

Submission by the Australian Catholic Council for Employment Relations to

THE SENATE

COMMUNITY AFFAIRS LEGISLATION COMMITTEE

inquiry concerning the

***Social Services Legislation Amendment (Family Payments Structural Reform and
Participation Measures) Bill (No. 2) 2015***

15 February 2016

	Page
A. Introduction	2
B. Outline of the Bill	3
C. FTB A annual supplement	5
D. FTB B: its history and nature	6
E. FTB B annual supplement	11
F. The increases in FTB A and FTB B have been very modest	13
G. The Bill threatens to increase poverty among low income families	14
H. The impact of the Bill on minimum wages	17
I. Human Rights Issues: : unanswered questions	20

A. Introduction

1. The Bill which is the subject of this inquiry is the third stage of changes proposed by the May 2014 Federal Budget. Collectively, those changes proposed the greatest reductions in the living standards of Australian families of any legislation ever considered by this Parliament.
2. Since the May 2014 Budget, legislation has been enacted to:
 - abolish the Schoolkids Bonus, with effect from the end of 2016; and
 - remove the access of couple parent families to Family Tax Benefit, Part B (FTB B) from 1 July 2016 once their youngest child turns 13.
3. The changes already introduced will have a major impact on families.
4. First, the abolition of the Schoolkids Bonus, will result in the loss will be \$430 per year for each child in primary school and \$856 per year for each child in secondary school. A family with a child in each level of education will lose \$24.65 per week. It should be noted that this proposal, unlike the other proposals to cut family incomes, was foreshadowed by the current Government in the 2013 election campaign.
5. Second, the limitation of FTB B eligibility for families where one parent stays home to care for their child or children (through the enactment of the *Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Act 2015*) will result in a loss of \$60.20 per week. On the basis that the child turns 13 at the end of the first year of secondary school, this will amount to a loss of about \$15,700 (plus expected indexation increases) over the last five years of secondary education. These losses will apply to all low and middle income families, with incomes up to \$100,00 per year.
6. Because this recent legislation only applies to couple parent families, the change has left untouched the FTB B payment to sole parent families. It will mean that a sole parent earning up to \$100,000 per year will retain this payment while unemployed couple families will lose the payment. It is a provision that discriminates against couple parent families, by discriminating against the parents by reason of the marital status and by discriminating against children by reason of their parents' marital status. The discrimination cannot be justified by any comparison of relative needs between the two groups. The current Bill proposes changes to the eligibility of sole parents, but even if enacted, the discrimination against couple parent families would continue.

7. The financial scope of the current Bill is evident from the *Explanatory Memorandum*: over the forward estimates it is expected to save \$4,259.8 million; see *Explanatory Memorandum*, page 2. The number of families expected to be covered by these changes is substantial. The Minister in explaining the proposed changes to Family Tax Benefit, Part A (FTB A), advised that 1.2 million families and 2.2 million children would be affected by those changes. In broad terms, this means that the average loss across the 1.2 million families will be \$3,775, or \$24.00 per week, over the three years of the forward estimates. The Bill seeks to deliver these savings under the rubric of "structural reform" and "workforce participation"; but the Bill uses these terms as a cover for cuts in family incomes.
8. The Australian Catholic Council for Employment Relations (ACCER), which is an agency of the Australian Catholic Bishops Conference, makes these submissions because, in its view, the substantive provisions of the Bill are unjust, both in principle and in effect. The deleterious effect on the living standards of families, many of whom are already living in poverty, is manifest. Low income families are not protected and, at least in respect of this cohort, the Bill is contrary to Australia's human rights obligations.

B. Outline of the Bill

9. The Bill has five significant features which will impact on low and middle income families, three of which have a very detrimental effect for working families and those families who rely on unemployment benefits. The other two proposed measures will involve an increase in payments, one of which is proposed as compensation for two of the benefits to be withdrawn and the other being of relatively limited value for those families.
10. First, the Bill (at Schedule 3) proposes the removal of the FTB A annual supplement, currently \$726.35 per year, or \$13.92 per week, which is made to parents of dependent children up to the age of 18, provided they remain in secondary education. This is to be done over two years: from 1 July 2016 the payment will be reduced to \$602.25 and from 1 July 2017 it will be reduced to \$302.95. When the transition is completed on 1 July 2018 the accumulated loss will have been \$547.50 for each child.
11. Second, the Bill (at Schedule 3) proposes the removal of the FTB B annual supplement, which is paid to "stay-at-home" parents in couple families, sole parents and various other persons who are the primary carers of children, by 1 July 2018. The current supplement is \$354.05 per year, or \$6.79 per week. This proposal is to be done by

reducing the current payment of \$354.05 per year to \$302.95 from 1 July 2016 and to \$153.30 from 1 July 2017. Over the transitional period to 1 July 2018 the loss will be \$252.50.

12. Third, as a partial offset to the losses incurred by the removal of the two annual supplements the Bill (at Schedule 1) proposes that from 1 July 2018 FTB A be increased by \$282.80 per year or \$5.04 per week.
13. The effect of these three changes would be:
 - In the two year transitional period, the total cuts in the FTB A annual supplement will be \$547.50 per child, which, in the case of a family with two children, would be equal to cuts of \$10.49 per week. In addition, families in receipt of FTB B will suffer losses on their FTB B annual supplements of \$252.50, which would be equal to \$2.42 per week. If they have two children their weekly loss over this two year period is \$12.91 per week.
 - The loss of a net income of \$12.91 per week for single breadwinner couple families with two children can be compared with the increase in the National Minimum Wage (NMW) in July 2015. The NMW was then increased by \$16.00 per week to \$656.90 per week, which, after tax, was an increase of \$12.68 per week. Therefore, what is proposed over the next two financial years is a net cut in weekly family payments for families with two children that is more than the net increase to the NMW in July 2015.
 - From 1 July 2018 the increase in FTB A of \$5.04 per week will be less than the cut of \$13.92 per week per child, with the consequent loss of \$8.88 per week per child. In a two child family this will be a loss of \$17.76 per week. If the family is eligible for FTB B, the loss will be \$24.55 per week. This loss in disposable income is almost twice the net wage increase as a result of the 2015 increase in the NMW.
14. Fourth, the Bill (at Schedule 2) proposes substantial changes to the rate at which FTB B is paid to carers of children when the youngest child or children turns 13, ie those families who retained eligibility for FTB B when couple parents lost their eligibility for this payment as a result of *Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Act 2015*.
15. The Bill proposes two different rates of payment for those who remain eligible for FTB B once the youngest child turns 13. Where the carer is a single parent aged 60 or more,

a grandparent or a great-grandparent, the current standard rate will remain until the youngest child turns 18 provided the child remains in secondary education after turning 16; ie there is no change in the rate of payment once the youngest child turns 13. Where the carer is not a single parent aged 60 or more or a grandparent or great grandparent, the payment, currently \$2,737.50 per year, would be reduced to \$1000.10 per year once the child turn 13 and removed once the child turns 16. On the basis that the youngest child turns 13 at the end of year 7, turns 16 at the end of year 10 and turns 18 at the end of year 12, this would cause a loss of \$5,212 over three years and a loss of \$5475 over two years. For a sole parent this is a loss \$10,687 over arguably the most important years of a child education.

