Chapter 1

Introduction

Background

1.1 On 18 June 2008, the Senate referred the provisions of the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2008 (the bill) to the Senate Finance and Public Administration Standing Committee (the committee) for inquiry and report by 24 June 2008.

Purpose of the bill

1.2 The bill seeks to implement various measures contained on the 2008–09 Budget, including changes to the:

- payment of Family Tax Benefit Part B;
- payment of the 'baby bonus';
- compliance arrangements of the Commonwealth Seniors Health Card;
- income management regime; and
- eligibility for the partner service pension.

1.3 The bill also proposes a number of legislative changes which do not originate from the 2008–09 Budget. Of particular note are amendments which clarify arrangements previously legislated in relation to the assessment of adjusted taxable income for Fringe Benefits Tax (FBT) and Child Care Benefit (CCB). These items are found in Schedule 6 of the bill. Each of the changes listed above are outlined later in this report.

Conduct of the inquiry

1.4 The reporting time for the committee's inquiry meant that advertising for submissions was not possible. However, the Secretariat gauged the interest of a range of potential submitters directly by telephone.

1.5 The committee received three written submissions, listed at Appendix 1, and held a public hearing in Canberra on 20 June 2008. A list of the witnesses who appeared at the hearings is in Appendix 2, and copies of the Hansard transcript are available on the committee's Internet page at: www.aph.gov.au/Senate/committee/fapa_ctte/index.htm.

Acknowledgement

1.6 The committee appreciates the time and work of those community service organisations and government departments who provided written and oral submissions to the inquiry, particularly in light of the tight timeframe. Their work has assisted the committee considerably in its inquiry.

Note on references

1.7 References in this report are to individual submissions as received by the committee. References to the committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

Issues[1]

Family Tax Benefit Part B

1.8 Currently, for sole parents, there is no income test for Family Tax Benefit Part B (FTB-B), regardless of income.[2]

1.9 For partnered families, while there is no eligibility limit on the income of the primary earner, the amount payable under the FTB-B income test is based on the income of the lower earner.[3] The rate payable is dependent on the actual income of the lower earner. On an income of up to $4380 the full rate is paid. Payments are reduced by 20 cents for each dollar of income above that amount. In certain circumstances, the lower earner can earn up to $22 302 and still be eligible for some FTB-B.[4]

1.10 The bill will establish a $150 000 limit on primary earner income for FTB-B and related tax offsets, regardless of whether the family is single or partnered. The amendments index this income limit once a year on 1 July to movements in the Consumer Price Index (CPI). The income test for the secondary earner, in the case of a partnered family, is not altered by these proposed changes. The Explanatory Memorandum reports a $112.8 million saving for the 2008–09 financial year, growing to $141.2 million in 2010–11.[5]

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1 In the preparation of this report extensive reference has been made to the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2008, *Bills Digest*, Parliamentary Library, June 2008,

2 Subclause 29(1) of Schedule 1, *A New Tax System (Family Assistance) Act 1999*.

3 Subclause 3(2), Schedule 3, *A New Tax System (Family Assistance) Act 1999*.

4 Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2008, *Bills Digest*, Parliamentary Library, June 2008, pp 3–4.

5 Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2008, *Explanatory Memorandum*, p. iii.

1.11 The government has stated that the income test on FTB-B will ensure that family payments are targeted to families on the basis of need.[6] It estimates the FTB-B income test will affect about 40 000 families.[7]

1.12 These measures are positive insofar as they target to families on the basis of need. The Bills Digest raises an issue of equity, however, between partnered families where one partner earns the bulk of the income and the other partner earns comparatively little. Take for example a case where each partner earns $75 000. Neither partner is eligible for FTB-B. Were the same income to be earned solely by one partner, and the other earn nothing, the full FTB-B payment would be received. This was acknowledged by an official from the Department of Families, Housing, Community Services and Indigenous Affairs (the Department) at the 2008–09 Budget Estimates:

> You could have a family where the primary income earner had $145,000 and the secondary earner had $10,000, a total income of $155,000. They would be in the system, whereas, if the primary earner had $155,000 and the secondary earner had none, they would not be in the system. But the reason for that is that the government did not want the decisions about taking up work by the secondary earner to be changed. They did not want it to result in any change of incentives for the secondary earner.[8]

Baby Bonus

1.13 The bill contains four measures relating to baby bonus. An income test of $150 000 per annum per family will be introduced from 1 January 2009. There will be provision for the baby bonus to be paid by instalment, rather than by lump sum. The indexation date for the baby bonus will be changed to 1 July each year (from twice-yearly) after the legislated increase to $5000 on 1 July 2008, and will be based on CPI. Lastly, eligibility for the baby bonus will be extended to parents who adopt children under the age of 16 and an adoptive parent will be able to access the full amount of baby bonus, even if it has been previously paid for the child.[9]

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6 Australian Government, *2008–09 Budget Paper No. 2 Budget Measures*, Better Targeting and delivery of Family Tax Benefit – $150 000 income test of primary earner for FTB, pp 370–371.

