

Advisory report

Scope of the Bill

- 1.1 The Social Security and Other Legislation Amendment (Further 2012 Budget and Other Measures) Bill 2012 (hereafter referred to as the Bill) was introduced to the House on 12 September 2012.
- 1.2 This compendium Bill introduces a number of amendments relating to support measures for Indigenous communities, financial assistance given to families and family support arrangements. Many of the amendments are a clarification of 2012 budget policies. Others aim to clarify policies through technical amendments and improve the operation of existing legislation.
- 1.3 The Bill contains 6 schedules addressing the following matters:
 - Schedule 1 – Extending Cape York welfare reform trial
 - Schedule 2 – Indigenous education payments
 - Schedule 3 – Social Security Appeals Tribunal
 - Schedule 4 – Amendments relating to certain child support declarations
 - Schedule 5 – Schoolkids bonus
 - Schedule 6 – Other Family Assistance tax amendments

Referral

- 1.4 The Selection Committee report no. 65 of Thursday 13 September referred the Bill to the Standing Committee on Social Policy and Legal Affairs for inquiry and advisory report.

- 1.5 The Selection Committee provided the following reasons for referral / principal issues for consideration:

Examination of drafting changes regarding schoolkids bonus, child support legislation and the Social Security Appeals Tribunal.¹

Conduct of the inquiry

- 1.6 In line with the reasons given for referral, the Committee has contained its consideration of the Bill to Schedules 3, 4, 5 and 6 which address the Social Security Appeals Tribunal, child support legislation, schoolkids bonus, and Family Assistance respectively.
- 1.7 Further, given the Selection Committee reason for referral, the Committee has examined the drafting of these changes and their consistency with the objectives and policy intent of the legislation.
- 1.8 Given this narrow focus of the inquiry, the Committee determined not to issue a call for submissions or to conduct a public hearing. The Committee has examined the proposed amendments and provides this advisory report for the Parliament to aid in its deliberation of the Bill.

Schedule 3—Social Security Appeals Tribunal

- 1.9 The Bill amends the following acts:
- *A New Tax System (Family Assistance) (Administration) Act 1999, Child Support (Registration and Collection) Act 1988, Paid Parental Leave Act 2010 and Social Security (Administration) Act 1999* to:
 - ⇒ enable a Social Security Appeals Tribunal (SSAT) member to release protected information in certain circumstances;
 - ⇒ enable an SSAT member to issue a non-disclosure order during a review;
 - ⇒ extend confidentiality obligations to everyone providing services at a review hearing;
 - ⇒ allow the SSAT Principal Member to reconstitute the SSAT;
 - ⇒ clarify that the SSAT Principal Member perform functions and powers enabling certain standards for the review process; and

¹ Selection Committee report no.65 available at <<http://www.aph.gov.au/committees>> viewed 13 September 2012.

⇒ make technical amendments;

1.10 The Summary of this Schedule states that it:

introduces a package of minor amendments to improve the operation of the Social Security Appeals Tribunal (SSAT) in the social security, child support, family assistance and paid parental leave jurisdictions. For example, some amendments will enable SSAT members to release protected information to relevant authorities in certain circumstances where there is a risk to the life, health or welfare of a person. Other amendments address current gaps in privacy protection for information and documents.²

1.11 The following sections outline the effects of amendments in the three key areas: release of protected information in controlled circumstances, strengthening privacy protections, and harmonising review mechanisms through the SSAT.

Release of protected information

1.12 Amendments are proposed relating to the release of protected information where there is risk to the life, health or welfare of a person or child. Currently, SSAT are prevented from releasing protected information to authorities such as law enforcement officers or child welfare authorities, even where there is known to be risk to life.

1.13 Privacy and the security of personal information is deemed of high importance, as is the protection of life and welfare particular where children may be involved.

1.14 These amendments permit the disclosure of information which would otherwise be classed as protected to regulated authorities in circumstances where there is assessed to be risk to the life, health or welfare of a person. This would bring the SSAT permitted actions in line with the National Framework for Protecting Australia's Children.

1.15 The Committee is satisfied with the safeguards and restrictions established around the release of information in these risk situations.

Privacy protections

1.16 Alongside permitting the release of protected information in situations where there is threat to life, health or welfare, the Bill proposes strengthening privacy protections for information and documents.

1.17 Currently there are gaps in the privacy protections afforded as directions by the Principal Member of the SSAT to not disclose information or

2 Explanatory Memorandum, p.5.

- 1.18 Amendments would extend the capacity for directions to not disclose information or documents to any stage of the review and would also extend confidentiality obligations to those providing services during the hearing of the review.
- 1.19 These are important additions to current protections and address gaps that exist in regard to protecting the personal information of those accessing the SSAT. The Committee supports the strengthening of privacy protections through the expansion of confidentiality obligations and the extended scope to issue non-disclosure orders.