16. Fifth, the Bill proposes that the maximum FTB B standard rate be increased by \$1,000.10 per year for families with a youngest child aged under one. This amounts to an extra \$19.17 per week. In relative terms this is quite minor across the years in which children will be dependent on their parents.
17. The losses outlined above will be felt in a wide range of families, with incomes of up to \$100,000 per year, but the results will be severe for low income families, including families reliant on low minimum wage rates, part time, insecure and casual work and unemployed families. Many low income working families are already living in poverty. The proposal would put more families into poverty; and those already in poverty would be in deeper poverty. Priority needs to be given to protecting children against poverty.

C. FTB A annual supplement

18. The FTB A annual supplement was introduced by the May 2004 Budget. In his Budget speech on 11 May 2004, the Treasurer, Mr Costello, announced a *More help for families* plan:

“Our plan: *More help for families* has five interwoven components:

- a \$600 increase in the level of payment per child under the Family Tax Benefit Part A;
- relaxing the income test for this benefit which will give more families access at higher rates;
- a change in the income test for the single income family benefit — FTB (B) — which will allow more mothers to access this payment while in part-time work;
- a new maternity payment — without qualification — for every mother on the birth of a child;
- a very substantial increase in childcare places.

The Family Tax payment, FTB (A), is paid to around two million Australian families. Tonight I am announcing an increase of \$600 in all levels of this payment. The base payment, per child, will increase from \$1,095 to \$1,695.

This new level is, in real terms, more than 100 per cent higher than the amount paid before this Government was elected in 1996.

This increase of \$600 will be available as a lump sum to families upon reconciliation of their 2003-04 entitlement, that is, when they file their tax return after 30 June this year and in every subsequent year.”

(<http://www.budget.gov.au/2004-05/speech/html/speech.htm>)

19. This annual supplement sum was indexed until 2010 when, from July 2010 it was \$726.35 per year, but it has not increased since then as a result of a budgetary decision of the Rudd Government.
20. The FTB A payment was to be made as a lump sum payment at the end of each year and after the filing of tax returns. The payment mechanism enable a verification of the eligibility for FTB A and the amount of the entitlement. Any suggestion that it was not meant to be a real benefit to families, and only a administrative procedure to regulate the payment process, is without foundation: see, for example, the Commonwealth's publication of 11 May 2004 *More Help for Families*, pages 2-3. If it is now thought that the withholding of the payment until the end of the taxation year is not needed or desirable for administrative reasons, or for the convenience of recipients, the whole of the benefit should be converted into FTB A fortnightly payments.

D. FTB B: its history and nature

21. In order to understand the proposal to withdraw the FTB B annual supplement, it is necessary to refer the development of the FTB B.
22. The origins of FTB B are found in the first Commonwealth income tax legislation. Section 79 of the *Income Tax Assessment Act 1936* provided taxpayers with a concessional deduction for dependent spouses and children. In 1942 the concessional deductions were converted into taxation rebates; see *Income Tax Assessment Act 1936* (as amended), section 160.
23. A significant change occurred in 1994 as a result of a policy announced by the Australian Labor Party in the 1993 Federal Election. In his Policy Speech on 24 February 1993 Prime Minister Keating proposed the introduction of the Home Child Care Allowance (HCCA):

"Our recently announced child care policy recognises that the future growth of the Australian economy and the living standards of Australians need women's participation in the workforce.

We recognise that child care is essential if women are to take a job, undertake training or study or look for work.

Our commitment to meet total demand for work-related child care by 2001 will aid women's participation in the economy, as our 30 per cent cash rebate on fees will make child care more affordable - especially for middle income earners.

It is not good enough to say that a woman is either in the paid workforce or in the home. Chances are these days, in the course of their lifetimes, most women will spend periods of time doing both.

The needs of mothers caring for children at home are often overlooked in the child care debate.

But we have not forgotten them.

I recognise and appreciate the important role played by women who choose to stay at home while their children are growing up.

We propose to introduce a new cash payment of \$60 each fortnight to be called the Home Child Care Allowance.

This allowance is more generous than the Dependent Spouse Rebate it will replace, and has the added advantage of being paid directly to the mother at home. This will provide a source of independent income for women while they are out of the paid workforce caring for children.

In a further measure to meet the needs of women at home caring for children, we will extend fee relief to occasional care. This is in addition to my earlier announcement that we will double the funding for playgroups.

Labor's child care policies recognise the reality that different families choose to deal with the responsibilities of work and family in different ways."

(<http://pmtranscripts.dpmc.gov.au/browse.php?did=8827>, emphasis added)

24. In a speech on 6 December 1993 to launch the International Year of the Family, Prime Minister Keating said:

"Our policies must address the diverse nature of Australian families, and the diverse nature of their employment and assistance needs.

A major issue to address in this context is how families balance the responsibilities of work and family life.

Governments should, I believe, promote policies which recognise and support choices families are making in combining paid work and family care.

We have to make these aspects of peoples' lives fit more harmoniously together.

We have to keep pressing for more "family-friendly" workplaces.....

We recognise that childcare needs are neither uniform or identical.

We recognise that women, throughout their lives, have a range of equally legitimate choices about being in the workforce or being at home.

We appreciate the value of caring and nurturing provided by women who do choose to stay at home while their children are growing up, and the value of the unpaid work they carry out both in the household and in the community.

That is why we have introduced the Home Care Child Allowance for supporting parents caring for their children full time at home.

By paying the allowance directly to the caring parent, usually the mother, we have provided many women at home with a source of independent income which otherwise they would not have."

(<http://pmtranscripts.dpmc.gov.au/browse.php?did=9071>, emphasis added)

25. The Second Reading of the *Social Security (Home Child Care And Partner Allowances) Legislation Amendment Bill 1993* occurred shortly afterwards, on 15 December 1993. The Second Reading speech included the following:

"The home child-care allowance reform consolidates the government's provisions that assist families with children. *It provides more direct recognition of the considerable time, energy and personal support devoted to children by parents, generally mothers, who decide to stay at home to raise their children.* For the first time, this support will be provided directly to the parent caring for children, rather than to the other partner as a tax concession.