7 The Hon. Jenny Macklin, MP, Minister for Families, Housing, Community Services and Indigenous Affairs, Simpler and Fairer Family Payments, *media release,* Canberra, 13 May 2008, www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/budget08_family_13may08.htm.

8 Mr Mark Warburton, Branch Manager, Family Payments and Policy, FaHCSIA, Senate Community Affairs Committee, *Budget Estimates Hansard*, 3 June 2008, p. 116.

9 Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2008, *Explanatory Memorandum*, p. 6.

1.14 The Explanatory Memorandum presents estimated savings over the forward estimates of $52.4 million in 2008–09 to $104.7 million in 2010–11.[10] Officials submitted at the 2008–09 Budget Estimates hearings that the cost of administration of the baby bonus scheme would increase by $5 million as a result of the changes, but that for every extra dollar of administration cost, the measures would save $14.[11] This is a total net savings of $354.5 million over four years.[12]

Income test

1.15 Currently, the baby bonus does not have an income test. The government announced the introduction of an income test for the baby bonus in the 2008–09 Budget.[13] The proposed income test is to limit the baby bonus to families with an income of $75 000 or less in the *6 month* period *after* the birth or adoption of a child. This will require the claimant to provide an estimate of anticipated taxable family income for the 6 month period. This will not be an unusual process for FTB and CCB claimants, as they currently have to provide a forward estimate of their income for the financial year.

1.16 The allowable time a person may claim the baby bonus will be extended to 52 weeks. This is mainly to allow for families, who erroneously estimated that their income would be in excess of $75 000 in the 6 month period following the child coming into care, to lodge a claim later.

1.17 Claimants will provide to Centrelink an estimate of their taxable income over the six month period, which will be assessed for reasonability against past income, or in some cases, against a tax return. There will, however, be no reconciliation of actual income against the estimate provided by the claimant.[14]

Numbers affected by the income test

1.18 In 2006–07, the baby bonus was paid in respect of 291 876 children.[15] While the Budget Papers do not directly indicate how many families are expected to become

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10 Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2008, *Explanatory Memorandum*, Financial Impact Statement.

11 Mr Mark Warburton, Branch Manager, Family Payments and Policy, FaHCSIA, Senate Community Affairs Committee, *Budget Estimates Hansard*, 3 June 2008, p. 119.

12 Australian Government, *2008–09 Budget Paper No. 2 Budget Measures*, Better targeting and delivery of Baby Bonus, p. 370: www.aph.gov.au/budget/2008-09/content/bp2/html/index.htm.

13 Australian Government, *2008–09 Budget Paper No. 2 - Budget Measures*, Better targeting and delivery of Baby Bonus, Canberra, 13 May 2008, pp. 370: www.aph.gov.au/budget/2008-09/content/bp2/html/index.htm

14 Mr David Hazlehurst, Group Manager, Families, FaHCSIA, *Proof Committee Hansard*, 20 June 2008, p. 44.

15 Department of Families and Community Services and Indigenous Affairs, *2006–07 Annual Report,* Canberra, 2007, p. 169: www.facs.gov.au/annualreport/2007/pdf.htm

ineligible for the baby bonus from 1 January 2009, the committee notes evidence received during Budget Estimates that the Government expected the means test to affect only 16 000 of the 293 000 births forecast for 2008–09.[16] The Budget Papers elsewhere estimate 285 000 children and families to be paid the baby bonus in 2008–09.[17]

1.19 At the committee's public hearing, Catholic Social Services expressed no concerns with the introduction of the baby bonus means test.[18]

Instalments

1.20 Currently, the baby bonus is usually paid as a one-off benefit. The bill would see the baby bonus delivered in 13 fortnightly instalments. Although the instalment option currently exists, it is rarely used except in the case of applicants aged 17 or under in which case the baby bonus is paid automatically in instalments.

