

APPENDIX 2

Department of Families, Housing, Community Services and Indigenous Affairs response to issues raised by National Welfare Rights Network (NWRN)

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

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.

The amendments in Schedule 1 do not provide for discretion as it is considered appropriate for the method of adjusting a person's ongoing rate to be applied in a consistent and fair manner. The method applied is considered to be fair as it compares the amount that a person has already received in the earlier part of the financial year based on the previous estimate, with the amount that would have been paid in that period based on the higher revised estimate. Adjusting the person's ongoing rate for the remainder of the financial year to recoup the amount of the notional overpayment already received in that financial year is considered reasonable as the adjustment is effectively 'smoothing out' the person's remaining entitlement for the financial year. The adjustment will act as a timely and fair mechanism to reduce the incidence of debts at reconciliation.

The provision of discretion to not apply the adjustment would add complexity, would weaken the effectiveness of the measure for reducing the incidence of debts, and would be less equitable as it would provide different outcomes for families who revise their estimate and have the same remaining entitlement for the financial year.

The adjustment method is flexible as it allows for a subsequent recalculation of the ongoing adjustment if a person provides a further revised estimate that is lower than the first revised estimate. This reflects the continuous nature of the adjustment, and takes into account that a person's circumstances may continue to change, or that the person may have new information leading to a further estimate. Centrelink will reassess the person's rate based on a revised estimate of income if Centrelink considers the revised estimate to be reasonable.

A person who is prompt in notifying Centrelink of a change in circumstances that results in an increased estimate of income will minimise the amount of the ongoing adjustment. This is because prompt notification will reduce the amount of the notional overpayment and will increase the length of the remaining period to recoup the notional overpayment. An adjustment may be higher than it would otherwise have

been if the person delays notifying Centrelink. It is not considered appropriate to allow for a different approach in such circumstances.

If the adjustment is significant because the increase in the estimate is quite high, this also means the person's financial ability has significantly improved. It is not considered appropriate to allow for a different approach in such circumstances.

It is considered inappropriate to continue to allow people to receive ongoing payments that would allow the amount paid during the financial year to exceed the amount payable based on the revised estimate. This measure is designed to prevent that outcome. Allowing alternative mechanisms to manage the overpayment would undermine the intent of the measure.

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

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 NWRN have highlighted.

We consider that the concerns raised by NWRN may to an extent reflect a misunderstanding of the way in which the provisions will operate.

When Centrelink decides that a person is not entitled to Family Tax Benefit (FTB) for a previous financial year due to the non-lodgment of relevant tax returns for that year (a non-lodger decision), the provisions provide for a grace period after that decision before a prohibited period would start. In general, the grace period will be 75 days. In practice, as Centrelink makes non-lodger decisions in November each year, this would result in a prohibited period starting in mid-January of the next year if relevant tax returns had still not been lodged by that time. This means a person will have more than 18 months to lodge an outstanding tax return before a prohibited period starts.

The provisions allow for the minimum grace period of 75 days to be extended in special circumstances. The provisions also allow for a prohibited period that has already begun to be ended in special circumstances. Further, where a prohibited period is ended in special circumstances, a new grace period will be set which will be a minimum period of 14 days, or such longer period as justified by the special circumstances.

While 'special circumstances' is not defined, it is a concept that is well understood due to its use in various provisions in family assistance and social security law and decisions by courts and tribunals on its meaning. In *Re Beadle and Director-General of Social Security* (1984), the Administrative Appeals Tribunal (Toohey J presiding) said:

An expression such as "special circumstances" is by its very nature incapable of precise or exhaustive definition. The qualifying adjective looks to circumstances that are unusual, uncommon or exceptional. Whether circumstances answer any of these descriptions must depend upon

the context in which they occur. For it is the context which allows one to say that the circumstances in one case are markedly different from the usual run of cases. This is not to say that the circumstances must be unique but they must have a particular quality of unusualness that permits them to be described as special.

As a matter of policy, in all cases where the Australian Taxation Office (ATO) decides to grant a person an extended time period to lodge a tax return or decides to suspend enforcement action against an outstanding tax return, Centrelink will also extend the grace period or suspend the prohibited period to correspond with the ATO decision. Also, independently of any ATO decision about the lodgment of an outstanding tax return, Centrelink will be able to apply the discretion in other special circumstances. This includes situations involving domestic violence, severe illness or severe financial hardship. This policy for special circumstances will be reflected in policy guidelines.

NWRN has proposed that the discretion to extend the grace period or suspend a prohibited period should be broadened to cover situations where it is the current partner of the FTB recipient who has not lodged the relevant tax return and the partner is simply refusing to comply with the requirement to lodge the outstanding tax return.

If the prohibition measure was to exclude an outstanding tax return of the current partner of an FTB recipient, it would undermine the effectiveness of the measure. This is because the application of the measure could easily be avoided simply by the couple agreeing to swap who receives FTB for the family. The inclusion of an outstanding tax return of the current partner also recognises that payment of FTB based on an estimate is affected by the combined income of a couple.

While a prohibition applies, this will not prevent payment of FTB as a lump sum at reconciliation for a particular financial year, as this payment would be based on actual income for that financial year. The measure limits only the method by which payment can be made. That is, the measure prevents the method of payment based on an estimate.

The measure does not affect the existing provision which precludes the payment of a top-up and the end of year FTB supplements if a person fails to lodge a required tax return within two years after the end of the relevant financial year. However, the measure will help people to avoid missing out on a top-up and the supplements by providing a further incentive for relevant tax returns to be lodged before the existing two year limit lapses.

Centrelink will write to people in advance to advise them that the method of payment based on an estimate will cease at the end of the grace period if they have not lodged relevant tax returns by that time. For existing cases that will be potentially affected by the measure from mid January 2010, Centrelink will write in August 2009 to advise them about the measure. For new cases, this information will be provided each year in November at the same time that a person is advised about a non lodger decision.

