:

the 'loss of income would probably amount to a few dollars a week' [and] that 'on top of that would be a couple of dollars a week, converted into a lump sum, for each child from this measure'. The foregone increase for affected families is actually around \$18 a year per child for Family Tax Benefit Part A and \$11 a year per family for Family Tax Benefit Part B. This is equivalent to only 35 cents per child for FTB-A and 21 cents per family for FTB-B each week in 2011-12.

The effect on a low income (maximum rate) single parent receiving FTB-A and FTB-B for two young children would \$47 per year (equivalent to 90 cents per week) for 2011-12. This represents around 0.34 per cent of their total FTB payments for 2011-12. Their fortnightly FTB payments would continue to rise with normal indexation. For this family, their total Family Tax Benefit (Part A and B) will increase by \$12.32 a fortnight (or \$321.20 a year) on 1 July 2011.³⁹

Indexation freeze on PPL

3.37 Whilst most submitters and witnesses to the inquiry were supportive of the indexation freeze for PPL, ACOSS commented:

The paid parental leave [proposal] will certainly affect low-income families, as well as middle- and high-income families ... They will have less impact on families who did not have the opportunity to be employed in the first place, which are many of the people that we are concerned about.⁴⁰

3.38 Responding to this concern FaHCSIA noted:

The pause on indexation of the Paid Parental Leave income limit will only affect families where the primary carer of the child earns more than \$150,000 in the previous financial year. This measure will not impact on low and middle income families.⁴¹

The \$150,000 threshold

3.39 Unlike FTB A, which declines as a family's income rises, FTB B, the Baby Bonus and PPL all have "sudden death" income test cut-offs at \$150 000 per family or

38 Mr Whitecross, FaHCSIA, *Proof Committee Hansard*, 15 June 2011, p. 14.

39 Letter from The Hon Judy Macklin MP to ACOSS and to the committee, received 20 June 2011.

40 Mr Davidson, ACOSS, *Proof Committee Hansard*, 15 June 2011, p. 7.

41 Letter from Ms Liza Carroll, Deputy Secretary, FaHCSIA, to the committee, received 20 June 2011.

primary carer. Once the threshold is reached (for example, through a sudden rise in family income due to a promotion or job change), a family's entitlement ceases. However, the *Budget Review 2011–12* pointed out that:

The impact of these measures will, however, be restricted only to those families with incomes in the few thousands of dollars above the frozen thresholds, who would have retained access to payment if indexation of the threshold had gone ahead.⁴²

3.40 The NWRN supported the proposed measures, stating:

...most families exist on considerably less income. Only about 13 per cent of Australian households have an income of \$150,000.

In a tight budgetary environment, the NWRN believes that the modest reduction in benefits arising from this measure, if a family's income increases, is justifiable.⁴³

3.41 ACOSS was also supportive of the savings measures:

...as they target families on above-average incomes who are less likely to experience financial hardship as a result.

While families on \$150,000 or more are not generally 'rich', the vast majority fall within the top 20% of families with children. Approximately half of families with children have annual incomes below \$100,000.⁴⁴

Committee view

3.42 The committee supports the proposed indexation pauses on higher income limits for family payments and for the Family Tax Benefit Part A and Part B supplements. It is the committee's opinion that these measures strike the right balance between keeping the family payments system sustainable in challenging economic and better targeting support for low and middle income families.

42 Daniels, D., 'Family assistance retargeted', *Budget Review 2011–12*, p. 160.

43 National Welfare Rights Network, *Submission 4*, p. 7.

44 ACOSS, *Submission 1*, p. 7.

CHAPTER 4

ASSESSING QUALIFICATION FOR THE DISABILITY SUPPORT PENSION

4.1 As outlined in chapter 1, schedule 3 of the Bill would make changes to the assessment for eligibility for the disability support pension (DSP) by requiring claimants to provide evidence that they have actively participated in a program of support. These changes were first announced in the 2011 Federal Budget.¹ In the 2011-12 Budget, implementation of this measure was brought forward from 1 January 2012 to 3 September 2011:

The intent of changes to the assessment arrangements for Disability Support Pension (DSP) contained in Schedule 3 of the Bill is to help Australians with disability into work wherever possible, while continuing to provide an essential safety net for people unable to support themselves.²

4.2 At present, to qualify for the DSP a person must have a physical, intellectual or psychiatric impairment of 20 points or more under the impairment tables (in the *Social Security Act 1991*) and a continuing inability to work.³ A person is determined to have a "continuing inability to work" if:

- (a) the impairment is of itself sufficient to prevent the person from doing any work independently of a program of support within the next 2 years; and
- (b) either:
 - (i) the impairment is of itself sufficient to prevent the person from undertaking a training activity during the next 2 years; or
 - (ii) 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 2 years.⁴

4.3 Under the current DSP arrangements, a person's inability to work can be assessed *before* the person has investigated alternative employment options or assistance from employment services, or sought retraining or rehabilitation:

1 Commonwealth Government, *Budget Paper No. 2: Budget Measures 2011-12*, 10 May 2011, p. 181.

2 Letter from The Hon Judy Macklin MP to ACOSS and to the committee, received 20 June 2011.

3 *Social Security Act 1991*, section 94.

4 *Social Security Act 1991*, subsection 94(2).

This means that assessments of a person's inability to work, for the purposes of Disability Support Pension, can occur without the person having tested whether the help available could find them suitable work.⁵

4.4 Currently around 45 per cent of DSP applicants apply for the payment without having previously participated in any employment or rehabilitation service.⁶

4.5 The Bill would change the work capacity assessment so that people applying for the DSP would be required to have actively participated in a program of support to find employment through an open employment service or vocational rehabilitation, and provide evidence of such.⁷ The criteria for determining "actively participated" would be defined in regulations to the Bill.⁸

4.6 The Bill defines "program of support" as a program that:

- (a) is designed to assist persons to prepare for, find or maintain work; and
- (b) either:
 - (i) is funded (wholly or partly) by the Commonwealth, or
 - (ii) is of a type that the Secretary considers is similar to a program that is designed to assist persons to prepare for, find or maintain work and that is funded (wholly or partly) by the Commonwealth.⁹

4.7 The requirement to have actively participated in a program of support does not apply to people with a severe impairment 'such as those who are clearly unable to work and are fast-tracked to ensure they receive financial support more quickly'.¹⁰

4.8 The Bill defines a severe impairment as:

A person's impairment is a severe impairment if the person's impairment is of 20 points or more under the Impairment Tables, of which 20 points or more are under a single Impairment Table.¹¹

4.9 The requirement to demonstrate future work capacity as outlined in schedule 3 of the Bill would commence on 3 September 2011.

5 The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, *Second reading speech*, 2 June 2011.

6 Mr Nick Hartland, Group Manager, Disability and Carers Group, Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), *Proof Committee Hansard*, 15 June 2011, p. 37.

7 The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, *Second reading speech*, 2 June 2011.

8 Family Assistance and Other Legislation Amendment Bill 2011, subsection 94(3C).

9 Family Assistance and Other Legislation Amendment Bill 2011, subsection 94(5).

10 The Hon Judy Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, *Second reading speech*, 2 June 2011.

11 Family Assistance and Other Legislation Amendment Bill 2011, subsection 94(3B).

4.10 It is the government's intention that the changes to the work capacity assessment:

...will provide faster, more sustainable support for people with severe disabilities, while referring others with the potential to work to employment services including Job Services Australia and Disability Employment Services.¹²

Issues regarding assessing qualification for the DSP

4.11 A number of submitters and witnesses expressed concerns regarding the new requirement for people to have actively participated in a program of support in order to assess whether they have a continued incapacity for work and are therefore eligible for the DSP.

4.12 The concerns raised during the course of the inquiry included:

- the appropriateness of the future capacity for work test for people with a disability, including putting people with a disability on the Newstart allowance rather than the DSP;
- the definition of a severe impairment and the requirement for a severe impairment to be scored as an impairment of 20 points from a single impairment table;
- the implementation date of 3 September 2011; and
- the lack of detail about what constitutes a program of support.