The allowance will replace the dependent spouse rebate currently available to couples with dependent children and will be paid at a higher maximum rate of \$60 a fortnight." (*Hansard*, House of Representatives, pages 4090-1, emphasis added.)

26. The legislation was enacted in 1994. In July 1995 the HCCA was amalgamated with the Partner Allowance to become the Parenting Allowance. In May 1998, the Howard Government rolled the Parenting Allowance into the Parenting Payment. FTB B emerged from the Parenting Payment as part of the reforms associated with the introduction of the Goods and Services Tax (GST) in 2000. FTB B was the successor to the HCCA and the earlier dependent spouse with children rebate, and extended to sole parents. Over the six years from 1994 to 2000 the payment had grown from \$30.00 to \$34.79 per week, very close to the rate of inflation over those years.
27. FTB B is a hybrid kind of payment. For low income families it is a means of providing income support to alleviate poverty. For higher income families it is a payment that recognises the need for horizontal equity in the tax system, by recognising the social contribution by those who use their incomes to support others. For all families it recognises the value of the care given by those who stay out of the paid workforce to care for their children and it recognises the need to help parents make a choice as to how they will exercise their family responsibilities.
28. The rate of payment under FTB A and FTB B is currently the same for a single breadwinner couple parent family and a sole parent family where the number and ages of their children are the same. It also means that where the single breadwinner in a couple parent family is paid the same wage as the sole parent and the number and ages of their children are the same, the disposable incomes of both households will be the same. It might be thought that the sole parent family has a higher standard of living than the couple parent family, but that view does not take into account the costs of child

care that are generally required in sole parent families. Child care costs can force sole parent families into poverty.

29. FTB B is currently payable to families in which the principal breadwinner in a couple parent family and an employed sole parent have an income of up to \$100,000 per annum. A sole parent is entitled to FTB B whether he or she is employed and is entitled to the full payment if earning up to \$100,000 per year. Payments to a principal carer in a couple parent family (ie the parent who is not the principal breadwinner) are reduced if the principal carer has income in excess of \$5,402 per annum. The payment reduces by 20 cents for each additional dollar of income over that amount.
30. The position outlined in the foregoing paragraphs will change on 1 July 2016 when the *Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Act 2015* comes into effect and removes the eligibility of couple parent families to FTB B once their youngest child turns 13. The legislation removes long-established rights.
31. A review of the history shows that there was common ground between successive governments in regard to the nature and purpose of family payments. This is apparent from Mr Keating's speeches prior to the 1994 legislation and from the passages concerning the introduction of the FTB B annual supplement which we set out in the next section. It was common ground that parents should have an effective choice as to how they would exercise their parental responsibilities and that the work of parents in the fulltime care of their children was of value to them, their children and the community as a whole. Any desire for increased workforce participation was subject to those fundamental values and principles concerning the exercise of family responsibilities and the care for children.
32. These views did not simply develop out of the political process. The politicians were responding to what was, and remains, a sense of fairness within the community about how parents should be able to make decisions regarding how they care for their children. What Prime Ministers Keating and Howard said at critical times in the framing of important public policy represented a community consensus, not merely a political consensus.
33. The need for families to have an effective choice as to how they balance their work and family responsibilities is discussed in the following extract from the report of a national Commission of Inquiry into Poverty (Poverty Commission). The Poverty Commission was established in 1972 to inquire into poverty and propose responses to it. Its report

was a significant cause of the increases in the social safety net in subsequent years. The report included:

“A further way in which many low income families are often placed under great stress is in relation to the freedom parents have to decide how they will divide their time between working, looking after children, and other activities. Because of financial pressures some parents are confronted with the choice of spending more time earning money and less time at home or struggling on an income below the poverty line....

Some fathers compensate for their low wages by working more hours or working two jobs. In many instances this may create considerable pressure on parents and their children.... Inadequate wages and pensions place considerable pressure on mothers to work...The mere fact of a mother working is not necessarily detrimental to the family. The relationship between a mother working and child development has been hotly debated in recent years, but the research on the subject has been inconclusive. The pertinent issue is the freedom of mothers to choose whether or not to work, so that each family can reach a solution which is satisfactory for its members. The pressure to work created by an inadequate income means that some mothers are less free to choose.” (*First Main Report, April 1975*, volume 1, page 204. Footnote omitted and emphasis added.)

34. The Poverty Commission was the result of widespread concern about the fact that families with a single full time breadwinner were living in poverty. The passage notes that low wages were being compensated for by fathers working overtime or taking a second job and that there was pressure on women to take up paid employment. Its point was that these responses to poverty were not acceptable. The breadwinner should not have to undertake extra work for the family to escape poverty; nor should the parent who is the primary carer have to take paid employment in order for the family to escape poverty.
35. The Poverty Commission proposed substantial changes to government policies and budgetary priorities to lift these families above the poverty line. The policy objective was to have an acceptable disposable income for families without the need for the breadwinner to work overtime or take a second job or for the other parent to undertake, or apply for, paid employment.
36. It should be stressed that the principle which underpins these policies does not raise any gender-specific issue. The principle applies whether the breadwinner, or principal breadwinner, is male or female. Parents should be able to choose which one of them will be the breadwinner and which one of them will stay out of the employed workforce in order to care for their children. A corollary of this principle is that parents may decide that the interests of the family, and those of the children in particular, would be best served by both of them being employed. Whether the

second parent takes a job will depend on a variety of factors, including the availability and cost of good child care. Where parents are out of the employed workforce for a substantial period of time in order to raise children there should be various kinds of training programs and other educational support to assist them to return to the workforce when they choose to do so.

37. The position articulated by the Poverty Commission 40 years ago has been an underlying principle of national budgetary support for families. It has been a principle that, until the May 2014 Budget, commanded support from both sides of Parliament for decades and remains just as relevant now as it was when articulated.
38. The hybrid nature of FTB B includes the delivery of a degree of horizontal equity into the family support system and a payment in recognition of the value of the care for children. These factors militate against means-testing the benefit. While there is a substantial argument in support of the view that FTB B should not be means-tested as it is, we accept that the Parliament might reasonably impose a means test on the eligibility for the payment. However, the means test should be reasonable and proportionate having regard to the circumstances in which families find themselves. To impose uniform cuts without any reference to needs and relative needs, as has been done by the recently enacted legislation and is proposed by the current Bill, would not be reasonable and proportionate.

