

SOCIAL SECURITY AND OTHER LEGISLATION
AMENDMENT
(2012 BUDGET AND OTHER MEASURES) BILL
2012



The National Council
& of Single Mothers
Their Children Inc.

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Eliminate and respond to violence, hardship and inequality for single mothers and their children.

WHO WE ARE

The National Council of Single Mothers and their Children Incorporated (NCSMC) is an organisation dedicated to single mothers. The council has become a platform whereby both community and government can communicate; it has lead the way in obtaining a range of beneficial outcomes; has actively sought to reduce systemic prejudice; continually challenges existing norms, and over many years has achieved improved opportunities and outcomes for single mothers and their children.

One of our greatest strengths is our expertise and commitment in working with and for the advancement of women and children due to poverty, violence, exclusion and gender inequality.

“We advocate for equality of opportunity, financial security and access to justice, legal and human rights”.

FAMILY ASSISTANCE

It is impossible to review any element of the Family Assistance Payments, such as a proposed change to Family Tax Benefit Part A without reviewing the interactions with the Child Support Scheme. The interactions are embedded in legislation - *A New Tax System (Family Assistance) Act 1999* (Cth). Furthermore, it would be inadequate to limit access to the Family Tax Benefit Part A for young people without understanding the impact and the subsequent need to focus upon Youth Allowance.

OUR RECOMMENDATIONS:

THESE RECOMMENDATIONS ARE CONTAINED WITHIN THE BODY OF THE SUBMISSION.

1. A moratorium upon penalties for payees who do not uphold the 'reasonable maintenance action test' when child support extends beyond the age of 18 and that the department works with the families to ensure that they receive the correct Family Tax Benefit A entitlement, and where needed, any back payment.
2. Review the Parental Income and Assessment test so it is a realistic level in order not to disadvantage, produce hardship or restrict the options for 'dependent' young person.
3. Eligibility for *Independent* Youth Allowance to be reduced to 18 years of age.
4. Increase the Youth Allowance by \$50.00 per week.
5. That the Standing Committee on Community Affairs acknowledges that the Maintenance Income Test is a long standing matter and was a key recommendation from the Ministerial Taskforce Report (2005) and that the Committee takes the necessary steps to progress this recommendation.
6. *Private Collect* Information is readily available enabling women to make an informed choice before they initiate any child support action.
7. That the Child Support Agency embarks on an internal educative process that will cease the practice of discouraging women to transfer from Private Collect to Child Support Collect.
8. Child Support Agency to periodically contact women to ascertain if they are receiving their payment in full and on time.
9. The Child Support Agency to acknowledge the impact and or risk of domestic violence and ensure that they have processes that protect women and children whilst they ensure that the liability is calculated upon actual care pattern.
10. Cease the practice of providing an artificially inflated 24% discount of child support in exchange for one night of contact per week and remove the prospect of children been bartered.
11. Supplement Allowance to be indexed and to keep pace with the cost of clean energy for low income families.

FAMILY ASSISTANCE & CHILD SUPPORT

THE BILL STATES:

From 1 January 2013, family tax benefit Part A will no longer be available for young people aged 18 or over unless they are in full-time secondary study. The payment may continue until the end of the calendar year for 18 and 19 year-olds who are completing secondary school or equivalent vocational education.

A New Tax System (Family Assistance) Act 1999 (Cth) requires a person who receives more than the base rate of FTB Part A for a child to take reasonable action to obtain maintenance, where it is reasonable to do so. This is referred to as taking 'reasonable maintenance action' or the 'maintenance action test' (MAT). To comply with this requirement, a person must apply for child support, where eligible or the entitled FTB A will be reduced to the base rate. Given that it is rare for child support to extend beyond 18 years, and NCSMC would argue *unfairly rare*, it is plausible that a payee may not be informed that they need to uphold the 'reasonable maintenance action' (post 18 years old) and therefore unknowingly incur a penalty through reduced Family Tax Benefit A entitlements.

Furthermore, NCSMC contends that the proposed legislative change; restricting eligibility to children age 18 to 19 who are studying, focuses the attention on the matter of *Youth Allowance* and its inadequacies. NCSMC calls upon the research and advice provided by experts in the Youth Sector, the Welfare Rights arena and the Community Sector and finds that there is a consensus in the area of (a) Parental Income and Assessment (b) The Age of Independence and (c) Youth Allowance payments¹.

(a) Parental Income and Assessments

In the event that young people are deemed 'dependent', Youth Allowance eligibility is assessed against their parent's assets and income. As stated by The Australian Youth Affairs Coalition:

parental income and assets thresholds are very low and unrealistic, even with the proposed increases to the Parental Income Test threshold and in light of this policy change most young people recognise that if their middle-income parents earn above the income threshold, they aren't necessarily able or willing to financially support

¹ Times are still tough for young unemployed people, August 2010, The Australian Council of Social Services.

and that is stretched when there are more than one child and that they maybe studying away from home².