Appropriateness of the future work capacity test

4.13 Some submitters, for example the Australian Council of Social Service (ACOSS) and the Australian Federation of Disability Organisations (AFDO), questioned the appropriateness of the future work capacity test, and putting people with a disability on the Newstart allowance, as a mechanism to get people with a disability into work.¹³

4.14 ACOSS, while supportive of moves to assist DSP recipients into work,¹⁴ believed the purpose of the changes was to stop entries to the DSP and described this as 'misconceived'.¹⁵ Mr Davidson went on:

12 The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, *Second reading speech*, 2 June 2011.

13 ACOSS, *Submission 1*, pp 2–3; Ms Leah Hobson, National Policy Officer, AFDO, *Proof Committee Hansard*, 15 June 2011, p. 7.

14 ACOSS, *Submission 1*, p. 2.

15 Mr Peter Davidson, Senior Policy Officer, Australian Council of Social Service (ACOSS), *Proof Committee Hansard*, 15 June 2011, p. 7.

The objective should be to assist more people with disabilities on income support to reduce their reliance on income support. When the welfare to work policy was introduced in 2006, with the same objective of reducing the numbers on the DSP payment, the main impact of that policy was to shift more people with disabilities onto Newstart. There are now over 90,000 people with a partial work capacity on the Newstart payment. So the difference for them is that they are on a lower payment. The difference is not that we have found them employment. Really, our goal should be to find people employment so that they do not need to rely on income support. This one-eyed focus on a single payment is, in our view, misconstrued.¹⁶

4.15 ACOSS was particularly critical of DSP claimants being shifted to the Newstart allowance because 'the alternative payment (Newstart Allowance) is at least \$128 per week less than the pension':¹⁷

At \$237 per week for a single adult, the Newstart Allowance is inadequate to pay for the essentials of life. Given that most people with disabilities face additional costs (for example, transport or medications), and will incur additional costs while participating in a 'program of support' (for example travel costs), it is likely that many applicants would struggle financially until such time as they either secure employment or are granted a pension.¹⁸

4.16 In addition, ACOSS was concerned about delays associated with assessing an individual's future work capacity and government payments made to that individual in the interim. ACOSS believed there was a risk that people who may ultimately meet the eligibility requirements for the DSP may forego income support payments whilst they wait for Centrelink to assess their capacity to work:

We understand that it is not the Government's intention to substantially delay access to the pension, and that 18 months is likely to be the maximum wait. However, the Bill offers no explicit protection against lengthy delays in assessing a DSP claim. If the maximum wait is 18 months, a single adult who ultimately meets the eligibility requirements for DSP could forego up to \$10,000 in income support if the Bill is passed. As far as we can ascertain, the Bill does not provide for back-payment of DSP entitlements to the date of the original claim. In our view, this is inequitable and sets a bad precedent in social security law. If a DSP claim was delayed for 18 months while Centrelink waited for a medical report, the applicant would clearly have cause for complaint.¹⁹

4.17 The Australian Federation of Disability Organisations (AFDO) was ideologically opposed to the future capacity for work requirements because in their

16 Mr Peter Davidson, Senior Policy Officer, Australian Council of Social Service (ACOSS), *Proof Committee Hansard*, 15 June 2011, p. 7.

17 ACOSS, *Submission 1*, p. 2.

18 ACOSS, *Submission 1*, p. 2.

19 ACOSS, *Submission 1*, p. 2.

view it created a situation where people with a disability were 'being set up to fail' by 'being obliged to look for work in order to receive some sort of payment from government'.²⁰

4.18 Ms Leah Hobson, National Policy Officer, expressed AFDO's opposition to schedule 3 of the Bill and argued the measure was an attempt by government to move people from one support payment (the DSP) to a lower allowance (Newstart).²¹ Ms Hobson went on:

We are also concerned that placing some people with disability who have some work capacity onto Newstart has some inherent problems. People with disability often face higher costs of living because of their disability. That might be because of things that would seem obvious to you or me, like the need to take more taxis or the need to pay for more medications. But it is also things that might not be considered as disability-specific if you looked at them on the surface, such as somebody who has problems regulating their body temperature and needs to have heating and cooling systems running all the time, so they have higher utility bills. For those people, having \$128 a week less is going to be a considerable problem. It is also true that some schemes specifically set up to help people with disability, such as travel pass programs that allow for concession passes, sometimes require that people have access to the Disability Support Pension specifically, in order to be eligible to get access to those programs.²²

4.19 The National Welfare Rights Network (NWRN) shared the concerns of ACOSS and AFDO. The NWRN questioned the appropriateness of the Newstart allowance for people with a disability, and was critical of potential delays in payment of the DSP, and payment of the Newstart allowance instead in the interim, while an individual's future capacity for work is assessed.²³ Further, the NWRN believed the future work capacity test would establish:

...a mandatory requirement that a person try and fail prior to qualification, especially in situations where it is apparent that this failure is overwhelmingly likely to be the case.²⁴

4.20 In response to claims about delaying payment of the DSP, Mr Nick Hartland, Group Manager, Disability and Carers Group, Department of Families, Housing, Community Service and Indigenous Affairs (FaHCSIA) offered the following

20 Ms Leah Hobson, National Policy Officer, AFDO, *Proof Committee Hansard*, 15 June 2011, p. 9.

21 Ms Leah Hobson, National Policy Officer, AFDO, *Proof Committee Hansard*, 15 June 2011, p. 9.

22 Ms Leah Hobson, National Policy Officer, AFDO, *Proof Committee Hansard*, 15 June 2011, p. 9.

23 National Welfare Rights Network (NRWN), *Submission 4*, p. 3.

24 NRWN, *Submission 4*, p. 3.

explanation about the rejection of a DSP claim and alternative income support payments:

The measure is not about that. The measure is about eligibility for DSP. What it means is that people will have to provide evidence that they have investigated alternative employment options or sought assistance from an employment service before they are granted DSP. So, at that point they are not eligible for DSP. Under this measure people who do not have this evidence will have their DSP claim rejected. That does not involve deferring a DSP claim or suspending a claim process. It is a rejection of a claim. If their claim for DSP is rejected, it is likely they will be granted Newstart or another income support payment.²⁵

4.21 The committee recognises that many people with a disability want to work but face considerable barriers to do so. The committee also acknowledges that stakeholders in the disability sector, including some who participated in this inquiry, share the government's goal to encourage and assist people with a disability to participate in the workforce. The committee acknowledges there is a range of views on the specific steps needed, but sees the measure outlined in schedule 3 of the Bill as a mechanism to assist in achieving this goal.

Definition of a severe impairment

4.22 As discussed earlier, the Bill defines a severe impairment as an impairment 'of 20 points or more under the Impairment Tables, of which 20 points or more are under a single Impairment Table'.²⁶ Individuals with a severe impairment so defined are exempt from the requirement to demonstrate their participation in a program of support in order to qualify for the DSP.²⁷

4.23 Various submitters took issue with the definition of a severe impairment, particularly the requirement that 20 points or more come from a single impairment table.²⁸

4.24 The Mental Health Council of Australia (MHCA) were opposed to the definition of a severe impairment in the Bill on the basis that:

A person with a mental disorder can have reduced level of functioning, however, when a person has two or more disorders, even if the disorders are only judged as 'mildly' or 'moderately' impairing on their own. This is because regardless of how the co-occurring disorders develop, they often

25 Mr Nick Hartland, Group Manager, Disability and Carers Group, FaHCSIA, *Proof Committee Hansard*, 15 June 2011, p. 36.

26 Family Assistance and Other Legislation Amendment Bill 2011, subsection 94(3B).

27 Family Assistance and Other Legislation Amendment Bill 2011, subsection 94(2)(a).

28 See for example Ms Leah Hobson, National Policy Officer, AFDO, *Proof Committee Hansard*, 15 June 2011, p. 10; Mental Health Council of Australia (MHCA), *Submission 7*, pp 2-3;

maintain each other. This can result in severely limited levels of functioning for the individual experiencing them.

...