1.21 With the baby bonus rate scheduled to increase to $5000 from 1 July 2008, this will then mean 13 payments of $384.62 per fortnight. The level of savings due to new approach could not be specifically identified.[19]

Indexation

1.22 Currently, the baby bonus is indexed twice a year on the basis of the CPI on 20 March and 20 September. The amendments propose to alter this to annual CPI indexation on 1 July.[20] This change will bring the baby bonus indexation into line with the current indexation for most other family assistance payment rates and income test limits, which are indexed once a year on 1 July to annual movements in the CPI. The Department has identified savings of $80 million over 4 years made possible by the indexation changes.[21]

Adopted children

1.23 When the original baby bonus measure was introduced from 1 July 2004, it was only payable in respect of a child who entered care (was born to parents, or went

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16 Senator the Hon. Joseph Ludwig, Minister for Human Services, Finance and Public Administration Committee, *Budget Estimates Hansard*, 29 May 2008, p. 48.

17 Australian Government, *Portfolio Budget Statements 2008–09, Budget related paper No. 1.7,* Families, Housing, Community Services and Indigenous Affairs Portfolio, Canberra, 13 May 2008, p. 88: www.fahcsia.gov.au/internet/

18 *Proof Committee Hansard*, 20 June 2008, p. 15.

19 Mr Mark Warburton, Branch Manager, Family Payments and Policy, FaHCSIA, *Proof Committee Hansard*, 20 June 2008, p. 42.

20 Schedule 2, Part 3.

21 Mr Mark Warburton, Branch Manager, Family Payments and Policy, FaHCSIA, *Proof Committee Hansard*, 20 June 2008, p. 42.

to live with new adoptive parents) within their first 26 weeks of life. This effectively excluded most adopted children because only a minority were adopted before that age. Overseas adoptions were particularly affected. This was altered in 2005 to allow claims up to 2 years of age.[22] The bill proposes to raise the age for which an adopted child can qualify from age 2 to under the age of 16.[23]

1.24 The Budget Papers estimate that about 330 adoptive children and families will be paid the baby bonus in 2008–09, up from 315 in 2006–07.[24] The Department estimated that about 130 of these adoptive families would be accounted for by the extension to the program.[25]

Seniors health card

1.25 At its inception in 1994, the purpose of the Commonwealth Seniors' Health Card (CSHC) was to provide assistance to retired aged persons who were on low income but were not eligible for the age or service pension. When introduced, the income limits for the CSHC were the same as for the age pension, so the vast majority of retired persons issued with a CSHC were those who were low income but couldn't access the pension because they were asset rich but income poor.

1.26 The CSHC primarily provides access to concessional prescription medicines under the Pharmaceutical Benefits Scheme. The CSHC may also provide access to other services which may include bulk-billed medical appointments, reduced cost out-of-hospital medical expenses and additional health, household, transport, education and recreation concessions. These services may be offered by State or Territory and local governments and private providers.

1.27 A CSHC holder may also be entitled to receive a Seniors Concession Allowance of $500 per year, and a Telephone Allowance if the card holder has a telephone connected in Australia in their own or their partner's name.

1.28 From January 1999, the income test for the CSHC was changed to one based on adjusted taxable income, which entailed a substantial change to prior assessment for CSHC which had taken place under the Social Security Act. Adjusted taxable income refers to net taxable income with three elements added back in. These are

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22 Dale Daniels, Family and Community Services Legislation Amendment (Family Assistance and Related Measures) Bill 2005, *Bills Digest No. 182 2004–05*, Parliamentary Library, June 2005: www.aph.gov.au/library/pubs/bd/2004-05/05bd182.htm#Contact.

23 Schedule 2, Part 4.

24 Australian Government, *Portfolio Budget Statements 2008–09, Budget related paper No. 1.7*, Families, Housing, Community Services and Indigenous Affairs Portfolio, Canberra, 13 May 2008, p. 88. www.fahcsia.gov.au/internet/. See also Department of Families and Community Services and Indigenous Affairs, *2006–07 Annual Report,* Canberra, 2007, p. 169. www.facs.gov.au/annualreport/2007/pdf.htm

25 Mr Mark Warburton, Branch Manager, Family Payments and Policy, FaHCSIA, Senate Community Affairs Committee, *Budget Estimates Hansard*, 3 June 2008, p. 117.

foreign income, employer provided fringe benefits and negatively geared property losses. Current income test limits are $50 000 per annum for a single claimant and $80 000 per annum for a partnership.[26]

1.29 The bill provides for the collection of tax file numbers (TFN) as part of a new compliance regime for the CSHC. Amendments would allow a relevant departmental secretary to collect TFNs both from current holders of, and claimants for CSHCs, to ensure eligibility under the income test. A relevant departmental secretary would also be able to cancel holders' cards or not grant cards to claimants in the event that TFNs are not provided within 28 days of a request.