E. FTB B annual supplement

39. In his 2004 election policy speech on 26 September 2004, Prime Minister Howard said:
- “We have brought the principle of choice to all of our policies and importantly, I bring a new dimension to our policies today in relation to childcare. We have spent more than \$8 billion on childcare in the six years from 1996 to 2002, more than double that in the last six years of the Labor Government.*
- Our policies have seen an 84 per cent increase in the number of childcare places and as part of our ongoing commitment to supporting parental choice in relation to childcare, I announce today that if the Coalition is re-elected, we will introduce a new taxation rebate of 30 per cent on parents out of pocket childcare expenses. This new rebate recognises that childcare costs faced by families vary enormously across the country, and providing a rebate on the out of pocket cost, supports families choosing the childcare service which best suits their needs.
- At the same time, to ensure complete fairness of treatment for families where one parent makes the choice to stay at home full time, we will provide an appropriate increase in the rate of Family Tax Benefit B. That is the benefit paid to parents who are at home full time caring for their children.*

We also, I believe, need these days to be more responsive as a society to the special needs of grandparents who are called increasingly to look after grandchildren as a result of family breakdowns. They are heroic people. They've spent their lives raising their own children and suddenly they find they must do the same thing again for their grandchildren. And they do it out of the love they naturally have for those children."

(<http://electionspeeches.moadoph.gov.au/speeches/2004-john-howard>, emphasis added.)

40. On 9 February 2005 the Minister for Families and Community Services, Senator Kay Patterson addressed the conference held by the Australian Institute of Family Studies Conference "Families Matter" on, among other topics, the FTB B annual payment. The Minister said:

"Government philosophy: choice

Having talked about some of the priorities common to families now is an appropriate point to talk about the priorities common to the Howard Government's approach to supporting families. *One of the elements of our approach that is central to our philosophy and common across a range of policy areas is our desire as a Government to help families exercise choice in how they live their lives.*

As the Prime Minister has said, choice is the golden thread that flows through many of our policies. Choice about whether to stay at home and care for the children or return to work; choice about childcare; choice about schooling, and choice about healthcare.

As our families become more diverse, it will be important that we ensure our responses continue to support and strengthen families, providing them with the choices that promote wellbeing and encourage self-reliance.

Government Action: Direct and Indirect

I talked a moment ago about the importance of putting children first. This is a key policy priority of the Coalition Government's approach to family policy – giving children the best start in life. While many of our policies are delivered to parents, they are actually targeted at children.

Family payments such as the Family Tax Benefit and the \$3000 Maternity Payment are two important forms of assistance delivered to parents in the interests of children.

Family Tax Benefit is now a central feature of our family policy.

Eight in ten Australian families receive a payment, which averages \$7,000 per year.

During the election campaign the Government committed to a \$300 increase in the Family Tax Benefit Part B payment. This payment, which assists parents who choose to stay at home to care for their children, is now a maximum of almost \$3,000 per year for children under 5 years and over \$2,000 for children aged 5 to 15 years.

I am announcing today that the Government has decided to bring forward by six months the \$300 increase to the annual rate of Family Tax Benefit Part B.

Recognising the overwhelmingly positive reception to our decision last year to pay the \$600 per child increase to Family Tax Benefit Part A as a lump sum this \$300 increase will also be paid as a lump sum.

The decision to provide a six-month advance will mean that families receiving Family Tax Benefit Part B will be eligible for a lump sum payment of up to \$150 from 1 July 2005 after they lodge their tax return. Every year thereafter families will be eligible for the \$300 annual increase after they lodge their tax return.

Increasing this payment for stay at home parents, usually mothers, is just another example of how the Howard Government seeks to improve the choices available to families in how they arrange their lives according to their personal circumstances.

We know that many parents choose to stay at home and we want to support that choice as far as possible. Similarly many other parents want to remain engaged in the workforce, sometimes for more than just monetary reasons. As a government we want to support that choice as well. Hence our heavy investment in child care.”

(<http://www.formerministers.dss.gov.au/2927/australian-institute-of-family-studies-conference-families-matter/>, emphasis added.)

41. On the same day the Minister issued a media release, *Extra assistance for 1.3 million Australian families*, which referred to the decision to provide the increase by way of a lump sum:

“Increasing this payment for stay-at-home mums and dads, is just another example of how the Howard Government is seeking to improve the choices available to families in how they arrange their lives according to their personal circumstances.”

“Following the positive response I received from parents who received the lump sum payments last year, I have decided to deliver this commitment in a lump sum also. Parents have told me the lump sum allowed them to purchase items such as school uniforms, replace household goods, pay for a special sporting activity and provide a boost to saving for their children’s future.”

(http://www.formerministers.dss.gov.au/6606/extra_assistance_9feb05/)

42. Like the FTB A annual supplement, this sum was indexed until 2010, to \$354.05 per year, but has not been increased since.
43. As with the FTB A supplement introduced the previous year, the intended and actual benefit of the FTB B supplement was not compromised or minimised by its payment as an annual supplement. Similarly, if it is now thought that the withholding of the payment until the end of the taxation year is not needed or desirable for administrative reasons, or for the convenience of recipients, the whole of the benefit should be converted into FTB B fortnightly payments.

F. The increases in FTB A and FTB B have been very modest

35. It has been claimed that the increases in family tax benefits since the introduction of the GST-related changes of 2000 have been overly generous and are not sustainable.
36. This is not so. From July 2000 to July 2015 the maximum periodic rate for a child under 13 rose from \$58.10 per week to \$89.88 per week, or 54.7%. Adding in the

annual supplement at a rate of \$13.92 per week, the increase was 78.7%. For FTB B, where the youngest child is aged 5 to 18, the increase was from \$34.79 to \$53.41 per week, or 53.5%. Adding in the annual supplement at a rate of \$6.79 per week, the increase was 73.0%.

37. There are three key measures that show that the increases in family support payments have lagged community trends:

- Household disposable income per head, as calculated by the Melbourne Institute, increased from \$393.07 per week in June 2000 to \$822.84 per week in June 2015, an increase of 109.3%; see *Poverty Lines, Australia, June Quarter 2015*, Table 2.
- From 1 January 2001 to 1 January 2016 the pension, including supplements, payable to single pensioners rose from \$201.27 to \$433.50 per week, an increase of 115.4%. For couple pensioners, the increase was from \$333.12 to \$653.50 per week, an increase of 96.2%; see *Working Australia, 2015: wages, families and poverty*, Table 21 and the current advice on the Department of Human Services website. (*Working Australia, wages, families and poverty 2015* is an ebook available, on ACCER's website: www.accer.asn.au.)
- Average Weekly Ordinary Time Earnings for full-time adults were \$781.80 per week in May 2000 and by May 2015 had increased to \$1,484.50, an increase of 89.9%; see *Average Weekly Earnings, States and Australia, May 2011* and *Average Weekly Earnings, Australia, May 2015*, both published by the Australian Bureau of Statistics in catalogue series 6302.0.