Section 6, after subsection 94(3)(b) currently states "A person's impairment is a severe impairment if the person's impairment is of 20 points or more under the Impairment Tables, of which 20 points or more are under a single Impairment Table". It further states in Example 3 that "if a person's impairment is of 20 points under the Impairment Tables, made up of 10 points each under two separate Impairment Tables, the person does not have a severe impairment". This means that a person with co-occurring disorders will not be classified as having a severe impairment, unless one or both of the disorders are individually assessed as causing a severe impairment to the person. Again, this does not take into account the cumulative effect of co-occurring disorders.²⁹

4.25 The MHCA were not only worried about those with co-occurring impairments but also the capacity of people with an episodic condition to comply with the requirement to participate in a program of support. Mr Quinlan explained:

...the point that can become confusing between an episodic illness and what could appear, symptomatically, to be noncompliance with regard to attendance at appointments and so on is another are where there is vulnerability, because it may take some time for the system to realise that there is, in fact, an episodic manifestation of illness rather than systematic noncompliance...one of the questions that need to be asked is whether or not the person is or is not taking part in programs or employment-that type of thing. Are the questions going to be asked as to why they are not, or will it simply be a matter of assuming that if there is a cross against their name they did not fulfil X, Y or Z?³⁰

4.26 ACOSS and the NWRN were similarly concerned by the 20 points from a single impairment table requirement³¹ and the impact this might have on individuals with 'multiple impairments which when taken together make it impossible for them to participate in a program'.³² The NWRN believed such people could 'be denied access to the DSP' and 'be left struggling with employment services systems that may be unfamiliar in dealing with people with such conditions'.³³

29 MHCA, *Submission 7*, p. 3.

30 Mr Frank Quinlan, Chief Executive Officer, MHCA, *Proof Committee Hansard*, 15 June 2011, pp 12 and 13.

31 ACOSS, *Submission 1*, p. 2 and NWRN, *Submission 4*, p. 4.

32 ACOSS, *Submission 1*, p. 2.

33 NWRN, *Submission 4*, p. 4.

4.27 The MHCA proposed that '[m]ore discretion to be given to the assessors to decide a person's overall level of impairment and or functioning, rather than being restricted to a single table rating'.³⁴

4.28 In the context of the definition of a severe impairment, Mr Ken Baker, Chief Executive, National Disability Services (NDS) raised the government's current review of the DSP impairment tables.³⁵ The review was established as a result of a 2009-10 Federal Budget measure and is being conducted by an advisory committee, in consultation with medical and allied health professionals as well as disability stakeholders.³⁶ The terms of reference for the review are to:

- update the impairment tables to ensure they are consistent with contemporary medical and rehabilitation practices;
- introduce consistent consideration of the use of aids and equipment in the measurement of impairment;
- re-assess the appropriateness of definitions contained in the introduction to the DSP impairment tables, with particular regard to the assessment of people with intermittent psychiatric conditions;
- re-examine the descriptors in the impairment tables to ensure that a score of 20 points aligns with an inability to work 15 or more hours per week in the open-labour market at or above award wages without the need for ongoing support;
- re-design the impairment tables to focus more on ability; and
- ensure that the impairment tables can be used by both allied health professionals and medical officers.³⁷

4.29 The updated impairment tables arising from the review are due for introduction on 1 January 2012.³⁸

34 MHCA, *Submission 7*, p. 1.

35 Mr Ken Baker, Chief Executive, National Disability Services (NDS), *Proof Committee Hansard*, 15 June 2011, p. 18.

36 Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), *Review of the tables for the assessment of work-related impairment for Disability Support Pension*, available: http://www.fahcsia.gov.au/sa/disability/payments/Pages/review_dsp_impairment_table.aspx (accessed 16 June 2011).

37 FaHCSIA, *Review of the tables for the assessment of work-related impairment for Disability Support Pension*, available: http://www.fahcsia.gov.au/sa/disability/payments/Pages/review_dsp_impairment_table.aspx (accessed 16 June 2011).

38 FaHCSIA, *Review of the tables for the assessment of work-related impairment for Disability Support Pension*, available: http://www.fahcsia.gov.au/sa/disability/payments/Pages/review_dsp_impairment_table.aspx (accessed 16 June 2011).

4.30 Mr Baker was concerned that:

...although the review of the disability impairment tables has considered how scores across tables may be combined, its terms of reference have not allowed it to consider the situation where gaining 20 points through one table produces a very different outcome for the person than a score of 20 through a combination of tables. So that scenario, which is at the centre of this section of the Bill, has not been considered through that review of the disability impairment tables. So I would say it may be reasonable or it may not be reasonable to have that distinction between severe disability and other more moderate forms of disability, but it has not properly been tested by the experts that are part of that review of the impairment tables as far as I am aware.³⁹

4.31 FaHCSIA clarified the 20 points for a severe impairment requirement, explaining that DSP applicants were not required to have 20 points from a single impairment table in order to qualify for the DSP but rather that those people with 20 points from a single impairment table would be exempt from the requirement to demonstrate their active participation in a program of support:

It is not clear to us from some of the submissions that we have seen whether there is a misunderstanding that all new DSP applicants will be required to achieve 20 points under one impairment table in order to qualify for DSP. That is not the case. The clause about 20 points under one table is a way of ensuring that people with a very severe disability are not referred to services where it is unlikely that there will be any benefit. In designing this measure, we wanted to avoid people who have a very severe disability having to prove their work capacity in this manner.⁴⁰

4.32 FaHCSIA confirmed that people who do not meet the definition of a severe impairment and fail to demonstrate their continued incapacity to work would be ineligible for the DSP:

If they do not have 20 points on one table the next part of qualification for DSP is meeting that continuing inability to work test. So that will be applied, but if it is a person who is caught in this measure, who does not have evidence that they cannot have their capacity built, they will be denied DSP, possibly granted another income support payment and then referred an employment service.⁴¹

39 Mr Ken Baker, Chief Executive, NDS, *Proof Committee Hansard*, 15 June 2011, p. 18.

40 Mr Nick Hartland, Group Manager, Disability and Carers Group, FaHCSIA, *Proof Committee Hansard*, 15 June 2011, p. 38.

41 Mr Nick Hartland, Group Manager, Disability and Carers Group, FaHCSIA, *Proof Committee Hansard*, 15 June 2011, p. 43; Mr Andrew Hatch, Section Manager, Disability and Carers Payment Policy Branch, FAHCSIA, *Proof Committee Hansard*, 15 June 2011, p. 44 and Ms Sharon Rose, Branch Manager, Disability and Carers Payment Policy Branch, FaHCSIA, *Proof Committee Hansard*, 15 June 2011, p. 46.

4.33 However, the measure does not introduce any new participation requirements. Departmental officials also outlined various exemptions available to individuals who do not meet the definition of a severe impairment by achieving 20 points from a single impairment table:

...if you are a DSP applicant and you have 20 points combined from a number of tables and you have evidence that you cannot be assisted by program assistance, you will still be eligible for DSP.⁴²

4.34 And:

There are actually a couple of groups excluded in a similar manner. So the 'severe' one was one that we needed to put into the legislation, but if you have already been through an employment services and it has not assisted you, then you will not be asked to go again, as we said. If your application is on the basis of one of the manifest conditions in DSP, again we take those conditions as being evidence in and of themselves that you are not able to work on a continuing basis for more than 15 hours a week. Again, this would not apply to that group. As I said, the legislation adds a third group that would not be affected, which is those who have 20 points on one table.⁴³

4.35 In addition, if it becomes clear before a person has completed that they will be unable to work more than 15 hours a week in the next two years, for instance because of an undiagnosed medical condition, they will be able to lodge a fresh claim. This may be on the recommendation of the employment service provider or the person's treating health professional.

4.36 In assessing a fresh claim for DSP, the Job Capacity Assessor will consider the person's program participation history as well as any new medical evidence provided. Where a person's program participation history verifies that they have attempted to participate in a program of support (eg. for six months) but this could not help them, the person will ordinarily be considered to have evidence of a continuing inability to work for at least 15 hours per week for the next two years.