1.30 The provision of a TFN is a common requirement for claimants for an income support or income supplement payment and has been in place since the late 1980s. It provides support for the identity of the claimant and also allows data matching with Australian Tax Office (ATO) records. Data matching allows the comparison of income information provided to claim the CSHC and like information provided to the ATO. The provision of a TFN by CSHC claimants will allow a relevant departmental secretary to obtain information from the ATO about adjusted taxable income.

1.31 The main impetus to require the provision of a TFN by CSHC claimants is to identify those with income from superannuation income stream from a taxed source. Since 1 July 2007, superannuation income from a taxed superannuation fund source for those aged 60 or more has not been taxable income.[27]

1.32 The committee heard that the current system relied on CSHC cardholders advising the Department that they had exceeded the income limit, and that out of a total cardholder population of about 277 000, some 13 000 were expected to lose eligibility for the card in 2008–09 and 14 000 in 2009–10 because of the TFN measure.[28]

Income management regime

1.33 Income Management Regime (IMR) provisions apply differently in different parts of Australia. An individual can become subject to an IMR for one of the following reasons:

- for the protection of the child of that individual;

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26 Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2008, *Bills Digest*, Parliamentary Library, June 2008, p. 17.

27 Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2008, *Bills Digest*, Parliamentary Library, June 2008, p. 15.

28 Ms Diana Lindenmeyer, Section Manager, Concessions and Allowances, FaHCSIA, *Proof Committee Hansard*, 20 June 2008, p. 47. Officials also told the committee that an additional 22 000 people would lose eligibility as a result of the changes to the adjustable taxable income tests.

- the individual's child is deemed to have unsatisfactory school attendance;
- the individual is a resident of a specified area of the NT; or
- the individual is subject to the jurisdiction of the Queensland Family Responsibilities Commission and the Commission requests that the provisions be applied.

1.34 Currently, certain conditions must be met before an individual may be subject to an IMR. This is the case even where an individual wishes to be subject to an IMR. The proposed amendments will allow for a person to volunteer to have their welfare payments provided under the IMR processes.

1.35 The bill provides for a relevant departmental secretary and a person to enter voluntarily into an agreement of up to 12 months under which the person agrees to be subject to the IMR under Part 3B of the *Social Security (Administration) Act 1999* (the voluntary scheme of income management). The bill also includes an amendment relating to payment of the credit balance of a person's income management account upon the death of the person. This is to ensure that the credit balance is paid to an appropriate person within the 12 month period provided for under the Act.

1.36 The amendments allow the welfare payment recipient, who has volunteered to be placed under IMR payment arrangements, to elect to relinquish the IMR arrangements at any time.[29]

Eligibility for partner service pension

1.37 A person can qualify for partner service pension if they are:

- legally married to and living with a veteran, or
- living with a veteran as their partner; and
- the veteran is receiving an age service pension or an invalidity service pension.

1.38 A person is also eligible if they are a member of a couple where their partner is a veteran having rendered qualifying service *and* the person is eligible for an age pension. If the partner does not qualify for an age pension, they must also meet one of the following criteria:

- be at least 50 years of age;
- have a dependent child or children when the claim is made;
- their veteran partner receives the totally and permanently incapacitated (T&PI) disability pension; or

29 Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2008, *Explanatory Memorandum*, p. 21.

- their veteran partner is receiving, or eligible to receive, a Special Rate Disability Pension under the *Military Rehabilitation and Compensation Act 2004*.

1.39 A Partner service pension may be paid to a former partner who is legally married to, but separated from a veteran. Former partners are eligible if the veteran is receiving or is eligible to receive the service pension, and

- the partner is at least 50 years of age; or
- the partner has a dependent child or dependent children.[30]

1.40 Amendments will increase the eligible qualifying age for partner service pension claimants and recipients.[31] Around 400 spouses are expected to be affected in first year after the measure is introduced.[32] Nobody already in receipt of pension will have their entitlement removed as a result of the measure.[33] The amendments presented in Schedule 5 will raise the qualifying age for access to the partner service pension from age 50 to the service pension age. This is age 60 for males or age 58.5 years for females. This change will not apply where the person is a partner of a T&PI disability pensioner or has a dependent child. The estimated cost savings for this initiative are $34.6 million over four years.[34] According to the Department of Veterans' Affairs, no consultations took place prior to the announcement of the measure.[35]

1.41 However, the actual saving will likely be somewhat less as partners who would otherwise qualify for the partner service pension will probably claim Newstart Allowance, which is not drawn from the Veterans' Affairs appropriation.

