AN HISTORICAL ANALYSIS OF FAMILY PAYMENTS IN AUSTRALIA: ARE THEY FAIR OR SIMPLE?

AN ANALYSIS OF TRANSFER PAYMENTS TO AUSTRALIAN FAMILIES APPLYING THE CRITERIA OF EQUITY AND SIMPLICITY

HELEN HODGSON

Helen Hodgson is a Senior Lecturer, Atax, Faculty of Law, University of New South Wales.

The Australian taxation system has a tradition of providing for a certain amount of equity for families by allowing concessions for families in the calculation of income tax payable.

Unlike the UK system, which did not adopt individuals as the unit of taxation until 1990, in Australia income tax is levied on individuals, rather than on family units. The Asprey Report considered this issue, without making any recommendations to change the system:

From the beginning, personal income tax in Australia has been based on individual incomes; along with Canada and New Zealand, Australia is one of the few countries still making this selection. This is not, of course, to assert that in our tax system (or in others with this basic unit) no regard whatever is paid to the family situation of the individual taxpayer. There are allowances for various dependants and numerous concessional deductions applying not only to the taxpayer's expenditure upon himself but also to that made on behalf of family members. It is, however, true that the allowances provided are generally rather small in relation to the total expenditure that the individual will normally make upon his or her family.¹

Under this system family tax concessions have been available as deductions, rebates or offsets that reduce the tax payable by the family, rather than through marginal tax scales. There is still considerable debate over the use of business entities to effectively reduce family income tax through the use of income splitting, which utilises marginal tax rates to reduce tax payable by the overall family unit.² An alternative method of providing family assistance is through the welfare system, with amounts being paid directly to the family concerned. With recent reforms to family transfer payments direct payment is becoming more prevalent—with consequential problems arising where these benefits are means tested.

² However discussion of income splitting is beyond the scope of this paper.
The *Asprey Report* went on further to acknowledge the issues that arise where the welfare and taxation system overlap:

"Still more important is the point that cash transfers to individuals, the whole class of social service payments of every kind, are inextricably bound up with the equity of the taxation system. The Committee certainly does not regard itself as qualified to advise upon the details of the social services, and is aware of other inquiries at work in this area. But some consideration of cash grants, taxable or otherwise, is essential in the design of an optimal tax system." 3

In this paper I consider some of the issues that arise under the current system of family transfer payments, including:

- Whether payments are more effective and equitable if paid as direct payments or as an offset against income tax payable;
- Are the current payments appropriately targeted at families in need;
- Has the current Family Tax Benefit simplified the regime when compared with previous regimes; and
- Do governments use such payments as an equity measure, or are there other policy considerations affecting the structure of such payments.

I OVERVIEW OF HISTORY

A Current System

With effect from 1 July 2000 the Howard government introduced the Family Tax Benefit (FTB), which was designed to replace the tax and welfare benefits that were available to families.

The Explanatory Memorandum stated that:

"As part of the Government’s plan for a new tax system, the structure and administration of family assistance is being simplified with effect from 1 July 2000. Twelve forms of assistance, currently available under the tax and social security systems, will be reduced to three." 4

The three benefits that are now available are the Family Tax Benefit Part A and B and the Child Care Benefit. The maternity allowance was also continued and moved into the Family Tax Assistance Legislation.

---

3 Above n 1 para 3.4

The Family Tax Benefit Part A is designed to provide assistance to low and middle income families. It is a means tested payment, available as a direct payment from the Family Assistance Office (fortnightly or as a lump sum) or as a tax offset.

Family Tax Benefit Part B replaced the former spouse rebate that was allowed as a tax offset. It is available to families that are dependant on one primary income earner. As with the Family Tax Benefit Part A it is available fortnightly or as a tax offset.

The Child Care Benefit replaced former child care assistance and rebates that were available to assist parents who placed their children in child care. These were paid outside the taxation system, but were in part a response to the legal principle that denies a person a deduction for the cost of child care while the parent is at work.\footnote{Lodge v FC of T High Court 72 ATC 4174.} \footnote{Acknowledged by the Minister for Human Services and Health, Hansard, 9 May 1995, 113.} Eligibility for the revised Child Care Benefit is dependent on conditions that must be met by the care giver as well as by the parent, but are linked to FTB eligibility. Payments are made either by instalments directly to the child care provider, or as a lump sum reimbursement.