4.37 The committee welcomes FaHCSIA's clarification of the definition of a severe impairment and the department's advice regarding the other circumstances in which an individual would be exempt from the requirement to participate in a program of support.

4.38 The committee believes the exemptions outlined by FaHCSIA should provide appropriate safeguards to ensure those who should clearly be eligible for the DSP are not required to meet the future capacity for work test. However, the committee

42 Mr Nick Hartland, Group Manager, Disability and Carers Group, FaHCSIA, *Proof Committee Hansard*, 15 June 2011, p. 38.

43 Mr Nick Hartland, Group Manager, Disability and Carers Group, FaHCSIA, *Proof Committee Hansard*, 15 June 2011, p. 43.

acknowledges the concern of stakeholders in this area. Committee members will be closely monitoring the effects of these provisions, including through future Senate estimates hearings.

Recommendation 1

4.39 The committee recommends that an Advisory Group engaging community organisations be established to work with government on the implementation of the DSP changes.

Implementation date

4.40 The implementation date of 3 September 2011 for the new work capacity requirement, as well as the different implementation dates for the DSP work capacity arrangements and the updated impairment tables (1 January 2012), were raised during the course of the inquiry.

4.41 Most submitters and witnesses flagged their displeasure and concern regarding the very limited time they had to consider the Bill, and the short period of time for the committee's inquiry into the Bill.⁴⁴ AFDO's view summarised these concerns:

In terms of this particular piece of legislation, you mentioned earlier the very tight time lines that everybody is facing with this legislation—we are very concerned about that. The community sector in general has limited capacity to respond to these sorts of things in such a short time frame, and we are particularly concerned that organisations of and for people with disabilities are not being consulted appropriately with regard to the implementation of this bill. In terms of rollout, as well, you are looking at a maximum of several months before these measures come into place, and that does not allow for Centrelink staff and others to have time to be as well trained and as well versed in what the appropriate steps are to respond to the needs of people with disability.⁴⁵

4.42 With respect to the different implementation dates for the new work capacity arrangements in the Bill and the updated impairment tables, ACOSS were of the opinion it made 'no sense at all' and 'would make much more sense to roll out both measures at the same time'.⁴⁶

44 See Mr Peter Davidson, Senior Policy Officer, ACOSS, *Proof Committee Hansard*, 15 June 2011, p. 3; Ms Leah Hobson, National Policy Officer, AFDO, *Proof Committee Hansard*, 15 June 2011, p. 9; The Salvation Army Australian Southern Territory Headquarters, Submission 3, p. 1; NWRN, *Submission 4*, cover letter; Northern Territory Council of Social Service (NTCOSS), *Submission 5*, p. 1 and Welfare Rights Centre Inc., *Submission 6*, p. 1.

45 Ms Leah Hobson, National Policy Officer, AFDO, *Proof Committee Hansard*, 15 June 2011, p. 9.

46 Mr Peter Davidson, Senior Policy Officer, ACOSS, *Proof Committee Hansard*, 15 June 2011, p. 6.

4.43 The MHCA and AFDO concurred, with AFDO emphasising the lack of information available to stakeholders in order to consider the impact of the Bill on the yet to be released updated impairment tables:

The current review of the impairment tables have not been made public...So, when we are talking about assessing a person's severe disability under the proposed legislation here, we cannot make any comment as to whether that is going to be an appropriate measure or too medically focussed...⁴⁷

4.44 FaHCSIA confirmed the government had brought forward the implementation date for the future work capacity test but not the updated impairment tables.⁴⁸ Mr Hartland advised the updated impairment tables were still being considered by the advisory committee and that the advisory committee's final report was 'very close':

At that point it will be provided to the minister, and it will be in the hands of the government as to when they would like to release the committee's report and the draft tables. They are mindful of the need to consult on the tables, so we would be expecting to be asked to talk to groups and for them to be released quite soon, but it is in the government's hands as to when the tables and the report are released.⁴⁹

4.45 The committee is pleased the government intends to release the draft updated impairment tables for consultation with stakeholders. The committee believes the release of the draft impairment tables sooner rather than later, and preferably prior to 3 September 2011, would be beneficial. The public release of the draft impairment tables prior to the implementation date for schedule 3 of the Bill would address uncertainty among some stakeholders regarding the impact of the Bill on people with a severe disability.

Definition of a program of support

4.46 The Bill requires people who are applying for the DSP to provide evidence of their continued capacity (or incapacity) to work by participating in a program of support. A "program of support" is defined as a program that:

- (a) is designed to assist persons to prepare for, find or maintain work; and
- (b) either:
 - (i) is funded (wholly or partly) by the Commonwealth, or

47 Ms Leah Hobson, National Policy Officer, AFDO, *Proof Committee Hansard*, 15 June 2011, p. 10.

48 Mr Nick Hartland, Group Manager, Disability and Carers Group, FaHCSIA, *Proof Committee Hansard*, 15 June 2011, p. 44.

49 Mr Nick Hartland, Group Manager, Disability and Carers Group, FaHCSIA, *Proof Committee Hansard*, 15 June 2011, p. 44.

- (ii) is of a type that the Secretary considers is similar to a program that is designed to assist persons to prepare for, find or maintain work and that is funded (wholly or partly) by the Commonwealth.⁵⁰

4.47 Some witnesses were unhappy with this definition on the basis that it did not make clear exactly what comprised a program of support.⁵¹ For example, Mr Baker of NDS stated:

I think there needs to be more detail about many of the questions you have asked—about what participation in a program of support means, how long it is required, how the subsequent decisions are made for someone who has not succeeded and when those decisions are made.⁵²

4.48 Mr Andrew Hatch, Section Manager, Disability and Carers Payment Policy Branch, FaHCSIA advised the committee:

A program of support includes all of the different programs. It could be the two types of DES, it could be Job Services Australia or it could be a similar service funded through a state or territory. We are including things like workers compensation, return to work programs and other types of insurance things.

...

They are all programs of support but 'independent' means they are not there with you forever more; they are just working with you and then put you into a job.⁵³

4.49 With respect to a list of specific programs, Mr Hatch went on:

We are still drafting and developing it. Because it will be in the instrument we want to make sure that we have actually listed all of those programs that look very much like a Commonwealth-funded employment service. We want to make sure that we work out which are the ones that provide those elements of support, and tailoring it to the person's disability, versus the more mainstream...Employment services. Part of what we are trying to do is make sure that it is not just 'I have registered for a pop-up message on a job website, and that was my program of support' versus somebody who was working with the person, providing vocational counselling, looking at

50 Family Assistance and Other Legislation Amendment Bill 2011, subsection 94(5).

51 Ms Leah Hobson, National Policy Officer, AFDO, *Proof Committee Hansard*, 15 June 2011, p. 10 and 16; Mr Frank Quinlan, Chief Executive Officer, MHCA, *Proof Committee Hansard*, 15 June 2011, p. 15 and Mr Ken Baker, Chief Executive, NDS, *Proof Committee Hansard*, 15 June 2011, p. 21.

52 Mr Ken Baker, Chief Executive, NDS, *Proof Committee Hansard*, 15 June 2011, p. 21.

53 Mr Andrew Hatch, Section Manager, Disability and Carers Payment Policy Branch, FAHCSIA, *Proof Committee Hansard*, 15 June 2011, p. 40.

training opportunities and programs for them, and looking at transferrable skills—more a program of assistance than just straight job seeking.⁵⁴

4.50 The committee notes the definition of a "program of support" in the Bill does not provide specific detail regarding the types of programs that might be approved. The committee suggests, however, that this is appropriate to ensure there is sufficient flexibility in the system to provide a variety of programs of support which meet the needs of people with all types of disability.

54 Mr Andrew Hatch, Section Manager, Disability and Carers Payment Policy Branch, FAHCSIA, *Proof Committee Hansard*, 15 June 2011, p. 40.

CHAPTER 5

LAND TRUSTS AND THE PUBLIC WORKS COMMITTEE ACT

5.1 Schedule 5 would insert a new section 5A into the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Land Rights Act), which would provide that the *Public Works Committee Act 1969* (the PWC Act) does not apply to a Land Rights Act Aboriginal Land Trust. The government indicated that this was a minor amendment to address an issue that, while arising from a legislative amendment made thirty years ago, has been only recently recognised.