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30 Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2008, *Bills Digest*, Parliamentary Library, June 2008, pp 15–16.

31 Australian Government, *200–-09 Budget Paper No. 2 Budget Measures*, Partner service pension – align partner and veteran age eligibility, p. 409. www.aph.gov.au/budget/2008-09/content/bp2/html/index.htm

32 Mr Sean Farrelly, National Manager, Compensation and Income Support Policy, Department of Veterans' Affairs, *Proof Committee Hansard*, 20 June 2008, p. 52.

33 Mr Sean Farrelly, Manager, Compensation and Income Support Policy, Department of Veterans' Affairs, *Proof Committee Hansard*, 20 June 2008, p. 52.

34 Australian Government, *200–-09 Budget Paper No. 2 Budget Measures*, Partner service pension – align partner and veteran age eligibility, p. 409. www.aph.gov.au/budget/2008-09/content/bp2/html/index.htm

35 Mr Sean Farrelly, Manager, Compensation and Income Support Policy, Department of Veterans' Affairs, *Proof Committee Hansard*, 20 June 2008, p. 53.

1.42 This reflects a trend over the past decade for dependency-based income support payments to be superseded by arrangements which look to the qualification of the individual in their own right, for income support.[36]

Schedule 6 changes

1.43 The bill seeks to make some minor technical amendments to arrangements previously legislated in relation to the assessment of adjusted taxable income for Fringe Benefits Tax (FBT) and Child Care Benefit (CCB). These measures were originally announced by the former government in the 2006–07 Budget. The *Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006* made changes to the definition of reportable fringe benefits for the income assessment for Family Tax Benefit (FTB), CCB and also for the Child Support Scheme.[37] That legislation sets 1 July 2008 as the commencement date for those provisions, one of which requires that income assessments must refer to gross reportable fringe benefits. That is, the net fringe benefit 'grossed up' by a multiple of either 1.9417 or 2.1292 before they are reported to the Australian Tax Office.[38] The grossing up is designed to factor in the equivalent of the gross amount for fringe benefit provided to the employee, as if they had been paid in wages or salary, rather as in a fringe benefit.

1.44 In some circumstances, for the assessment of income for FTB and CCB, an indexed estimate of the future adjusted taxable income can be made by Centrelink.[39] The amendments provide for estimates for 2008–09 income and onwards to be based on gross amounts of reportable fringe benefits. The estimate would be made according to the grossed up amount with reference to the highest marginal income tax rate plus the Medicare levy (46.5 per cent).[40] That would occur even where the taxpayer's own marginal tax rate is lower, such as for those in the not-for-profit sector (NFP).

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36 For further elaboration, see Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2008, *Bills Digest*, Parliamentary Library, June 2008, p.17.

37 Peter Yeend, Child Support Legislation Amendment (Reform of the Child Support Scheme - New Formula and Other Measures) Bill 2006, *Bills Digest No. 43 2006-07*, Parliamentary Library, Canberra, October 2006. www.aph.gov.au/library/pubs/SearchResults.asp

38 The lower rate is used if the benefit provider is not entitled to claim GST credits, whereas the higher rate is used where the benefit provider is entitled to a GST credit in respect of the provisions of a benefit. Regardless of whether the benefits provided are type 1 or type 2, only the lower gross-up rate is used for reporting on employees' payment summaries.

39 *A New Tax System (Family Assistance) (Administration) Act 1999*, Section 20A.

40 Mr David Hazlehurst, Group Manager, Families, FaHCSIA, *Proof Committee Hansard*, 20 June 2008, pp 27–28.

'Grossing up' impacts

1.45 The committee heard considerable evidence of the harm the changes would have on employees in the NFP sector, a significant number of whom 'salary package' a proportion of their income.[41] In so doing, workers in the sector are able to take advantage of a concession on the payment of FBT by certain Public Benevolent Institutions.[42] This has the effect of increasing the net income of those employees, while avoiding an FBT liability on the part of the employer. As a result, NFP sector employers are able to bridge some of the remuneration gap between themselves and the private and government sectors.

