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Opinion

The new family tax package

From 1 July 2000 there will be fundamental changes to the way in which government assistance is delivered to families. These changes have been brought about by *A New Tax System (Family Assistance) Act 1999* and *A New Tax System (Family Assistance)(Administration) Act 1999*. The changes will mean that 11 different kinds of family benefits will be reduced to three, as shown in the table on the next page.

These new payments will be administered by the Family Assistance Office which will be set up in Centrelink, Medicare Offices and Australian Taxation Offices. This has the advantage that claimants only have to deal with one office which will co-ordinate all aspects of payment rather than dealing with three different agencies.

Simplified income test

A further advantage of the new system is that the income test has been simplified. All claimants will be assessed on their current financial year income. They can choose to have the benefit of their family tax benefit or childcare assistance throughout the year, in which case they must provide an estimate of income for this current financial year.

At the end of the financial year, when actual income is known, if there has been an underpayment or overpayment, an appropriate top-up payment will be made or a debt raised.

In the past, recipients of family allowance who have been paid on estimated income, have been unable to claim any underpayment of family allowance occurring because they have overestimated their income. On the other hand, those who have underestimated income have often found themselves liable for debts. The new scheme enables a recipient to attempt to avoid any debt arising by overestimating their current year income, knowing that their correct entitlement will ultimately be paid to them. In most circumstances claimants can also choose to receive their entitlements as a lump sum at the end of the financial year, when actual income is known.

Shared care

Changes have also been made in the area of shared care. Entitlement to family allowance formerly required a person to have a 'dependent child' in their care. This was defined in s.5 of the *Social Security Act 1991* and in most cases required that the adult have legal re-

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Benefits currently administered through Centrelink	Benefits currently administered through the tax system	Benefits currently administered through Medicare	New payment
<ul style="list-style-type: none"> •Family allowance •Family tax payment Part A 	<ul style="list-style-type: none"> •Family tax assistance Part B 		<ul style="list-style-type: none"> •Family tax benefit Part A (Paid for all dependent children up to the age of 20 and for dependent full-time students aged between 21 to 24 years)
<ul style="list-style-type: none"> •Basic parenting payment •Guardian allowance •Family tax payment Part B 	<ul style="list-style-type: none"> •Dependent spouse rebate (with children) •Sole parent rebate •Family tax assistance Part B 		<ul style="list-style-type: none"> •Family tax benefit Part B (Aimed at single income families and paid for children up to 16 and dependent full-time students up to 18 years)
<ul style="list-style-type: none"> •Childcare assistance 		<ul style="list-style-type: none"> •Childcare rebate 	<ul style="list-style-type: none"> •Child care benefit

sponsibility for the day-to-day care, welfare and development of a young person in their care. Under the *Family Law Act 1975* as amended by the *Family Law Reform (Consequential Amendments) Act 1995*, most parents separating and seeking orders relating to the care of their children from the Family Court, would both retain such legal responsibility.

However, some parents, although sharing the care of their children, were unable to establish the relevant legal responsibility. These included parents who obtained orders prior to the amending Act, that is those having orders giving 'custody' to one parent and 'access' rights to the other parent. Also affected were parents who obtained orders after the amendments to the *Family Law Act 1975*, but where the legal responsibility for day-to-day care was given to one parent solely, with the other parent retaining rights of contact only. Several Federal Court decisions including *Secretary to the DSS v Field* (1989) 52 SSR 694; *Secretary to the DSS v Wetter* (1993) 73 SSR 1065; *Elliot v Secretary to the DSS* (1995) 2(1) SSR 10 and *Vidler v Secretary to the DSS* (1995) 2(2) SSR 26 placed significant restrictions on a 'contact' or 'access' parent's ability to establish their legal responsibility for the day-to-day, care, welfare and development of their child or children. Those cases required that there be extended access to a child by the 'non-custodial' parent, which of necessity would need to include the duty to care for the child and to have control of the child. A period of at least 14 consecutive days was said to be necessary in most circumstances. Thus parents with weekend access, for

example, even if frequent and regularly exercised, could not establish that they had a 'dependent child' and would not be entitled to a share of family allowance.

'FTB child'

Under the new system a dependent child is now known as an 'FTB child'. An adult will have an FTB child (under 18 years) if:

- the adult is legally responsible (whether alone or jointly with someone else) for the day-to-day care, welfare and development of the child and the child is in the adult's care;
- a family law order or registered parenting plan is in force and the adult is someone with whom the child is to live or have contact under the order or plan, and the child is in the adult's care;
- the child is in the adult's care and is not in the care of anyone else with the legal responsibility for the day-to-day care, welfare and development of the child.

Where the child is over 18, the requirement is that the child be in the adult's care.

Thus, those 'non-custodial' parents who could not formerly gain access to a share of family allowance are intended to gain an entitlement to the new family tax benefit, commensurate with the proportion of time that they care for their child or children. The exception is that a parent with less than 10% care will not be eligible, and the other parent will be paid 100% of the benefit.

While this clearly has the advantage of recognising the shared responsibility

of both parents in caring for children, it will also mean that a number of recipients formerly receiving full payment may be disadvantaged. This is concerning because the reduction in entitlement will occur whether or not the other parent claims, or is entitled to receive (after application of the income test), their share of the family tax benefit. This is because the Secretary is entitled to determine the percentage of family tax benefit to which a person is entitled where a child is an FTB child of two people who are not members of the same couple. Formerly, a declaration that family payment was to be shared could only be made where both parents were qualified for the payment. Qualification involved an income and assets limit. In some circumstances the new scheme will operate to the detriment of primary carers, mainly women, who are dependent on social security entitlements, particularly when their former partners are self-supporting and do not have the same financial needs.

A further concern arises where one parent claims their family tax benefit throughout the year and is assessed as entitled to a certain percentage according to the amount of time the child or children are stated to be in their care. There is no requirement to notify the other parent of the assessment. Should the other parent subsequently claim an entitlement, say at the end of the financial year, disputes may well arise about the percentage to which each parent is entitled, and such a situation may well result in a debt being raised.

Debt provision

The debt provision applies widely, to generally make any overpayment of family assistance a debt due to the Commonwealth. Waiver of a debt has been further restricted. Where a debt has arisen solely as a result of administrative error and the debtor has received the payments in good faith, there is now an additional requirement that the person would suffer severe financial hardship if the debt were not waived. This additional requirement applies if the debt is not raised within specified time periods.

Rights of review

Rights of review are extended under the new scheme, in the sense that decisions relating to childcare benefit can now be reviewed by the SSAT and the AAT. However, a person must seek internal review of any decision relating to family assistance within 52 weeks of notification.

[A.T.]