5.2 The PWC Act establishes the Joint Parliamentary Standing Committee on Public Works. It examines all public works for the Commonwealth which are estimated to cost more than \$15 million, and does so to consider:

- the stated purpose of the proposed work and its suitability for that purpose
- the need for the work
- the cost-effectiveness of the proposal
- the amount of revenue it will produce if the work is revenue producing
- the current and prospective value of the work.¹

5.3 The Land Trusts are vehicles that hold title to Aboriginal land in the Northern Territory. A Land Trust operates on the instructions of the relevant Land Council:

it can only act in accordance with directions given to it by the relevant land council, and a land council can only give a direction with the consent of Aboriginal traditional owners and having consulted with other Aboriginals affected by any particular decision.²

What is a public work?

5.4 At the time that the Land Rights Act was passed in 1976, there was a relatively simple definition in the PWC Act of those works to which it applied:

"public work" means a work-

- (a) that is proposed to be carried out by or for the Commonwealth within Australia or within a Territory not forming part of Australia; and

1 Parliamentary Standing Committee on Public Works, Role and operations, <http://www.aph.gov.au/house/committee/pwc/role.htm>, accessed 9 June 2011.

2 Mr Litchfield, Section Manager, Land Reform Branch, FaHCSIA, *Committee Proof Hansard*, 15 June 2011, p. 24.

(b) in respect of the carrying out of which moneys appropriated by the Parliament are proposed to be expended by the Commonwealth;

5.5 This definition was revised in 1981,³ becoming more elaborate. The new definition was more complex, and introduced the concept of an 'authority of the Commonwealth'. The new definition of public work included:

(a) a work-

(i) that is proposed to be carried out by or for the Commonwealth, either within or outside Australia; and

(ii) in respect of the carrying out of which moneys appropriated by the Parliament are proposed to be expended by the Commonwealth;

(b) a work-

(i) that is proposed to be carried out, either within or outside Australia, by or for an authority of the Commonwealth to which this Act applies by virtue of section 6A; and

(ii) in respect of the carrying out of which moneys appropriated by the Parliament, or moneys of the authority, are proposed to be expended by the authority; or

(c) a work in respect of which a declaration referred to in sub-section (2) of section 6B is in force,

but does not include-

(d) a work that is proposed to be carried out by or on behalf of the National Capital Development Commission-

(i) for the Commonwealth; or

(ii) for an authority of the Commonwealth to which this Act applies (including that Commission),

unless the work is, under the regulations, a prescribed work for the purposes of this definition; or

(e) a work that is proposed to be carried out by or for the Commonwealth by way of assistance to an overseas country;

5.6 An 'authority of the Commonwealth' was defined 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 enactment; or

(c) an incorporated company over which the Commonwealth is in a position to exercise control, but does not include an inter-governmental body.

5.7 The 1981 amendments also established a framework for exemptions from the provisions of the PWC Act in a new section 6A. These were:

(1) Subject to sub-section (2), this Act applies to every authority of the Commonwealth.

(2) This Act does not apply to -

(a) an authority of the Commonwealth in respect of which a declaration referred to in sub-section (3) is in force;

(b) the Parliament House Construction Authority; or

(c) an authority of the Commonwealth established for the purpose of providing, or for purposes which include the purpose of providing, tertiary education in the Australian Capital Territory.

(3) Where the Governor-General is satisfied that an authority of the Commonwealth is engaging in trading or other activities, or is providing services, in competition with another body or other bodies, or with persons, the Governor-General may make regulations declaring that this Act does not apply to that authority.⁴

5.8 This provision governing exemptions is the same today as when it was introduced. There was however a period during which the Australian Maritime College was exempted from the PWC Act by being listed in subsection (2). This was added under *Statute Law (Miscellaneous Amendments) Act (No. 2) 1982* (No. 80, 1982) and removed by *Maritime Legislation Amendment Act 2007* (No. 150, 2007).

Land Trusts and the Public Works Committee Act

5.9 The Explanatory Memorandum for the Bill states:

Aboriginal Land Trusts have not in practice been considered to be Commonwealth authorities to which the PWC Act applies.⁵

5.10 FAHCSIA advised the committee that it had received legal advice that had drawn attention to a possible problem in relation to the application of the PWC Act:

It only came to our attention late last year when we sought legal advice into one of the projects, the community stores project, which was a large project for the Aboriginals Benefits Account funding some community stores, upgrades and rebuilds... it had never been contemplated before that these

4 *Public Works Committee Amendment Act 1981* (No. 20, 1981)

5 Explanatory Memorandum, p. 14.

land trusts would be captured, and once we received that advice there was a question as to whether it was.⁶

5.11 There appeared to be a difference of view between FaHCSIA and the Public Works Committee. The legal advice received by FaHCSIA suggested that the Land Trusts *might* be captured by the PWC Act, FaHCSIA itself believed they *should not* be captured by the Act, while the Public Works Committee believed that they currently *are* subject to its scrutiny.⁷

5.12 FaHCSIA officers explained the need to make the amendment in the context of the history of the PWC Act, and in particular the amended definitions outlined above:

In 1981 there was an amendment going through to the Public Works Committee Act that introduced the concept of Commonwealth authorities. At that stage the concept of land trusts had been in existence for five years. At the time of the amendment going through, our understanding—and I guess the understanding of all of the lawyers that we have had involved—is that there has been no consideration of the fact that land trusts should be captured or be considered to be Commonwealth authorities for the purpose of the PWC. Over the last 30 years it has not come to the fore; it has not been an issue that we know of where there has been legal advice. It is not an issue that the right thing has not been done, but this is the first time that we had advice that said, on balance, that land trusts could be perceived to be Commonwealth authorities for the purpose of the PWC Act. Because it was on balance and it is a matter of 'It could be' we wanted to put that beyond doubt, because it actually starts to raise some issues and we wanted to clarify absolutely that that was not the case.⁸

5.13 As the case of the Australian Maritime College demonstrates, a body has in the past been exempted by inclusion in section 6A of the PWC Act. The committee raised this issue with FaHCSIA. In response, the department indicated:

The amendment could have been put through under either the Public Works Committee Act or the Aboriginal Land Rights (Northern Territory) Act. Given that its scope used to apply only to Aboriginal land trusts, which exist only within the scope of [the Aboriginal Land Rights Act], that was an appropriate place for it to be.⁹

6 Ms Halbert, Acting Deputy Secretary, FaHCSIA, *Committee Proof Hansard*, 15 June 2011, p. 23.

7 Ms Halbert, Acting Deputy Secretary, FaHCSIA, *Committee Proof Hansard*, 15 June 2011, p. 23.

8 Ms Ahmer, Branch Manager, Special Projects, FaHCSIA, *Committee Proof Hansard*, 15 June 2011, p. 25.

9 Ms Fox, Special Counsel, Legal, FaHCSIA, *Committee Proof Hansard*, 15 June 2011, p. 24.

5.14 The committee is aware that the Public Works Committee has expressed concern about ensuring that all relevant works are subject to the scrutiny intended by the Act.¹⁰

Committee view

5.15 The committee was concerned whether the schedule would set a precedent in how exemptions to the Public Works Committee Act occur. It was concerned that there was a difference of view between that Parliamentary committee and FAHCSIA about the application of the Act.

5.16 Having heard evidence from FaHCSIA, the committee is satisfied that the schedule formalises an arrangement that has been the understanding of FaHCSIA and, crucially, the Land Councils, ever since the Public Works Committee Act was amended in 1981. The committee notes that FaHCSIA advised that the Land Councils 'are comfortable with the amendment as it effectively promotes existing practice'.¹¹ This is reflected in the Northern Land Council's support for the amendment, saying it 'accords with the practice of all parties since the inception of the *land Rights Act 1976*'.¹² The committee received no other correspondence from the Land Councils, other Indigenous representatives, or any other stakeholder, suggesting there was any issue with the proposed amendment.