1.46 Mr Bicknell explained the significant financial losses that would be suffered by low wage earners in the NFP sector if the changes from 'net' to 'gross' income assessment were to take place:

> Salary sacrifice is really important for a lot of people who work for us in making up their total package. For example, if we have a worker who has a spouse with no income and two children and earns $35,000 a year, salary sacrifice, as it has been operating now, would typically add $110 per fortnight to their salary package. If the proposed changes had gone ahead, that person would have lost $59 per fortnight, and $59 per fortnight on that sort of income is a very significant cost.[43]

1.47 The Department was unable to provide the committee with the number of people employed in the NFP sector; representatives submitted that the information necessary for such a calculation was not collected. Nor, presumably for the same reason, did the Department conduct sector-specific analysis of the impact of the provisions in Schedule 6. As a result, officials told the committee that they were unaware of the widespread impacts that grossing up would have on the NFP sector until quite recently.[44]

1.48 The NFP witnesses told the committee that they too had only recently realised the extent to which the 'grossing up' changes would impact the remuneration of their employees. It was only when several NFP employees raised concerns directly with their employer (after employees were notified of the changes, along with 1.4 million

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41 See, for example, Messrs Quinlan, Macfie, Minnett and Bicknell, *Proof Committee Hansard*, 20 June 2008, pp 5–10.

42 See www.ato.gov.au/print.asp?doc=/Content/48583.htm, accessed 20 June 2008.

43 Mr Peter Bicknell, UnitingCare Wesley Port Adelaide, *Proof Committee Hansard*, 20 June 2008, p. 9.

44 Mr Mark Warburton, Branch Manager, Family Payments and Policy Branch, FaHCSIA, *Proof Committee Hansard*, 20 June 2008, p. 30.

other Australians, by a Centrelink mail out[45]) that the implications become fully apparent to the sector.[46] Mr Macfie's view was that:

> I think that this was a measure that was buried. It was not made clear at the time. It was only when Centrelink started taking action that people first became acutely aware of it. I think anyone would acknowledge that issues around child support and fringe benefit tax, in particular in areas like grossing up, are extremely complex.[47]

1.49 The committee was left in no doubt as to the effect the changes would have among those working in and managing the NFP sector. Mr Minnett, representing the Salvation Army, submitted that:

> If left unaddressed, the situation from 1 July 2008 will create a negative impact on our staff's ability to fully access benefits under family tax benefit A and B, child care benefits and rent assistance. If the government does not act to amend the necessary legislation, staff will lose benefits, or parts of their benefits…[W]e understand that an employee earning approximately $35,000 could lose around $59 a fortnight as a result. Our employees work for us for a reduced salary because they want to make a difference in society. Many of them could earn more elsewhere, and taking employment in the not-for-profit sector is a chosen sacrifice.[48]

1.50 These sentiments were echoed by Mr Peter Bicknell, from UnitingCare:

> UnitingCare Wesley Port Adelaide has 872 staff and we employ staff in a wide range of areas—aged care, mental health, youth work, family work, homeless young people, and a number of other areas such as that throughout South Australia. Of the 872 staff we employ, 820 have a gross pay of less than $50,000, so we are really talking about people who are on the lower income levels. Of those, 390 salary sacrifice. Salary sacrifice is really important for a lot of people who work for us in making up their total package. For example, if we have a worker who has a spouse with no income and two children and earns $35,000 a year, salary sacrifice, as it has been operating now, would typically add $110 per fortnight to their salary package. If the proposed changes had gone ahead, that person would have lost $59 per fortnight, and $59 per fortnight on that sort of income is a very significant cost.[49]

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45 Examples of the Centrelink correspondence are available on the committee's website - www.aph.gov.au/Senate/committee/fapa_ctte/index.htm

46 See, for example, Mr Peter Bicknell, UnitingCare Wesley Port Adelaide, *Proof Committee Hansard*, 20 June 2008, p. 14.

47 *Proof Committee Hansard*, 20 June 2008, p. 17.

48 *Proof Committee Hansard*, 20 June 2008, p. 8.

49 *Proof Committee Hansard*, 20 June 2008, p. 9.

1.51 Representatives were quick to correct any misapprehension on the committee's part about the role played by salary packaging in the NFP sector. As Mr Quinlan said:

> The charitable and not-for-profit sector is currently reliant upon these special taxation arrangements to attract and retain staff and deliver services. In effect, these fringe benefits arrangements, which were originally designed for the top end of town, have been extended to the charitable and not-for-profit sector specifically for this purpose. To explode a particular myth in relation to the charities and not-for-profit sector, when we are talking about fringe benefits tax we are not talking about expensive cars, flash holidays or expense accounts. We are talking about fringe benefits acquired by salary packaging, which is usually contributed in terms of mortgages, rents, household expenses and so on. There is a paucity of data available about the actual impacts, but I can give you figures from at least one of our agencies, our largest metropolitan agency, where recent data suggest that 80 per cent of the staff currently utilising salary packaging arrangements are earning $50,000 or less.[50]

1.52 The committee takes the view that provision of support to the NFP sector seems unlikely to be best achieved through manipulation of the fringe benefits tax system. The transaction costs associated with salary packaging were noted by witnesses, a number of whom reported that the burden of administering salary sacrifice arrangements was burdensome enough to warrant outsourcing.[51] The committee speculates that the expense associated with the need to take this course would only exacerbate the sector's ability to pay market rates to staff.

