APPENDIX 1

Comments by National Welfare Rights Network

12 June 2009

Committee Secretary
Senate Standing Committee on Community Affairs
Department of Senate
PO Box 6100
Parliament House
Canberra ACT 2600

re: Family Assistance Amendment (Further 2008 Budget Measures) Bill 2009

The National Welfare Rights Network Inc (NWRN) welcomes the opportunity to provide comment to the inquiry into the Family Assistance Amendment (Further 2008 Budget Measures) Bill 2009. Having said this however, we wish to place on record our disappointment at the very short time made available to prepare a submission on this very technical and complex piece of legislation.

The limited time available has not permitted NWRN to undertake an examination of the provisions contained in Schedule 3 of the Bill. Given the short time frame for this inquiry our comments are necessarily brief and are limited to Schedules 1 and 2 of the Bill.

Schedule 1: Continuous adjustment of rate of family tax benefit by instalment

This Schedule proposes to insert a new section 31E into Subdivision C of Division 1 of Part 3 of the Family Assistance Administration Act to apply in the case of ongoing family tax payment instalment payments. The effect of the provision is to make the current voluntary option of continuous adjustment mandatory. The section will require the Secretary upon the revision of an income or maintenance estimate to firstly determine whether a Family Tax Benefit (FTB) recipient has a notional overpayment for an earlier period of the income year because of the revised estimate and if so, to then reduce the ongoing rate of FTB to cover the notional overpayment. This will be worked out in accordance with the method statement set out in the proposed subsection 31E (2). In the event of a notional overpayment, the method statement will produce a daily overpayment rate by which the Secretary must reduce the recipient's daily rate of Family Tax Benefit for the remainder of the income year, unless a new application of section 31E occurs due to a subsequent revised estimate. As a consequence, the application of the method statement can result in the daily rate of Family Tax Benefit being reduced to nil but explicitly prevents the daily rate being reduced below nil.

Whilst NWRN has long championed for a greater focus on debt prevention in both the design of policy and administration of the Social Security and Family Assistance systems, we are concerned that the introduction of mandated continuous adjustment will create an undesirable level of rigidity into the program making it less responsive to the diverse needs of families that it is designed to assist. The proposed change will reduce the choice and flexibility that families currently have to manage income variations in the income year and make payment arrangements which best suit their family circumstances through the 'More Choice for Families' and voluntary continuous adjustment option. For this reason, NWRN believes that consideration ought to be given to providing Centrelink with a discretionary power not to apply the continuous adjustment measure when satisfied that there is a more appropriate means available to manage the notional overpayment.

NWRN accepts that continuous adjustment is a sensible and practical debt prevention option. However its current value lies in it being part of a suite of options that Centrelink has in its toolbox to assist families to manage the implications flowing from income variations throughout the income year. This was also recognised by the Australian National Audit Office (ANAO) in its 2006/07 Audit Report on the Management of Family Tax Benefit Overpayments. The Minister in her second reading speech states that approximately three quarters of all families already utilise the continuous adjustment option on a voluntary basis yet no analysis is offered in relation to other families who elect not to use the option. The Minister promotes the change on the basis that it 'will assist in reducing the risk of the clamant having an overpayment on reconciliation and limiting the possibility of a debt' without taking any account of the impact of reduced fortnightly instalments which is a likely explanation of why some families elect not to take up this option.

Whilst reducing debts is a worthwhile objective it is not the primary objective of the Family Tax Benefit system which is to help people on low to middle incomes to meet the costs of raising dependent children. For this reason, it must be balanced against the impact on families receiving less than their legislated rate for the remainder of the income year. This is particularly important when the continuous adjustment results in a significant reduction in the fortnightly rate, reduces the fortnightly rate to below the base rate or produces a zero entitlement for the remainder of the income year. The risk of a mandated system of continuous adjustment is that its immediate impact may place families under greater financial strain denying them any advantages that might be associated with spreading the notional debt over a longer period of time through being able to negotiate a lower debt withholding rate on reconciliation or utilising the end of year supplement payment to offset the reconciliation debt. For some families, receiving a higher fortnightly entitlement for the remainder of the financial year in lieu of the lump sum end of year supplement may be what is required to meet their family's fortnightly expenditure during the year. Also, continuous adjustment may not be the best option for families whose remaining entitlement may be insufficient for the year to fully recover the overpayment already accumulated because the increase in estimate annual income was quite high or it occurred late in the income

year. It might be better managed, through, for example, the setting off of the debt against an anticipated income tax refund.

Families should not be placed in further financial hardship through curtailing the flexible options available to manage the disadvantages inherent in the fundamental design of the system which makes overpayments inevitable given that the rate of fortnightly instalments can only be calculated on the basis of a forecast or estimate. Given that it is not possible to envisage all the circumstances where a mandatory continuous adjustment might not be in the best interests of the family, we believe that a degree of flexibility should be retained through conferring Centrelink with general discretion not to apply the provision when the circumstances warrant it.

NWRN recommends that the Bill be amended to give Centrelink a general discretion not to apply the continuous adjustment measure when having regard to the recipient's individual family circumstances, there is a more appropriate means available to manage the notional overpayment.

Schedule 2 – Non payment of family tax benefit for non lodgment of tax returns

Whilst NWRN recognises the need to provide some incentive for families to lodge their tax returns within a reasonable period (so that the FTB reconciliation process can be finalised), we are opposed to the current proposed legislative provisions on the basis that it is a retrograde measure, is unfair by comparison with other tax provisions and is unjustifiably punitive in nature. For example while a person who lodges a tax return after the deadline may be subject to penalties, any entitlement to a refund is not affected. Further the Australian Taxation Office may grant a deferral beyond the period permitted by the Family Assistance legislation.