(b) The Age of Independence

NCSMC welcomes the Government's initiative to reduce the age of independence from 25 years to 22 years by 2012 but has always believed that a more contemporary and realistic age would be 18 years old. The proposal to restrict FTB A to 18 or 19 (secondary study) elevates the need to lower the eligibility age of *Independent*. This would provide policy consistency

(c) Increase Youth Allowance

The Tax Summit produced broad and overwhelming agreement from various Australian Leaders including the Business Sector, Community Sector and Academics that the amount is completely insufficient and that, at a minimum, it requires an increase by \$50.00 per week

Recommendations:

Family Tax Benefit Part A restricted to young people aged 18 who are in fulltime secondary study:

1. A moratorium upon penalties for payees who do not uphold the 'reasonable maintenance action test' when child support extends beyond the age of 18 and that the department works with the families to ensure that they receive the correct Family Tax Benefit A entitlement, and where needed, any back payment.
2. Review the Parental Income and Assessment test so it is a realistic level in order not to disadvantage, produce hardship or restrict the options for 'dependent' young person.
3. Eligibility for Independent Youth Allowance to be reduced to 18 years of age.
4. Increase the Youth allowance by \$50.00 per week.

FAMILY TAX BENEFIT AND CHILD SUPPORT

² Increase in Youth Allowance, January 2011, The Australian Youth Affairs Coalition

Finally and before leaving the interaction of Family Assistance and Child Support, NCSMC must on behalf of our members and constituents raise the matter of the Maintenance Income Test. The Maintenance Income Test (MIT) is the interaction between child support received and the Family Tax Benefit A. NCSMC points out that this matter was identified as a recommendation (9.3) within the Ministerial Taskforce Report³, but remains excluded from implementation. The MIT produces an inequitable and disproportional impact for single parent households when compared to a two-parent family. Currently, when child support is received the Family Tax Benefit A is reduced by 50 cents in the dollar for low threshold amounts commencing at \$1,368.75 per year and continuing until the payment reaches the base rate of Family Tax Benefit A.

However, a two parent family may receive income of up to \$45,114 for the financial year which will then gradually reduce by 20 cents for each dollar above \$45,114 until the payment reaches the base rate of Family Tax Benefit Part A.

Recommendations:

5. That the Standing Committee on Community Affairs acknowledges that the Maintenance Income Test is long standing matter and was a key recommendation from the Ministerial Taskforce Report (2005) and that the Committee takes the necessary steps to progress this recommendation.

PRIVATE COLLECT AND CHILD SUPPORT

The Bill corrects an inequity in the family tax benefit Part A rate provisions. From 1 July 2012, if an individual is privately collecting child support and it is reasonable to collect the full amount, the maintenance income test for family tax benefit Part A will be based on the individual's child support entitlement, instead of restricting the rate of family tax benefit Part A for a child to the base child rate when the individual privately collects less than the full child support entitlement.

³ *In the Best Interests of Children Reforming the Child Support Scheme Summary Report and Recommendations*, May 2005: Ministerial Taskforce on Child Support.

NCSMC welcomes steps that aim to address this matter. The proposed legislative changes would go some way in addressing one of the issues associated with Private Collect and that such a change would have NCSMC full endorsement.

NCSMC would like the Standing Committee to be informed of concerns that relate to *Private Collect* and believes that a more efficient outcome would be a review of these issues rather than the adoption of one presented recommendation.

NCSMC points to the Australian Law Reform Commission's Report on *Family Violence and Commonwealth Law*. The reported stated that:

In the child support context, family violence may have an impact in a number of ways. A parent who has experienced family violence may fear continued interaction with the other parent and avoid all occasions of contact or opportunity for continuing control. This may influence their participation in the child support scheme—prompting decisions to, for example, not seek child support, end child support, change collection methods, or accept insufficient child support. Further, CSA-initiated actions may endanger victims by inflaming conflicts and opening up possibilities for pressure and coercion.

Equally important are Chapter 12's recommended reforms about consulting victims prior to CSA-initiated actions. Victims of family violence are likely best able to understand whether certain actions will place them at risk. The ALRC considers that the CSA should seek input from those experiencing family violence or who have safety concerns arising from family violence—and consider their concerns—prior to initiating such actions⁴.

This recommendation is of particular importance in the area of Private Collect as it often free from some of the cushions and buffers that can be available in the Child Support Collect. It is built upon assumptions and a belief of cooperative parent practices including the private transfer of money.

⁴ FAMILY VIOLENCE AND COMMONWEALTH LAWS -IMPROVING LEGAL FRAMEWORKS, REPORT 117 – FEBRUARY 2012, AUSTRALIAN LAW REFORM COMMISSION

Private Collect

Parents can make payments and transfer arrangements between themselves. This can occur once CSA has informed the parents of how much child support needs to be paid. CSA will endorse this option when:

- a court order is registered
- a child support assessment has been issued
- a child support agreement is accepted by CSA.

NCSMC notes the current and growing CSA level of child support debt is a sign that payers do not fully comply, and where there is high conflict, coercion and or violence the likelihood is further reduced. This payee and her children then incur the double penalty of the ex partner not paying Child Support and the reduction of Family Tax Benefit A to the base rate. The proposed legislative change goes some way toward addressing this issue.

I kept telling child support that he isn't paying. They told me to keep trying. After three years I had had enough and then learnt that the Agency could not collect the debt.