1.53 The committee also notes evidence adduced that indicates that the FBT concession arrangements benefits least those NFP employees in the lowest income brackets. Mr Quinlan told the committee that:

> ...in at least one of our agencies, who employ 3,000 staff, 88 per cent of the workers on salary packages were earning $50,000 or less. I can add to that that 64 per cent of them were earning $40,000 or less, and 30 per cent of them were earning $30,000 or less. This really is affecting workers at the hard end of the services that we are delivering.[52]

Fringe benefits tax concession cap

1.54 Organisations appearing before the committee noted that they are limited by the $30 000 grossed up cap on the value of benefits that can be paid without attracting FBT. The committee heard that this cap is unindexed and that it had not been

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50 Mr Frank Quinlan, Catholic Social Services Australia, *Proof Committee Hansard*, 20 June 2008, p. 7.

51 See, for example, Messrs Quinlan and Minnett, *Proof Committee Hansard*, 20 June 2008, p. 18.

52 Mr Frank Quinlan, Catholic Social Services Australia, *Proof Committee Hansard*, 20 June 2008, p. 12.

reviewed since its introduction in April 2000. As a result, organisations highlighted that the FBT mechanism which enabled them to improve the remuneration of their employees was being eroded over time.[53]

Restoring the net reportable fringe benefits definition

1.55 The Treasurer, Hon. Wayne Swan MP, together with the Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon. Jenny Macklin MP, announced on 19 June 2008 that the Government would move amendments to the bill in the Senate so that the changes scheduled for 1 July 2008 would not take place.[54] This significantly addressed the concerns expressed by representatives of the NFP sector, who generally welcomed the government's announcement.[55]

However, quite apart from the concerns highlighted by the bill, significant concerns exist in the sector for its future, mainly because of the inability to meet market expectations of reimbursement. In this regard, the committee welcomes the Treasurer's announcement that he would refer the matter to the Henry Review (titled Australia's Future Tax System) which he tasked to 'examine the complexity of existing arrangements and make recommendations to improve equity and simplicity in the system for the long term.'[56]

1.56 Ms White, representing the Australian Services Union, cited a survey which found that 52 per cent community services sector employees reported that they were not committed to stay in the sector beyond 5 years, and 75 per cent claimed that low wages were the reason for leaving.[57] In the event the situation is left unchecked, Ms White predicted a 'significant crisis' in the sector.[58]

1.57 Mr Quinlan made the point that the broader employment conditions in the sector compare just as unfavourably to other sectors as does the remuneration.

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53 Mr Frank Quinlan, Catholic Social Services Australia, *Proof Committee Hansard*, 20 June 2008, p. 7.

54 Joint Press Conference, Parliament House, 19 June 2008, transcript available at www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/measures_impacting_charitable_sector_19june08.htm, accessed 21 June 2008.

55 See, for example, Mr Gregor Macfie, ACOSS, *Proof Committee Hansard*, 20 June 2008, p. 5.

56 Joint Press Conference, Parliament House, 19 June 2008, transcript available at www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/measures_impacting_charitable_sector_19june08.htm, accessed 21 June 2008.

57 *Building Social Inclusion in Australia: Priorities for the Social and Community Services Sector Workforce*, Australian Services Union, April 2007, pp 10, 19.

58 Ms Linda White, Australian Services Union, *Proof Committee Hansard*, 20 June 2008, p. 9.

Abandoned community buildings and old primary schools were commonly used to house staff, and a disused convent forms the Catholic Social Services' headquarters.[59]

Treatment of salary sacrificing and investment losses

1.58 Although it does not form part of the bill before the committee, it is worth noting for completeness the concerns raised by the NFP sector over a measure contained in the 2008–09 Budget which alters the treatment of salary sacrifice into superannuation and investment losses for the purposes of family tax benefits.[60] The measure, which is yet to be legislated and which will come into affect on 1 July 2009, is intended to close a loophole which currently allows families or individuals to reduce their income for family assistance purposes by making large pre-tax contributions to superannuation. This measure is entirely separate from the FBT concessions discussed above and is not affected by the 19 June announcement by the government.