44. We accept that the changes in eligibility for family tax payments have extended these payments into higher income groups (see, for example, *Working Australia, 2015: wages, families and poverty*, Table 19) which has added to the overall costs of the benefits, but this is not a feature that should prejudice the very modest increases made available to low income families.

G. The Bill threatens to increase poverty among low income families

45. The Bill threatens to increase poverty levels among low income families. In Figure 1 we show the relationship between the disposable incomes of three low income single breadwinner couple families, with two children aged 8 and 12, and the 60% relative poverty line over the period January 2001 and January 2015. The relative poverty line is based on the data in Table 1 in the Attachment hereto. Table 1 is in similar form to

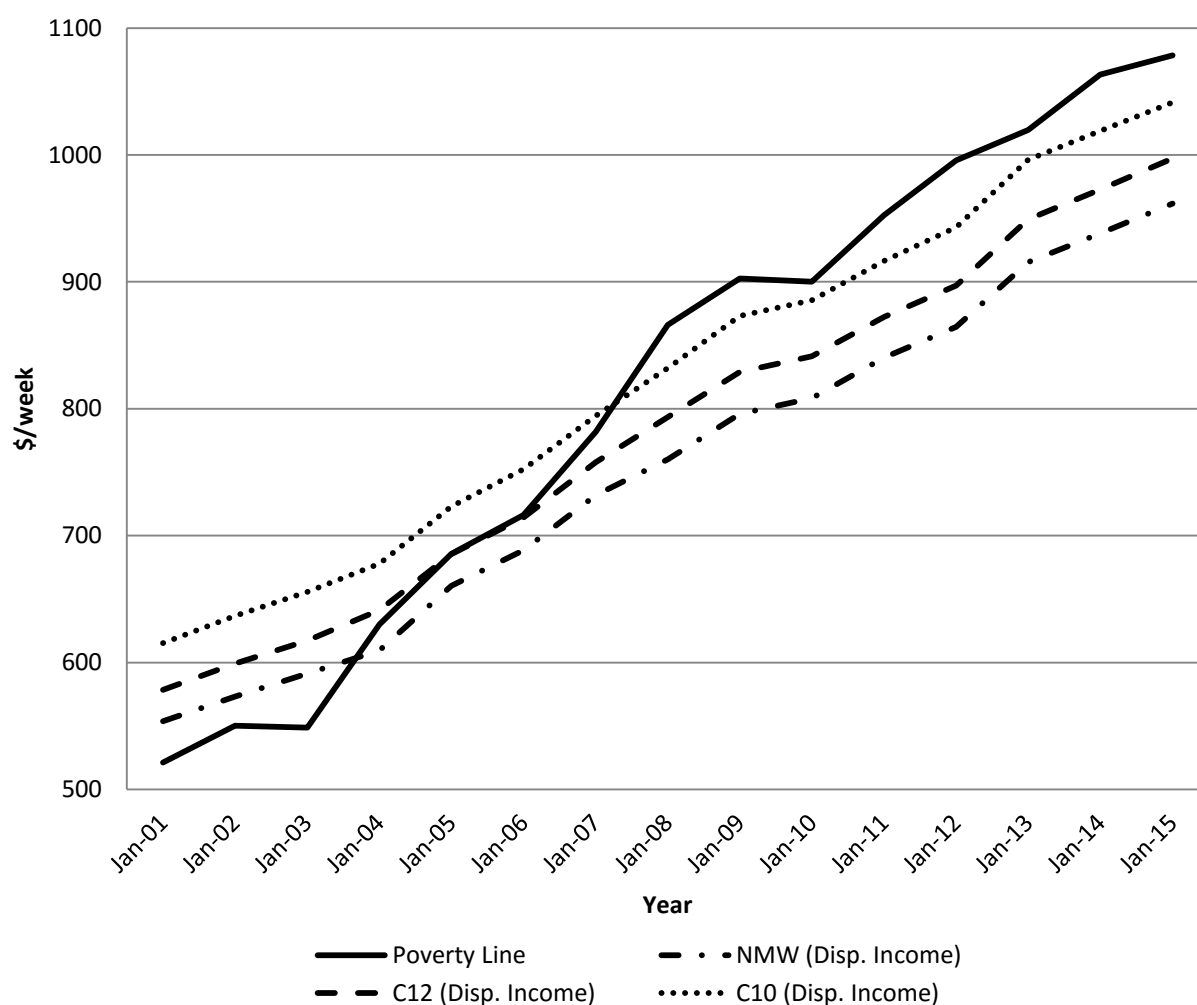
Table 27 in *Working Australia, 2015, wages, families and poverty*, but it has been updated to reflect the more recent data published by the Australian Bureau of Statistics (ABS) on 4 September 2015 in *Household Income and Distribution, 2013-14*, catalogue no. 6523.0.

Figure 1

Disposable Incomes of Safety Net-dependent Families Relative to Poverty Line

(Couple and two children)

January 2001 – January 2015



46. Table 1 shows the poverty lines for single workers, couples with two children and sole parents with two children. This table uses the modified OECD equivalence scale used by the ABS, which sets the single person at 1.0, a second adult at .5 and each child at

.3. In January 2015 the 60% poverty line for a single adult was calculated on a median equivalised disposable household income of \$855.92 per week and was \$513.55 per week. For a family of two adults and two children the 60% poverty line was \$1078.46 per week, or 2.1 times the poverty line of the single adult. The 60% poverty line for the sole parent and two children was \$821.68 per week, or 1.6 times the single person's.