5.17 Finally, the committee notes that the amendment would not alter the basic objective of public works scrutiny, namely that 'if work is undertaken by or for the Commonwealth, even on Aboriginal land trust land, it will be subject to scrutiny by the Public Works Committee'.¹³

5.18 In light of these considerations, the committee does not object to the schedule.

10 Public Works Committee, *Seventy-Fourth Annual Report*, 2011, pp. 3–4; *Seventy-Third Annual Report*, 2010, pp. 2–4.

11 Mr Litchfield, Section Manager, Land Reform Branch, FaHCSIA, *Committee Proof Hansard*, 15 June 2011, p. 4.

12 Northern Land Council, *Submission 7*, p. 1.

13 Ms Halbert, Acting Deputy Secretary, FaHCSIA, *Committee Proof Hansard*, 15 June 2011, p. 4.

Recommendation 2

5.19 The committee recommends that the Bill be passed.

**Senator Claire Moore
Chair**

FAMILY ASSISTANCE AND OTHER LEGISLATION AMENDMENT BILL 2011

DISSENTING REPORT

Timing

The Government's haste in pushing this bill through shows a lack of respect for some of Australia's most vulnerable people who have not had the opportunity to have their say on the proposed measures.

We the dissenting Senators believe that the implementation of the measures will be haphazard and introduce further complexity without any genuine benefit. For example, past experience suggests that measures dealing with the Disability Support Pension (DSP) to improve the quality of DSP and work capacity assessments are likely to have only a limited impact on DSP numbers.

This important bill only attracted seven submissions, clearly demonstrating that stakeholders did not have sufficient time to make submissions on disparate measures in this Bill.

Organisations who commented on the lack of time for genuine examination of the legislation included –

The Australian Council of Social Services who said in its submission:

It would have been better if disability and welfare advocacy organisations had been more deeply involved in identifying the problems to be addressed and the policy response to those problems. At the least, it is vital that Government take the time now to consult over implementation of this policy. A September 2011 start date makes this impracticable and even January 2012 would have made it very difficult.¹

The Salvation Army Australian Southern Territory said:

The seriously compressed timeframes being imposed...restricts consultation and input from the sectors that provide a voice to the most disadvantaged and marginalised members of our communities.²

The National Welfare Reform Network (NWRN) expressed:

...deep concerns to the Committee over the inordinately limited time allowed for this inquiry. The Committee is to report within an extremely short timeframe. This places an unfair burden, not just on community

1 Australian Council of Social Service (ACOSS), *Submission 1*, p. 4.

2 Salvation Army Australian Southern Territory Headquarters, *Submission 3*, p. 1.

stakeholders, but on the Committee Secretariat, stakeholders and the Senators on the Committee who are meant to understand and scrutinise the Bill.

Due to timing difficulties, we are unable to appear before the Committee on Wednesday 15 June 2011 at such short notice. The haste with which the inquiry is proceeding means that many stakeholders are unable to adequately examine the likely impacts and consequences of the measures in the Bill.³

The Northern Territory Council of Social Service (NTCOSS) said:

...our concern at the very short time frame available in which to make a submission on issues of such critical importance. The short time frame for submissions has made it difficult for disability and other community service organisations to provide an extensive response to these complex policy issues.⁴

The Welfare Rights Centre Inc said:

...we note our concern about the unusually short time-frame permitted for this inquiry. This inevitably has limited the capacity of those with on-the-ground knowledge of the real issues facing people with disabilities and/or people who are dependent upon income support, to offer informed comment. Such haste undermines the integrity of the Senate Committee process.⁵

That the Minister Jenny Macklin herself needed to write to a witness and the Committee after the public hearings to attempt to explain facets of the Bill is further demonstration of Government haste.

Indexation

Schedule 2 of the bill makes amendments to indexation arrangements for family assistance. The bill proposes to freeze indexation of the Family Tax Benefit part A and Part B supplements for three years which will see a quarter of a million of Australian families worse off.

At a time when Australian families are struggling with the rising cost of living, these amendments will only place further pressure on families.

We call on the government to acknowledge and attend to the impact that this policy will have on Australian families who will have their family benefits eroded or cut off.

3 National Welfare Reform Network (NWRN), *Submission 4*, p. 1.

4 Northern Territory Council of Social Service (NTCOSS), *Submission 5*, p. 1.

5 Welfare Rights Centre Inc, *Submission 6*, p. 1.

Disability Support Pension

While undergoing the hurdles imposed by the Bill, DSP recipients will have their benefits reduced by \$128.00 a week. This group of people can least afford a cut to their benefit plus the stress of having to undergo "training" that many are simply not equipped to deal with.

Coalition senators find it offensive that the Government has deliberately engineered a system that appears more designed to delay Government spending on benefits than to genuinely help those with a disability to find and keep jobs.

FAHCSIA evidence made it clear that more than half those initially refused DSP were expected to be successful subsequent to trying to undertake a program of support.

This was spelt out in the evidence provided by Mr Hartland:

Senator BOYCE: But, nevertheless, costings have been engineered around more than 50 per cent of people ultimately receiving disability support pension after being rejected.

Mr Hartland: Yes, that is right.⁶

There is also confusion about the numbers of people who will not qualify for the DSP at their first application but then will qualify in 12 months' time.

During the committee hearing on Wednesday, June 15, departmental officers said their costings were based on 6,000 people being rejected but 3,400 ultimately qualifying within the following 12 months.⁷

The department has since revised this and said that in 2011-12, 14,790 people would be initially rejected from DSP but 2,943 would eventually be again placed on the DSP; in 2012-13, 17,892 people would be initially rejected from DSP but 5,375 would eventually be again placed on the DSP, in 2013-14, 17,979 people would be initially rejected from DSP but eventually 7,429 would again be placed on DSP and in 2014-15, 18,065 would initially be rejected from DSP and 7,477 would eventually again be placed on DSP.⁸

It is hit and miss and unacceptable when we are dealing with a bill that affects some of the most disadvantaged and vulnerable members of society.

6 Mr Nick Hartland, Group Manager, Disability and Carers Group, Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), *Proof Committee Hansard*, 15 June 2011, p. 46.

7 Mr Nick Hartland, Group Manager, Disability and Carers Group, FaHCSIA, *Proof Committee Hansard*, 15 June 2011, pp 45-46.

8 FaHCSIA, *answer to question on notice*, 16 June 2011 (received 17 June 2011).

Ms Hobson of the Australian Federation of Disability Organisations (AFDO) in evidence said:

We are concerned that people with disability actually often want to work and they have considerable barriers placed in their way. Those might include lower rates of educational attainment, prejudice from prospective employers and a lack of access to support to help them work, including things like appropriate transport, flexible work hours or a physically accessible workplace. We are also concerned that placing some people with disability who have some work capacity onto Newstart has some inherent problems. People with disability often face higher costs of living because of their disability. That might be because of things that would seem obvious to you or me, like the need to take more taxis or the need to pay for more medications. But it is also things that might not be considered as disability-specific if you looked at them on the surface, such as somebody who has problems regulating their body temperature and needs to have heating and cooling systems running all the time, so they have higher utility bills. For those people, having \$128 a week less is going to be a considerable problem. It is also true that some schemes specifically set up to help people with disability, such as travel pass programs that allow for concession passes, sometimes require that people have access to the Disability Support Pension specifically, in order to be eligible to get access to those programs.⁹

Coalition committee members have concerns about a measure that unreasonably delays access to a more adequate level of income support to people who are eligible for that support while, at the same time, putting them through training programs and other hurdles that are of no benefit to them.

We would like to again put on record our concerns about the impact of the haste of this bill.

There are many questions that remain unanswered or unclear which is creating a sense of anxiety and insecurity in the disability sector.

There has been no opportunity to analyse the probable consequences of the bill. For example how effective are the training programs in keeping people in meaningful employment? Has there been any analysis of the social cost of the bill – the impact it will have on people's peace of mind and security.

The uncertainty contained in this bill can only place further strain on the support services people currently access.

We support capacity building policies that improve the employment prospects of people with disabilities on income support, however we do not support adding further complexity and stress to people's lives and shifting people from higher pension payments to lower payments when they are in fact eligible for the higher payments.