The proposed change carries an unacceptably high level of risk that innocent children will be punished through the denial of fortnightly statutory entitlements because families are unable to comply with the prescribed time frames due to reasons beyond their control, lack of resources or incapacity. This has the very real potential to undermine the statutory objectives behind the Family Assistance legislation by increasing financial hardship and child poverty.

Under the proposed legislative framework, a person subject to a variation under the current non lodger debt provisions because they have not lodged an income tax return within 12 months of the end of the relevant tax year will be prohibited from receiving fortnightly instalment payments following the grace period. The grace period is generally defined as a period of 75 days but may be as little as 14 days in the case of another prohibited period. The effect of these provisions is that a person can be prohibited from receiving ongoing fortnightly FTB instalments from as little as 15 months after the end of the relevant financial year even in circumstances where a person is in the process of preparing or lodging ATO returns or the failure is outside of the person's control because of the refusal of their partner to lodge their return.

Whilst the provision does confer the Secretary with discretion to extend the grace period, the special circumstances test is too tough especially when compared to the taxation provisions.

The ATO Receivables Policy – Chapter 51 Lodgment of Documents notes:

INTRODUCTION
2. Taxpayers are required to lodge correct documents by the due date.
3. At times, taxpayers may experience circumstances that prevent them from lodging by the due date. Legislation allows the Commissioner to defer the time for lodgment of an approved form and other prescribed forms.
4. Where taxpayers fail to meet their lodgment obligations, the Tax Office will differentiate its treatment of taxpayers according to their individual circumstances and the reasons for their non compliance.
5. The policy seeks to make it as simple as possible for taxpayers to meet their obligations under the law, to lodge documents on time and to ensure the integrity of the tax system.

The key policy is contained at Chapter 55. At the very least, NWRN is of the view that the Bill would need to ensure that it is consistent with deferral (for example under 38-55 of the Taxation Administration Act 1953) and suspension options to the Commissioner under this policy.

The Deferrals legislation is supported by a non-exhaustive list of factors at Chapter 55:

Exceptional and unforeseen circumstances

25. A deferral will usually be granted in exceptional or unforeseen circumstances where the taxpayer can demonstrate that the inability to lodge by the due date can be reasonably attributed to those circumstances. Such circumstances may include:
natural disasters (flood, fire, drought, cyclones, earthquake and similar events) or other disasters that may have, or have had, a significant impact on a taxpayer or region or particular industry or grouping of taxpayers
the serious illness of the taxpayer
impeded access to records (for examples, records seized during a police search or retained as evidence in a court matter), or
the advanced age or the youth of a taxpayer, the serious illness of a family member or a problem due to language difficulties.

26. Each request will be considered on its merits and the deferred due date will be determined having regard to the particular circumstances of the taxpayer and those that led to the inability to lodge by the due date. The fact that a taxpayer may have a poor lodgment compliance history should not prevent consideration of a request for a deferral of time to lodge, where the inability to lodge was caused by circumstances beyond their control.

28. Deferrals may be granted to a class of taxpayers affected by a common event, for example, bushfire or delayed legislation. Where the Tax Office can reasonably assume that a common event has sufficiently impacted on all of a defined population, a deferral may be granted without individual applications by the taxpayers. For example, where industrial instruments prevent employees of schools and associated bodies from working over the Christmas holiday shutdown period, deferrals may be granted to all entities affected in this way.

We note that this includes:

- Natural disasters
- Illness
- Access to records
- Age
- Language difficulties

Although opposed to this measure, NWRN believes that it could be improved through broadening the grounds on which the grace period can be extended to include the factors set out above. In addition, the circumstances should be extended to provide not only for the victims of domestic violence who are unable to comply because of the unwillingness of a partner to lodge and their inability to resolve matters for fear of retribution by way of further physical or psychological abuse but also to where the inability to lodge was caused by circumstances beyond the immediate control of the FTB recipient. The intention here would be to cover situations where notwithstanding the best endeavours of the FTB recipient, their current partner has simply refused to comply. Again, because it is not possible to predict all the circumstances that might need the protection of this provision, Centrelink should also be given the power to grant an extension 'for any other special or compelling reason'.

Further given the harsh financial consequences that will flow as a consequence of not lodging the ATO returns within the stipulated time frames, NWRN is concerned that the Bill does not provide adequate safeguards so that payment cancellation only occurs once Centrelink has exhausted all reasonable strategies to facilitate compliance and then only as a last resort. We would urge amendments to the Bill which address the following flaws in the framework:

The absence of a statutory requirement for a notice which clearly articulates the steps to be taken, a timeframe for taking these steps and the consequences of non compliance before the Schedule 2 provisions are activated.

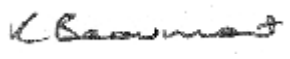
The absence of provisions whereby FTB recipients can be exempted from the Schedule 2 process in the event that reasonable action is being taken to prepare and/or lodge the tax returns, the tax returns can not be lodged due to circumstances beyond the person's control or where a person has been granted an ATO deferral.

The absence of a provision to preserve a person's entitlement to the Family Tax Benefits which would have been received but for the cancellation in the event that the tax returns are lodged after the 2 year limitation period.

NWRN recommends in the event that Schedule 2 is allowed to stand, that it be amended to provide adequate safeguards to address the identified flaws in the provisions and further that the grounds for the extension of the grace period are broadened to take account of the concerns that we have highlighted above.

Should you require any further information regarding this submission, please do not hesitate to contact Ms Genevieve Bolton, our National Liaison Officer on (02) 6257 2931.

Yours faithfully



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