47. The disposable incomes of these households are set out in Tables 2, 3 and 4 of the Attachment and represent three different minimum wage rates. These tables reproduce Tables 28, 29 and 30 in *Working Australia, 2015*. The figures are at 1 January of each year. The tables provide the detail of the various kinds of family transfers, with the total disposable income calculated for each year. The disposable incomes of single workers are those in the "net" columns. The breadwinner in each family is employed full time and is paid the safety net rate. The family comprises a couple where one parent stays at home to care for two children or a working sole parent with two children. Each table applies to both kinds of families because the transfer payments to each are the same. The calculations are based on the children being aged 8 to 12. (These are the ages used by the Fair Work Commission in its Statistical Reports.) In each case the Schoolkids Bonus is included in the FTB A figure on the basis that one child is in primary school and the second child is in secondary school .
48. The ABS has advised that changes in methodology over the years since this kind of data was first collected in 1994-95; see *Household Income and Distribution, 2013-14*, Explanatory Notes, paragraph 8. For this reason we have limited our comparisons in *Working Australia, 2015* to the period January 2004 to January 2015. Using the updated figures published by the ABS in September 2015, we find:
- the NMW-dependent family of four fell further into poverty: from 3.2% below the poverty line to 10.8% below it, with a poverty gap in January 2015 of \$116.76 per week;
 - the C12-dependent family of four fell into poverty: from 1.8% above the poverty line to 7.5% below it, with a poverty gap in January 2015 of \$81.29 per week; and
 - the C10-dependent family of four fell into poverty: from 7.6% above the poverty line to 3.4% below it, with a poverty gap in January 2015 of \$37.05 per week.

49. The C10 rate in this comparison is significant. It is the rate set for trade-qualified, or equivalent, workers. How has it come to be that a skilled worker in Australia is not able to maintain a family at a standard of living in excess of poverty? The Bill proposes to make this situation worse, even though the increases in the family payments made to these families (78.7% in FTA A and 73.0% in FTB B) have lagged behind other key variables in government income support and community-wide income.
50. We can use the figures at January 2015 to provide a guide as to the impact that the Bill would have if it were passed. The projected losses over the transitional period and from 1 July 2018 can be added to the poverty gaps. In Tables 2, 3 and 4, the effect of these cuts, on the basis of the January 2015 figures, would be to reduce the disposable incomes by \$24.55 per week and to add the same amount to the poverty gaps.

H. The impact of the Bill on minimum wages

51. In January 2015 a NMW-dependent single breadwinner family of a couple with two children (aged 8 and 12) living in rented premises had a disposable income of \$961.70 per week; see Table 2 in the Attachment hereto, which reproduces Table 28 of *Working Australia, 2015: wages, families and poverty*. The family's disposable income included Government transfer payments of \$380.59 per week, which was equal to 39.6% of their disposable income. By contrast, in August 1973 the same kind of family received only 7.7% of its disposable income from Government transfers; *Working Australia, 2015*, Table 11.
52. This large increase has had an impact on the Federal Budget and on minimum wage decisions. An example of the modifying impact of changes in the taxation and transfer arrangements is found in the *Safety Net Review Case 2005*, where the Australian Industrial Relations Commission said:

[353] We also acknowledge that some of the changes to the income tax and tax transfer system identified by AiG [the Australian Industry Group] have had a beneficial impact on the disposable income of some low-paid employees. We have taken these changes into account in deciding the amount of the safety net adjustment....Consistent with AiG's submission we have not taken a mechanistic approach to this issue. Rather, *the social safety net changes have formed part of the broad exercise of judgment we have undertaken to determine the quantum of the safety net adjustment....*" (*Safety Net Review Case, 2005*, PR002005, emphasis added)
53. The very substantial increase in family payments were not intended to do away with the need for the wage packet to provide support for low income families. Substantial as

they are, family transfers do not cover the costs of dependants in these, or any other, households. No government had adopted a policy to cover these costs. The Treasurer, Mr. Hockey, said in his Budget Speech on 13 May 2014:

"Unlike pensions, which are an income replacement payment, family payments are an income supplement to help with *some* of the costs of raising a family."
(Emphasis added)

54. The Bill now before the Parliament seeks to turn back the level of public support for families, with the inevitable result that it would put pressure on wages.
55. There is an economic case in support of an increase in family transfers. It keeps down the costs of employment and promotes employment to the extent that employment is responsive to rises or falls in wage costs. Absent family transfers, the costs of family support are imposed on the community through the wages system. Wages impose costs on employers, which are passed on to the community through the price of goods and services. In an economy protected by a tariff system this might occur without undue impact on employment levels. Where an economy is globalised, to some extent or another, wage costs might affect the capacity of individual firms to operate and employ. In these circumstances there is good reason to transfer the costs of family support that is carried by the community through the costs of goods and services to the government's taxes and transfers systems. A moral consequence of the application of the *law of comparative advantage*, which is used to justify increasing trade between countries, is that the benefits of a change in policy and trading relations should be used to support those who are disadvantaged by the changes.
56. In a globalised world family support cannot be left to the wage packet alone. A morally acceptable and economically sustainable wages policy depends on a morally acceptable national budget, with the burdens and benefits being shared according to needs and capacities.
57. Despite the increase in transfer payments over recent decades wage increases have failed to protect many workers and their families against poverty. Section 284(1) of the *Fair Work Act 2009*, which provides that the Fair Work Commission (FWC) "must establish and maintain a safety net of fair minimum wages, taking into account [among others] relative living standards and the needs of the low paid". In its decision of June 2014, the FWC said:

"Single-earner families that receive the NMW or a low award rate have had declines in their equivalent real disposable income, to the point where today a

couple with two children would be in poverty as conventionally measured. Households that rely on earnings as their principal source of income comprise about one-third of all families below a 60 per cent median poverty line." (*Annual Wage Review 2013-14*, paragraph [399])

58. Poverty and its conventional measure, the 60% relative poverty line, had been referred to in the FWC's June 2013 decision in the context of a reference to the statutory obligation on the tribunal to take into account "the needs of the low paid". The FWC said:

"We accept the point that if the low paid are forced to live in poverty then their needs are not being met. We also accept that our consideration of the needs of the low paid is not limited to those in poverty, as conventionally measured. Those in full-time employment can reasonably expect a standard of living that exceeds poverty levels." (*Annual Wage Review 2012-13*, paragraph [33], emphasis added.)

59. The FWC accepted that the needs of the low paid are not limited to those in poverty, as conventionally measured, but the fact of the matter is that many families in the Australian community are living in poverty has not caused the FWC to target poverty and to do so as a priority. Our criticisms are set out in *Working Australia, 2015*, especially at Chapter 10, which is a commentary on the FWC's June 2015 decision.

60. There are some who argue that in-work poverty is primarily the responsibility of the social welfare system. ACCER has argued that the terms of the *Fair Work Act* require the FWC to set wages after taking into account the actual level of government support, rather than some desired level of public support for families. There has been no serious discussion within the annual wage review process or more generally in the community about the appropriate contributions that should be made by the public purse and the wage packet. The proper integration of the wages and welfare system requires some serious discussion about the respective contributions to be made to the support of low income families; and, crucially, on a better understanding of the income needed to provide workers and their families with a decent standard of living.