Private Collect Concerns:

Payees are not aware that they can transfer from Private Collect to CSA collect and women report that they incur barriers and are often are discouraged from taking this path.

Women report that when they embark on a Private Collect arrangement they are not aware that CSA will not collect any Private Collect debt. In order to collect the debt women must transfer to a CSA collect and then the collected amounts can only be what was not collected in the last three months prior to the transfer. Except in exceptional circumstances, such as ill health or natural disaster, CSA can collect debt for the past 9 months. The three months is well short of the eighteen months provided in a CSA collect.

Partial Exemptions:

Partial exemptions are available on grounds of family violence and it enables a payee to privately collect less than the full amount of child support. In such cases, payees will not be required to change to CSA collection and their FTB will be calculated on the amount of child support actually received, rather than the amount of the child support stated in the agreement. NCSMC wanted to gain

information from women as to how helpful they found Partial Exemptions and sought this information through various networks. NCSMC could not locate one woman who had experience of Partial Exemptions but was overwhelmed by women who stated that they would have found it extremely valuable if they had known of its existence. NCSMC then attempted to locate information on *Partial Exemption* from the Child Support Website and reviewed what we considered to be the most logical areas:

1. Family Separation / Family Violence Support.
2. On line assessment application
3. Private Payments

Partial Exemption information could not be located on Child Support website.

Recommendations:

6. *Private Collect* Information is readily available enabling women to make an informed choice before they initiate any child support action.
7. That the Child Support Agency embarks on an internal educative process that will cease the practice of discouraging women to transfer from Private collect to Child Support Collect.
8. That Child Support Agency periodically contacts women to ascertain if they are receiving their payment in full and on time.

ACTUAL CARE VS COURT ORDER

Proposal as per Bill:

Currently, when there is a change in the actual care of a child that does not comply with a formal care arrangement, family tax benefit and child support continues to be based on the formal care arrangement for 14 weeks if the individual with reduced care disagrees with the change and is taking steps to have the formal care arrangement complied with.

The objective is to strike a reasonable balance between complying with previously agreed or ordered care arrangements and ensuring there are adequate resources in households to support children. An amendment will allow a person's percentage of care for child support and family tax benefit purposes to be based on the actual (new) care of the child immediately, in special circumstances, such as where there is evidence of violence or other unusual behaviour.

NCSMC welcomes processes that aim to acknowledge the existence and impact of domestic violence and provide avenues to better manage domestic violence in

context of child support. Furthermore, the integrity of the Child Support Scheme relies upon accurate and timely financial assessment and the actual pattern of care. Therefore, steps that seek to gather these elements are supported by NCSMC.

The most consistent and overwhelming statement that NCSMC hears from women regarding the matter of Actual Care Vs Court Order care relates to the one night of contact per week. NCSMC has argued against the decision to provide a 24% discount of child support in exchange for one night of care per week. This has placed children in the position of being bartered and has led to agreements being made to solicit the most desirable child support liability, but overtime it is not upheld and as the motivations are flawed it does not operate in the Child's Best Interest. There is a lack of willingness from women due to exhaustion, fear and cost for them to go through the legal process to have a new Court Order that is reflective of the actual pattern of care. This disproportional financial incentive presents a range of inherent risks most concerning the needs, safety and protection for child(ren) as in the context of child support this becomes a secondary consideration.

A bold and progressive outcome of the Standing Committee on Community Affairs would question the validity of the 24% discount and acknowledge that it can be a danger for child(ren) and that Australia does not want a system that encourages the bartering of children.

A more sophisticated child support system would align the cost of care provided with the actual time and not an artificially inflated discount. One night of contact per week should be realized at no more than 14 % and not 24%. In addition to removing the inherent risks this change would go some way in establishing Orders that are not based upon a flawed motivation and therefore would be more likely to be maintained in the longer-term.

Every Tuesday night I bath and feed my six year old twins. Drop them at their father's house. The next morning I pick them up at 7.30am and get them ready for school. Because they sleepover he doesn't have to pay very much. They don't like going there and he doesn't want them. They only sleep but he gets a big reduction in child support.

Recommendations:

9. The Child Support Agency to acknowledge the impact and or risk of domestic violence and ensure that they have processes that protect women and children whilst ensuring that the liability is calculated upon actual care pattern.

10. Cease the practice of providing an artificially inflated 24% discount of child support in exchange for one night of contact per week and remove the prospect of children from being bartered.

SUPPLEMENT ALLOWANCE

The Bill amends the clean energy low income supplement provisions to clarify the eligibility of a group of low-income families who may otherwise not be fully assisted for their expected average cost impacts under a carbon price. This will ensure that the low income supplement will operate as intended

NCSMC welcomes any assistance and notes that single mother families are one group that have difficulty in meeting the cost of utilities and incur late payments or disconnection fees. This signals the impact of low level of payments, the lack of access to the Utilities Allowance and high cost of utilities. NCSMC points out that this allowance equates to \$8.00 per fortnight and given the hardship that single mother families encounter would like to be reassured that it will be indexed and that it will keep pace with the actual clean energy costs.