9 Ms Leah Hobson, National Policy Officer, Australian Federation of Disability Organisations (AFDO), *Proof Committee Hansard*, 15 June 2011, p. 7.

We also concur with ACOSS that it 'makes no sense at all' to introduce the new work requirements ahead of the new impairment tables in January 2012.

Coalition Senators join the majority of submitters to this Inquiry in calling on the Government to delay introducing this measure until further analysis of any impacts and any benefits have been assessed.

Senator Sue Boyce

Senator Judith Adams

DISSENTING REPORT

BY SENATOR RACHEL SIEWERT

INTRODUCTION

This Bill contains five budget measures, two of which are of great concern to me. While the aim of the Government to bring the budget into surplus is commendable, this shouldn't happen at the expense of vulnerable Australians. Both Schedule 2 and Schedule 3 make savings at the expense of low income families and people with disabilities.

This is particularly concerning considering the rushed nature of this Inquiry. There are serious implications for people on low income and this Bill has been pushed through without adequate time for proper consideration of the detail.

PAUSING THE INDEXATION OF FTB A AND B SUPPLEMENTS

Freezing the indexation of these supplements could create financial hardship for low-income families. Although this indexation may in theory only amount to the loss of a few dollars a week, it is a significant amount for low income and single parent families. There are over 629,000 recipients of FTB on income support who will be negatively affected by this measure. The supplements were initially designed to deal with Family Tax Benefit debt, but they are now an essential part of the budget planning of low-income families. Evidence given by the Australian Council of Social Service (ACOSS) confirms this:

People whose families are living on, for example, less than \$30,000 a year, which includes many families on income support payments, need every dollar they can get. They particularly struggle with bulky expenses such as car registration, fridges breaking down, having to move house, which frequently happens if you rent privately, and finding the bond. These unavoidable expenses often come as lump sums and the feedback we have received from members is that people find those supplements particularly useful to meet those kinds of expenses and also to repay the debts that they have incurred to meet those expenses in the past including, for example, Centrelink debts.¹

The freezing of indexation of supplements, combined with other measures such as changes to the parenting payment grandfathered welfare to work provisions, has a cumulative impact on low income families. It is concerning to me that the Government has not done an analysis on what the total cumulative impact of these

1 Mr Peter Davidson, Senior Policy Officer, Australian Council on Social Service (ACOSS), *Proof Committee Hansard*, 15 June 2011, p. 4.

measures would be. I have asked for such assessment during both Budget Estimates and this Inquiry.

We therefore believe these measures should not proceed in a way that causes adverse impacts on low income families.

INCREASED REQUIREMENTS FOR QUALIFICATION FOR DSP

My greatest concerns with this legislation relate to Schedule 3, which requires people with disabilities to prove their incapacity to work by participating in training or work related activities ('program of support') before they are eligible for DSP. This is deeply problematic for a number of reasons:

Classification of severe impairment

Individuals who are assessed to have a severe impairment which prevents them from working are not required to complete a program of support. However, the method for determining severe impairment does not account for co-morbidity or cumulative conditions. To be judged to have a severe impairment a person must be assigned an impairment rating of 20 points or more under a single impairment table. This means that a person with co-occurring disorders will not be classified as having a severe impairment unless one or both of the disorders rate above 20 under a single table. This is concerning as the impact of co-occurring disorders can be very severe. Frank Quinlan, CEO of the Mental Health Council of Australia, provided the following evidence on this issue:

Several Australian and international studies have shown that people with disabilities such as mental disorders and substance abuse disorders will usually have co-occurring disorders, and a person with co-occurring disorders is likely to have greatly exacerbated negative impacts. A person with two or more moderate level disorders occurring across the tables when combined could result in a total equivalent of a severe impairment, when you combine substance, mental and physical disorders. The current amendment does not allow for cumulative totals across the tables and therefore does not take account of co-occurring disorders.²

Under the proposed legislation, people suffering from co-occurring disorders who are not judged to have a severe impairment will not be put straight on to DSP. They will most likely be placed on Newstart and yet be unable to meet the requirements of participation in a program of support. It was not made clear by either FaHCSIA or DEEWR what would happen to people in this situation and how long they would be caught in this situation.

Another issue identified during the Inquiry, is that the legislation doesn't appear to give any discretion to assessors when qualifying people to go straight on DSP. Ability

2 Mr Frank Quinlan, Chief Executive Officer, Mental Health Council of Australia (MHCA), *Proof Committee Hansard*, 15 June 2011, p. 8.

to work is dependent not only on the different disabilities an individual has but on their environment and the level of support available. As Leah Hobson, National Policy Officer for Australian Federation of Disability Organisations writes:

For instance, a person living in a country area may be deemed capable of physically getting up and going to work each day and perhaps fulfilling an office job. But, for somebody with a physical disability, there may be a shortage of personal attendant carers in that area such that the person is not able to get out of bed before business hours start because the carers simply will not be available at those times. There may be a lack of public transport for that person. It is about a whole range of factors for each person which are not necessarily taken into account, even during job capacity assessments.³

It is therefore important that assessors be able to take these factors into consideration when making their determination.

It is also of concern that the method of determining severe disability does not adequately take into consideration the episodic nature of some disabilities such as mental illness and substance abuse disorders. Episodic symptoms can often be misinterpreted as non-compliance. If a person is assessed when they are functioning at a high level and are not deemed severely impaired, it is unclear what will happen if they later down the line become unwell and are not able to participate in the program of support. According to evidence given at the hearing, there has been no information provided about a right of appeal or to be reassessed.. It was also uncertain what would happen to a person's application for DSP if they gained employment and then lost it due to their disability – would they be put back on Newstart or potentially be subject to a penalty period for non-compliance?

Finally, it is important to note that it is has been very difficult to fully evaluate concerns relating to the impairment tables when not only are the tables not completed yet, but the progress of the current review has not been made public.

The speed with which this Bill is being pushed through indicates the bringing forward of the start date is clearly only a cost-savings measure, designed to cut \$49 million out of the budget and makes little sense when the very tables designed to be used in implementing the measure have not even been completed.

Lack of clarity in the qualification process

There is a great deal of ambiguity in this legislation. In particular, it is unclear what is the maximum amount of time a person could wait before being reassessed for disability support. Although DEEWR gave evidence that 'the longest programs probably do go for 18 months', considering the impact of these measures on people with disabilities such ambiguity is unacceptable. There is no time limit in the

3 Ms Leah Hobson, National Policy Officer, Australian Federation of Disability Organisations (AFDO), *Proof Committee Hansard*, 15 June 2011, p. 12.

legislation and length of participation would appear to be at the discretion of the Government. In fact, there is little detail at all on how this process would work in practice, and too much is left to legislative instruments considering the potential impact of the Bill.

For example, there is insufficient explanation of what the program of support would entail. As Leah Hobson, National Policy Officer for the Australian Federation of Disability Organisations writes:

I think there is another concern there in terms of the definition of a program of support being at ministerial discretion because, in the first instance, we do not actually know what that definition of a program of support is beyond something very broad. But, secondly, it is very easy for ministers to change those sorts of requirements on an ad hoc basis if it is not in the legislation. So something like that would certainly be an improvement.⁴

Some more details on the content of the program were provided by FaHCSIA at the hearing, but again the parameters are not in the legislation.

Adverse impact on people with disabilities

Consistent numbers could not be provided by FaHCSIA on how many people would be eventually placed on DSP after initially being rejected. During the hearing the Department stated that of the 6000 people rejected between September 2011 and January 2012, 3400 of them will eventually be placed on DSP. This equates to over half of applicants who should be on DSP and are put on Newstart to save money.. Figures provided later by the Department differed, without clear justification. However, even the revised figures showed by 2014, over one third of yearly applicants would eventually end up on DSP.