Review mechanisms

- 1.20 The Bill contains a number of amendments in relation to the review operations of the SSAT. Several of these amendments relate to consistency in language and definitions.
- 1.21 The amendments of consequence address the following:
- Grounds for the dismissal or reinstatement of a request for review
 - Determining who may make submission on a party's behalf, and
 - The participation in the review of parties responsible for a child.
- 1.22 The changes to the grounds for dismissal or reinstatement of a request for review are intended to harmonise the review provisions of the SSAT and assist the operation of the Tribunal to achieve its objectives.
- 1.23 The intent of other amendments is to ensure all parties involved are informed of pertinent decisions, thereby increasing the equity and communications processes of the SSAT.
- 1.24 Further amendments provide the SSAT Principal Member with the capacity to exercise discretion when determining whether a submission may be made by one party on behalf of another. In arriving at this decision, the privacy of parties concerned must be considered which strengthens privacy protections for those involved and the privacy regime of the SSAT.
- 1.25 The amendments are seen as strengthening privacy protections for parties engaging with the SSAT and ensuring the operation of the SSAT to deliver fair outcomes in line with its statutory objective.
- 1.26 The Committee did not identify issues with the drafting of these amendments.

Schedule 4—Amendments relating to child support declarations

- 1.27 The Bill amends the following acts:
- *Child Support (Assessment) Act 1989* and *Child Support (Registration and Collection) Act 1988* to clarify arrangements when the amount of child support payable under a child support assessment is reduced in certain circumstances.
- 1.28 The Summary of this Schedule states that
- In this Schedule, amendments are made to the child support legislation to confirm the longstanding policy and administration in cases where the amount of child support payable under a child support assessment is reduced because:
- a court decides that the payer is not a parent of one of the children in the assessment; but
 - the payer remains liable for at least one other child in the assessment.³
- 1.29 The amendments in the Bill relate to cases where paternity is challenged and it is found that a father has paid child support for a child which is now determined to be not his biological child. In these instances the policy and administrative redress has been for the total amount of child support paid to be applied to any remaining children for which the father is liable for child support or has a child support debt. If excess payments have occurred, these may be recovered from the payee by applying for a court order.
- 1.30 In general, this process has enabled determinations to be made which provide financial redress for the child support payer without recourse to court actions. This policy and administration has been carried out through declarations made under section 107 of the *Child Support (Assessment) Act 1989*.
- 1.31 However, the legislative interpretation in the judgement of the Full Court of the Family Court of Australia in *Child Support Registrar v Farley and Anor [2011]* calls into question the authority for this policy and administration. In short, for future cases of this nature it would necessitate the payer taking court action to obtain repayment from the payee of the overpayment for the child he is now deemed not liable for. Following this, the payer would be required to make an additional payment back to the payee for any other children for whom he remained liable.

3 Explanatory Memorandum, p. 51.

- 1.32 The end balance of the financial payment or repayment between the two parties would remain unchanged from the existing arrangements, however the recent judgement would introduce a complex administrative process to arrive at this outcome.
- 1.33 The amendments proposed give effect to the current policy and administration approach, and enable the Registrar to take into account all amounts of child support paid or owed in amending the assessment. This provides a more streamlined and sensible administrative approach.
- 1.34 The Committee did not identify issues with the drafting of these amendments.

Schedules 5 and 6—Schoolkids bonus and Family Assistance

- 1.35 The Bill amends the following acts: *A New Tax System (Family Assistance) Act 1999*, *A New Tax System (Family Assistance) (Administration) Act 1999* and *Social Security Act 1991* to make technical amendments.
- 1.36 The Summary of Schedule 5 states that it ‘makes clarifying and technical amendments to the schoolkids bonus legislation, consistent with the intended policy.’⁴ The Summary of Schedule 6 states that it:
makes minor clarifications to portfolio legislation, such as the family assistance clean energy legislation – including to the rules for rounding of payment rates.⁵
- 1.37 The amendments relating to payments of the schoolkids bonus are intended to clarify existing eligibility and payment method. The amendments do not represent a change to policy but ensure that, for those eligible, the payments are delivered automatically at identified times during the year when education expenses are likely to be incurred.
- 1.38 Other minor and technical amendments are made in Schedule 6 to family assistance and social security legislation. Some of these amendments relate to the Government’s Clean Energy Future Plan and the payment of assistance measure to eligible families.
- 1.39 These amendments clarify provisions and do not represent any change in intended policy.
- 1.40 The Committee did not identify issues with the drafting of these amendments.

4 Explanatory memorandum, p. 55.

5 Explanatory Memorandum, p. 55.

Committee comment

- 1.41 The Committee has considered the amendments in this Bill with regard to the Selection Committee referral to examine drafting changes. The Committee has not considered the policy of these amendments, as the amendments do not represent a change in existing or introduced policy of the Government.
- 1.42 Predominantly the amendments represent clarification of provisions, or technical changes required to give effect to payment assistance. In relation to the child support changes, these amendments affirm existing policy and administrative arrangements.
- 1.43 The amendments in regard to the SSAT are more of more substance and do represent some operational changes. However these changes are for the benefit of those utilising the SSAT by enhancing appeals provisions, strengthening privacy protection and information security, and introducing measures aimed to protect life or welfare in circumstances when there is risk.
- 1.44 The Committee has not identified issues with the amendments presented in Schedules 4, 5 or 6 the Bill. The Committee recommends that the House pass the Bill.

Recommendation 1

- 1.45 **The Committee recommends that the House of Representatives pass the Social Security and Other Legislation Amendment (Further 2012 Budget and Other Measures) Bill 2012.**

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Chair