1.59 This measure was elaborated on by Senator the Hon. Chris Evans, representing the Hon. Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, in an answer to a question without notice on 18 June 2008:

> Our budget is designed to make income tests for various tax and transfer programs fairer and better targeted to those in need of government assistance. Around 2.2 million families with 4.3 million children receive family tax benefits. Therefore, approximately 3.5 per cent of families receiving family tax benefit payments will be affected by the changes to salary sacrifice into superannuation. This also brings the treatment of salary sacrifice into superannuation into line with the rules that already exist for pensioners and the rules that already exist for the self-employed. The self-employed are already under this regime. This brings the rest of the population into that same system. It also ensures that parents cannot reduce or avoid their child support obligations by voluntarily salary sacrificing part of their remuneration into superannuation. It is making sure we test their real income. It is not the purpose of the social security system to provide further incentives, over and above those provided by the tax system, to make voluntary contributions to superannuation.[61]

1.60 The committee is of the view that the government is right to pursue these measures, and that it should consult with the NFP sector in developing the amendments to ensure that there are no unintended consequences for the sector.

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59 Mr Frank Quinlan, Catholic Social Services Australia, *Proof Committee Hansard*, 20 June 2008, p. 12.

60 See, for example the exchange between Senator Fifield and Mr Gregor Macfie, ACOSS, *Proof Committee Hansard*, 20 June 2008, p. 11.

61 Senate Hansard, 18 June 2008, p. 45.

Conclusion

1.61 The contribution made by the not-for-profit sector to Australia's well-being needs little explanation, but the committee would like to acknowledge the sacrifices, by way of pay and conditions, made by the many thousands of individuals working in the sector.[62] The committee is therefore pleased to note the government's announcement that the changes planned for 1 July 2008 will not occur.

1.62 The committee has made note of the need to improve the efficiency with which government assists the NFP sector in securing and retaining staff, specifically that the fringe benefit tax exemption is not the 'be all and end all'. Salary sacrificing through the provision of favourable fringe benefits tax status is not ideal, and active consideration should be given to devising a more efficient mechanism. This would seem a move highly consistent with the Government's increased emphasis on social inclusion, as well as the intention to engage the community sector more closely.[63] However, in lieu of such an innovation being made in the short term, the committee considers that the two actions are necessary. Firstly, the Senate should endorse the changes proposed by the government so that the FBT changes scheduled for 1 July 2008 do not take place.

1.63 Secondly, the existing cap on the amount which may be 'packaged' by employees should be raised to bring it up to a more reasonable level and then indexed to the CPI. This will assist NFPs to attract and retain staff in the short- to medium-term and alleviate the perilous position some NFP organisations find themselves in. In the committee's view this should not be rushed through in the bill currently before the Parliament, but should be given more time in order to determine exactly the level of the new cap, in consultation with the NFP sector. The committee notes that it may be possible for the government to consider this issue as part of the Henry Review and that separate consideration may be needed.

1.64 The committee makes a recommendation in both of these areas. It also makes a third recommendation for the government to consult the NFP sector in relation to the 2008–09 Budget measure regarding the treatment of salary sacrifice of superannuation and investment losses for the purposes of family tax benefits.

Recommendation 1

1.65 The committee recommends that in light of the serious concerns raised during the committee's hearing, the Senate pass the bill subject to the

62 Mr Macfie told the committee that placing an economic value on the NFP sector 'is a complex issue because we do not really have a definition of the sector and whether you have a value input for the amount of voluntary work that is done in the sector, which is enormous. If you put all of that together and you include the very broad what is called the third or non-profit sector, it can be as high as $30 billion.' *Proof Committee Hansard*, 20 June 2008, p. 21.

63 See, for example, Mr Frank Quinlan, Catholic Social Services Australia, *Proof Committee Hansard*, 20 June 2008, p. 16.

amendments announced by the government to restore the use of net reportable fringe benefits in income definitions for family assistance purposes.

Recommendation 2

1.66 The committee recommends that the government consider the appropriate level of the cap on FBT-exempt benefits for NFP sector employees and whether the cap should be indexed to the CPI.

Recommendation 3

1.67 The committee recommends that the government consult with the not-for-profit sector, as well as other stakeholders, in developing the amendments to change the family benefits tax treatment of salary sacrifice to superannuation and investment losses so as to avoid unintended consequences.

Senator Helen Polley

Chair