Essentially this Bill unnecessarily subjects people with disabilities to financial hardship for an extended period of time. It is a cost saving measure designed to keep them off DSP and make them try to survive on Newstart. ACOSS writes:

...since the alternative payment (Newstart Allowance) is at least \$128 per week less than the pension, the Bill would deprive the majority of applicants (those with low employment prospects who still have an ongoing need for income support) of additional income to help them meet their basic living expenses. At \$237 per week for a single adult, the Newstart Allowance is inadequate to pay for the essentials of life. Given that most people with disabilities face additional costs (for example, transport or medications), and will incur additional costs while participating in a 'program of support' (for example travel costs), it is likely that many applicants would struggle financially until such time as they either secure employment or are granted a pension.⁵

4 Ms Leah Hobson, National Policy Officer, AFDO, *Proof Committee Hansard*, 15 June 2011, p. 9.

5 ACOSS, *Submission 1*, p. 2.

People placed on Newstart instead of DSP are subject to a double disadvantage. Not only do they receive \$128 a week less, but they are also subject to a higher taper rate. This barrier to work is ironic considering the Government's aim is to encourage people with disabilities to engage in the workforce. It is interesting to note the Government has, in other measures, addressed this barrier by lowering the taper rate for those on DSP. How this Bill, which puts more people onto lower payments and higher taper rates will further their aim is unclear.

Considering that at least one third of applicants will eventually be placed on DSP, it seems as if this legislation is setting many up to fail. 18 months of trying and not succeeding in training or work related activity could be extremely damaging to already vulnerable people and seems unnecessarily cruel. As one witness pointed out, even people who do end up on DSP are going to be discouraged from working because they were forced to look for work under pressured and inappropriate circumstances. The Australian Federation of Disability Organisations pointed out that subjecting people inappropriately to these programs of support could lead to further disengagement:

I think it becomes a cumulative set of issues for people. Maybe you are dealing with housing issues, maybe you are dealing with substance abuse issues, maybe you are dealing with just having come out of prison... Then you are trying to gather all of those aspects of your life together. Then you have the additional financial pressure of having \$128 a week less and the additional pressure on your organisational skills and your energy levels to actually go and meet those compliance rules by going to whatever your program of support is—whether that is an hour a week or three or four days a week, we do not actually know. So it can provide a whole set of new potential pressure points for people so that they are not actually dealing with some of those other issues in their lives as well, I think.⁶

Role of providers

Yet another area of ambiguity in this Bill is the role of Job Service Providers. It is unclear whether Providers will be required to contribute to the DSP qualification assessment and what the nature of this contribution might be. This is an important issue, if providers become 'gatekeepers' for the DSP it could impact on their relationship with their clients and their willingness to disclose information. However, if Providers do not give input it is unclear how Job Capacity Assessors would make an informed decision on the client's ability to participate in the program of support.

The increased workload is concerning considering that funding per client, in real terms, is decreasing. Evidence given by Ken Baker, Chief Executive of National Disability Services, indicates funding per client is decreasing:

6 Ms Leah Hobson, National Policy Officer, AFDO, *Proof Committee Hansard*, 15 June 2011, p. 14.

The latest figures I have, which are from the 2011 report on government services, show that funding per open employment service user for the disability employment services program fell, in real terms, from \$4,108 in 2003-04 to \$3,621 in 2008-09. Funding per client has not increased since then, and although the 2011 budget projects increased funding for disability employment services, all of that funding is for an expansion of clientele. None of it is for increased fees or outcome payments for clients. So that will mean a continued reduction in real terms for funding per client, during a period in which a new cohort of clients will engage with those services, some of whom will not want to be there.⁷

Job assessment process

It is also unclear how and when reassessment for DSP will take place and I have ongoing concerns about the assessment process. There is ambiguity around how long people will be on programs of support, what criteria will be used to assess if and when people will be reassessed to go on DSP and what role the job services provider will play in that decision.

Multiple submissions stressed that a great deal of skill is needed to make such assessments. The importance of highly specialised staff was stressed. Peter Davidson, Senior Policy Officer from ACOSS noted:

By and large, we do not think the JSA providers have sufficient resources to assist people with disabilities in this category of applicants for DSP. We would be very disappointed if most of them ended up in the JSA system rather than in the specialist disability streams. Secondly, many need vocational training.⁸

Time

Finally, the rushed nature of this Inquiry has made it impossible to properly deal with the complexity of issues before us. It is clear it has been pushed forward to save \$49.7 million, at the cost of people with disabilities.

There has been very little time for community organisations to express their opinion or suggest amendments and no time for them to consult with people with disabilities.

There has also been little time for the Department of consult with community organisations on the Bill. Many witnesses providing evidence at the Inquiry noted that the Government had not engaged them in any kind of consultative process.

7 Mr Ken Baker, Chief Executive, National Disability Services, *Proof Committee Hansard*, 15 June 2011, p. 17.

8 Mr Peter Davidson, Senior Policy Officer, ACOSS, *Proof Committee Hansard*, 15 June 2011, p. 6.

Furthermore, many witnesses have raised concerns at the early start date of this measure. Not only will Centrelink and employment service providers have to redesign their systems but staff will have to be properly trained to respond to the needs of people with disabilities.

CONCLUSION

These budget measures have serious implications for vulnerable Australians – both low income families and people with disabilities. While I acknowledge the value of supporting people with disabilities to work if they are able, leaving people on Newstart for 18 months is unfair.

Given the potential impact of this Bill and the rushed nature of proceedings I have serious concerns about supporting schedules 2 and 3 of the legislation.

Recommendation 1

That the Bill be divided and Schedule 3 (assessing qualification for disability support pension) and Schedule 2, item 2 (indexation of FTB supplements) be removed from the Bill at this time.

Senator Rachel Siewert

APPENDIX 1

SUBMISSIONS AND ANSWERS TO QUESTIONS TAKEN ON NOTICE

Submissions

- 1** Australian Council of Social Services
- 2** Ms Vicki Peterson
- 3** The Salvation Army Australian Southern Territory
- 4** National Welfare Rights Network
- 5** Northern Territory Council of Social Service Inc
- 6** Welfare Rights Centre Inc
- 7** Mental Health Council of Australia
- 8** Northern Land Council

Answers to questions taken on notice

Department of Families, Housing, Community Services and Indigenous Affairs – Answer to a written question taken on notice received 17 June 2011.

Department of Families, Housing, Community Services and Indigenous Affairs – Answers to questions taken on notice (from public hearing, Canberra, 15 June 2011).

Department of Education, Employment and Workplace Relations – Answers to questions taken on notice (from public hearing, Canberra, 15 June 2011).

APPENDIX 2

PUBLIC HEARING

Wednesday, 15 June 2011 - Canberra

Committee Members in attendance:

Senator Claire Moore (Chair)

Senator Rachel Siewert (Deputy Chair)

Senator Sue Boyce

Witnesses

Australian Council of Social Services (ACOSS)

Mr Peter Davidson, Senior Policy Officer

Australian Federation of Disability Organisations

Ms Leah Hobson, National Policy Officer

Mental Health Council of Australia

Mr Frank Quinlan, Chief Executive Officer

Ms Rachelle Irving, Deputy Chief Executive Officer

National Disability Services

Mr Ken Baker, Chief Executive

Department of Families, Housing, Community Services and Indigenous Affairs

Ms Kari Ahmer, Branch Manager, Special Projects

Ms Liza Carroll, Deputy Secretary

Ms Julie Fox, Special Counsel, Legal

Ms Cath Halbert, Acting Deputy Secretary

Ms Nick Hartland, Group Manager, Families

Mr Andrew Hatch, Section Manager, Disability and Carers Payment Policy Branch

Mr John Litchfield, Section Manager, Land Reform Branch

Mr Michael Lye, Group Manager, Families

Ms Sharon Rose, Branch Manager, Disability and Carers Payment Policy Branch

Mr Andrew Whitecross, Branch Manager, Family Payments

Department of Human Services

Ms Vicki Beath, General Manager, Disability, Carers and Older Australians Branch

Mr Robin Salvage, National Manager, Families and Child Care Programs, Centrelink

Department of Education, Employment and Workplace Relations

Ms Fiona Buffinton, Group Manager, Specialist Employment Services Group

Mr Derek Pigrim, Branch Manager, Specialist Employment Services Group