61. The cuts proposed in the Bill, if implemented, would have a significant impact on family living standards and place pressure on the wages system to compensate for those changes. In the bargaining sector, the outcomes would vary. How the FWC should respond would be a matter of debate between the parties in the annual wage reviews.

However, what is clear is that the Bill, if enacted, would have the effect increasing poverty levels and lowering the living standards of Australian families.

I. Human Rights Issues: unanswered questions

62. The Parliamentary Joint Committee on Human Rights (Committee) delivered the *Thirtieth Report of the 44th Parliament* on 10 November 2015, a human rights scrutiny report made pursuant to the *Human Rights (Parliamentary Scrutiny) Act 2011*. Included in the report is a consideration of the provisions of the *Social Services legislation Amendment (Family Payments Structural Reform and Participation Measures) Bill 2015*; see pages 53-60. This Bill was in similar form to the current Bill under consideration, but it included the proposed changes to the eligibility of couple parent families to receive FTB B once the youngest child turned 13. This particular provision was the matter covered in the *Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Act 2015*.
63. The Committee considered the terms of the earlier Bill under two headings: the reduced rate of FTB B, at 1.260 to 1.279, and the removal of family tax benefit supplements, at 1.280 to 1.297. In both sections particular emphasis was given to the terms of the *International Covenant on Economic, Social and Cultural Rights* (Covenant). After considering these instruments and the terms of the Bill, the Committee has identified serious shortcomings in the statements of compatibility with human rights included in the *Explanatory Memorandum*.
64. In regard to FTB B the Committee considered the application of the terms of Articles 2(1), 9 and 11(1) of the Covenant. Included in Article 2(1) is the obligation to ensure that the right to social security is "made available in a non-discriminatory way" (paragraph 1.264). The substantive right to social security is found in Article 9. Article 11 concerns "the right of everyone to an adequate standard of living for himself and his family". The committee formed a view:

"The committee considers that these changes to FTB Part B engages and limits the right to social security and right to an adequate standard of living." (1.261)
65. After expressing this view the Committee set out its reasoning. The discussion of the right to social security included references to the right to have social security made available in a non-discriminatory way and the inclusion of family and child support in the right to social security. In regard to the right to social security the Committee sought the advice of the Minister for Social Service (Minister) on several matters that

would justify the limit on the right to social security (1.271). In relation to the right to an adequate standard of living, further advice is also sought from the Minister (1.279). To our knowledge no further advice was received from the Minister before the Bill was passed in its amended form, or since.

66. These earlier concerns of the Committee continue in respect of the proposals in the current Bill to reduce FTB B to sole parents after the youngest child turns 13 and to remove their eligibility for FTB B once their youngest child turns 16 and regarding.
67. In regard to the FTB A and FTB B supplements, the Committee considered the application of the terms of Articles 9 and 11(1), ie the right to social security and the right to an adequate standard of living. It concluded that "the removal of family tax benefit supplements engages and limits the right to social security" and that the "statement of compatibility [included in the *Explanatory Memorandum*] does not sufficiently justify that limitation for the purposes of international human rights law". Further advice has been sought from the Minister. A similar conclusion was expressed in relation to the assessment by reference to the right to an adequate standard of living: and, again, a request for advice from the Minister.

Discrimination in the Bill

68. The Committee's reference to the non-discriminatory provisions of the Article 9 appears to relate to the provisions that limit the amount payable and the ages at which the reduced amount is to be paid and the exclusion of couple families from even those limited benefits. The request for advice from the Minister covered both aspects.
69. The Bill considered by the Committee (and now enshrined in legislation) discriminated against couple families and the children of couple families as a result of their exclusion from the provision of benefits that apply to sole parents and grandparents. There was a reference to the differential treatment of the couple parent families and sole parent families in the Minister's second reading speech when introducing the original Bill. The basis on which sole parents are provided with a benefit not provided to couple parents is in this passage in the second reading speech: "...we also recognise that sometimes it is difficult for single parents to transition to work, even when their youngest children are into secondary school, and this is why we are applying different payment assistance for these categories once the relevant children turns 13, providing them with some additional appropriate assistance while they prepare to re-enter the workforce."
70. This cannot be a proper basis for the discrimination against couple parent families. The Committee provided the Minister with an opportunity to respond to explain and

elaborate these matters, but there was no response to our knowledge. Any attempt to justify the differential treatment of parents and their children should be by reference to living standards and measures by which relative living standards can be assessed in the case of sole parent and couple parent families. We expect that an objective assessment of the living standards of low income couple parent and sole parent families will demonstrate that, by reference to similar measures of community living standards, both kinds of families are not provided with an adequate standard of living at present and that both will be substantially worse off if the legislation is enacted.

71. The Statements of Compatibility with Human Rights attached to the current Explanatory Memorandum do not address these kinds of concerns.

Convention on the Rights of the Child

72. ACCER also relies on several provisions in the *Convention on the Rights of the Child* (Convention) in regard to the discrimination in the Bill against parents with older children and the children themselves. These matters are also relevant to ACCER's view that the *Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Act 2015* is in breach of human rights because of its discrimination against couple parents and their children.

73. Under Article 1 of the Convention "a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier". The children intended to be excluded from the benefits of FTB B, which enable a parent to provide care to the children, are excluded by reason of their age.

74. Article 2 protects a child against discrimination on the basis the status of his or her parents.

"1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members."

75. Article 26 gives a right to every child to the right to benefit from social security. Australia is obliged to into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child. To deny the child a benefit generally available other children is, *prima facie*, contrary to Article 26. There

may be a justification for differential treatment according to age, but the relevant grounds would need to be demonstrated. Article 26 provides:

"1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child."

76. Article 27 recognises the right of a child an adequate standard of living, the responsibilities of parents and the obligation on States Parties to take appropriate measures to assist parents and others responsible for the child to implement the right to an adequate standard of living. The adoption of an arbitrary age, which excludes children from the supports conducive to the attainment of this outcome is inconsistent with the Convention. Article 27 includes:

"1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing."

77. ACCER submits that the terms of the Covenant and the Convention make it clear that the changes proposed by the Bill to limit eligibility to FTB B and to remove the FTB A and FTB B supplements are inconsistent with Australia's obligations under those instruments.

Attachment

Table 1

Poverty lines for workers and families

January 2001 – January 2015

(\$ per week)

	Median equivalised disposable household income	Poverty Line Single	Poverty Line Couple and 2 children	Poverty Line Sole parent and 2 children
January 2001	413.59	248.15	521.16	397.04
January 2002	436.58	261.95	550.09	419.12
January 2003	435.48	261.29	548.70	418.06
January 2004	499.98	299.99	629.97	479.98
January 2005	544.20	326.52	685.69	522.43
January 2006	568.43	341.06	716.22	545.69
January 2007	620.43	372.26	781.74	595.61
January 2008	687.42	412.45	866.15	659.92
January 2009	716.28	429.77	902.51	687.63
January 2010	714.27	428.56	899.98	685.70
January 2011	756.09	453.65	952.67	725.85
January 2012	790.16	474.10	995.60	758.55
January 2013	809.30	485.58	1,019.72	776.93
January 2014	844.00	506.40	1,063.44	810.24
January 2015	855.92	513.55	1,078.46	821.68

Table 2
Wages, taxes and family payments for NMW-dependent workers and families
January 2001 – January 2015
(\$ per week)

Year	NMW Per week	NMW Per year	NMW Net, per week	Medicare exemption	FTB A	FTB B	FTB A Supp.	FTB B Supp.	Rental assist. max.	Disposable income
2001	400.40	20,893	346.38	6.00	116.20	34.79	-	-	50.43	553.80
2002	413.40	21,571	354.76	6.20	122.92	36.82	-	-	52.46	573.16
2003	431.40	22,510	366.37	6.47	126.70	37.94	-	-	53.93	591.41
2004	448.40	23,397	377.93	6.73	130.48	39.06	-	-	55.40	609.60
2005	467.40	24,389	396.78	7.01	133.56	39.97	23.50	2.87	56.80	660.49
2006	484.40	25,276	412.84	7.27	139.06	41.02	24.06	5.88	58.27	688.40
2007	511.86	26,709	449.93	7.68	140.84	42.14	24.76	6.02	60.58	731.95
2008	522.12	27,244	467.59	7.83	147.46	43.54	25.60	6.23	61.84	760.09
2009	543.78	28,374	494.29	8.16	151.34	44.87	26.20	6.44	64.63	795.93
2010	543.78	28,374	497.17	8.16	156.94	46.55	27.28	6.65	65.61	808.36
2011	569.90	29,737	521.86	8.55	160.30	47.53	27.84	6.79	67.57	840.44
2012	589.30	30,750	537.49	8.84	164.64	48.79	27.84	6.79	70.02	864.41
2013	606.40	31,642	556.87	9.10	193.25	50.53	27.84	6.79	71.16	915.54
2014	622.20	32,466	569.44	9.33	199.74	52.26	27.84	6.79	72.84	938.24
2015	640.90	33,442	581.11	12.82	204.51	53.66	27.84	6.79	74.97	961.70

Table 3
Wages, taxes and family payments for C12-dependent workers and families
January 2001 – January 2015
(\$ per week)

Year	C12	C12 per	C12 net	Medicare exemptio	FTB A	FTB B	FTB A Supp.	FTB B Supp.	Renta 1 assist	Disposable income
2001	439.60	22,938	370.50	6.59	116.20	34.79	-	-	50.43	578.51
2002	452.60	23,617	380.05	6.79	122.92	36.82	-	-	52.46	599.04
2003	470.60	24,556	391.74	7.06	126.70	37.94	-	-	53.93	617.37
2004	487.60	25,443	408.93	7.31	130.48	39.06	-	-	55.40	641.18
2005	506.60	26,434	421.18	7.60	133.56	39.97	23.50	2.87	56.80	685.48
2006	523.60	27,321	438.14	7.85	139.06	41.02	24.06	5.88	58.27	714.28
2007	551.00	28,751	475.17	8.26	140.84	42.14	24.76	6.02	60.58	757.77
2008	561.26	29,287	500.28	8.42	147.46	43.54	25.60	6.23	61.84	793.37
2009	582.92	30,417	526.67	8.74	151.34	44.87	26.20	6.44	64.63	828.89
2010	582.92	30,417	529.54	8.74	156.94	46.55	27.28	6.65	65.61	841.31
2011	609.00	31,778	553.15	9.14	160.30	47.53	27.84	6.79	67.57	872.32
2012	629.70	32,857	569.59	9.45	164.64	48.79	27.84	6.79	70.02	897.12
2013	648.00	33,813	589.96	9.72	193.25	50.53	27.84	6.79	71.16	949.25
2014	664.80	34,689	603.31	9.97	199.74	52.56	27.84	6.79	72.84	972.75
2015	684.70	35,727	615.71	13.69	204.51	53.66	27.84	6.79	74.97	997.17

Table 4
Wages, taxes and family payments for C10-dependent workers and families
January 2001 – January 2015
(\$ per week)

Year	C10	C10 per	C10 net	Medicare exemption	FTB A	FTB B	FTB A Supp.	FTB B Supp.	Rental assist. max	Disposable income
2001	492.20	25,683	406.53	7.38	116.20	34.79	-	-	50.43	615.33
2002	507.20	26,466	416.81	7.61	122.92	36.82	-	-	52.46	636.62
2003	525.20	27,405	429.14	7.88	126.70	37.94	-	-	53.93	655.59
2004	542.20	28,292	444.77	8.13	130.48	39.06	-	-	55.40	677.84
2005	561.20	29,283	457.78	8.42	133.56	39.97	23.50	2.87	56.80	722.90
2006	578.20	30,170	475.40	8.67	139.06	41.02	24.06	5.88	58.27	752.36
2007	605.56	31,598	510.94	9.08	140.84	42.14	24.76	6.02	60.58	794.36
2008	615.82	32,133	538.06	9.24	147.46	43.54	25.60	6.23	61.84	831.97
2009	637.48	33,263	570.03	9.56	151.34	44.87	26.20	6.44	64.63	873.07
2010	637.48	33,263	572.90	9.56	156.94	46.55	27.28	6.65	65.61	885.49
2011	663.60	34,627	596.56	9.95	160.30	47.53	27.84	6.79	67.57	916.54
2012	686.20	35,806	614.52	10.29	164.64	48.79	27.84	6.79	70.02	942.89
2013	706.10	36,844	636.14	10.59	193.25	50.53	27.84	6.79	71.16	996.30
2014	724.50	37,804	648.47	10.87	199.74	52.56	27.84	6.79	72.84	1018.81
2015	746.20	38,936	658.72	14.92	204.51	53.66	27.84	6.79	74.97	1041.41

The figures in Tables 2, 3 and 4 are at January of each year. Family Tax Benefits are taken from Table 19. Rent assistance, is calculated on the basis of 52.18 weeks per year. The “net” amount includes the Medicare levy. The family exemption from the Medicare levy is treated as a family transfer.