However on closer examination, there are a number of additional entitlements that have been rolled into the new system, which raises the question as to whether the system has in fact been simplified at all. Combination of benefits does not necessarily result in the simplification of benefits. The following table compares the old benefit with the corresponding concession in the new system.
<table>
<thead>
<tr>
<th>Old Benefit</th>
<th>New Benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family allowance</td>
<td>Means tested payment to family with children. Supplementary payment available for low income families.</td>
</tr>
<tr>
<td>Family tax payment Parts A and B</td>
<td>Tax-free thresholds were modified where a taxpayer had children. For each child the tax threshold was raised by a prescribed amount, and an additional allowance was made if the taxpayer had a child under five years of age. The modified thresholds were means tested.</td>
</tr>
<tr>
<td>Family tax assistance Parts A and B</td>
<td>Where a family did not have a high enough taxable income to benefit from the changes through the taxation system, direct payments were made fortnightly through the welfare system.</td>
</tr>
<tr>
<td>Dependent spouse rebate (with children)</td>
<td>Spouse rebate was claimed as an income tax offset. From 1982 the amount that could be claimed in respect of a dependant spouse was increased if the taxpayer also had a dependant child or student. From 1994 the entitlement was reduced by the amount of any parenting payment.</td>
</tr>
<tr>
<td>Basic parenting payment</td>
<td>A payment to a person who stayed at home to care for children—largely replaced dependant spouse rebate.</td>
</tr>
<tr>
<td>Sole parent rebate</td>
<td>A taxpayer who had the sole care of a dependant child or student was entitled to a tax offset.</td>
</tr>
<tr>
<td>Child care cash rebate</td>
<td>Subject to a work test. Paid to families where a sole parent or both parents are working, studying, training or looking for work as recognition that child care is a cost of work.</td>
</tr>
<tr>
<td>Child care assistance</td>
<td>Paid to low and middle income families on the basis of a family income and assets test.</td>
</tr>
</tbody>
</table>
B Income Tax

1 Concessional Deductions and Rebates: Pre/Post 1975

Prior to 1975, concessional deductions were available to taxpayers, depending on their personal circumstances. This has been expressed as follows:

Concessional Deductions help to restore horizontal equity between individuals on a particular income level who differ with respect to characteristics such as marriage, children and health and who therefore incur different amounts of the associated “unavoidable” expenditure.\(^7\)

Some of the criticisms explored by the committee in relation to a system of deductions related to the lack of equity inherent in deductions within a progressive tax scale. In particular the following two issues were identified:

- A poor man’s wife is worth less than a rich man’s;\(^8\)
- In any case the deduction was not enough.

In 1976 these concessional deductions were replaced by a system of rebates, under which a set rebate amount was available in respect of a spouse. The original recommendation was that the amount would be reduced by income that the spouse earned, with the rebate being dissipated just below the point at which the spouse would become liable to pay tax personally. The advantage of the rebate is that it had the same dollar value to each recipient, without reference to the marginal tax rate of the taxpayer. The spouse rebate under this system was related to supporting a spouse, rather than whether children were a part of the family.

The concerns about deductions for children were addressed by removing a direct concession in relation to dependent children. Child Endowment was renamed Family Allowance and increased. Children were retained as a notional rebate for the calculation of the zone rebate, which is in itself a horizontal equity measure. This notional rebate is taken into account for each student under 25 or child under 16 who does not have a significant personal income.

In 1982 the spouse rebate was modified to allow an increased amount where a dependent spouse was caring for children or students, where a notional rebate would have been available. This reintroduced the concept of a family as parents with children in determining the quantum of the rebate entitlement.

It was at this time that the rebates began to be indexed automatically to allow for inflation instead of being reviewed periodically.

As a side issue, it was not until 1990 that the Income Tax Assessment Act was reviewed to remove the traditional values inherent in family policy. In reading the

\(^8\) Above n 1 para 12.3.
literature that accompanies the legislation providing family support, it was usual to see the assumption that the main breadwinner of the household was the male partner, with the spouse being the secondary earner. It is also from that year that the definition of spouse includes a de-facto spouse, at least for taxation purposes.

2 Home Child Care Allowance

In 1994 family concessions were moved further out of the taxation system through the introduction of the Home Child Care Allowance (later to be renamed the Basic Parenting Payment). This benefit was paid directly to a parent who chose not to work, and was intended to replace the dependant spouse rebate (with child). There was a slightly higher rate paid when compared to the rebate but, importantly, it was paid directly to the parent at home instead of to the taxpaying spouse.

The dependant spouse rebate (with child) was not repealed at this time, but it was effectively replaced as any payment received as a direct benefit reduced the amount that the taxpayer could claim.

3 Family Tax Payment

The next significant change in recognising families in the calculation of tax payable was made following the election of the Howard Liberal Government at the 1996 election.

The Family Tax Payment increased the tax threshold for families with the care of children under the age of 16, or students under the age of 18 by an additional $1000 for each dependent child. As this was an increase in the tax threshold, it was effectively a rebate of an amount equal to the tax rate applicable at the lowest level, that is, 20 per cent x $1000 = $200 per child. However, it was means tested so that parents earning more than $70 000 per annum (increased by $3000 for each child) were not entitled to the full amount.

There was a second component to this initiative that applied when a family had at least one child under five years of age. A means test, linked to the income levels for the parenting payment, applied to the income of the secondary earning spouse and a further threshold applied to the family income.

The extra threshold available was an amount of $2500, which effectively amounted to $500 reduction in tax, that is, 20 per cent x $2500. This was available in addition to the first component. The spouse rebate was also available in relation to low income spouses.

As it was acknowledged that some low income earners did not earn sufficient to claim the benefit through the taxations system, low income earners were able to claim the equivalent of the income tax rebate as a social security benefit called Family Tax Assistance.
In August 1998 the Liberal Party announced an increase in these thresholds as part of its tax reform package, to take effect from 1 July 2000. However, these increases were overtaken by the FTB.

4 Family Tax Benefit

As discussed previously, the FTB was supposed to simplify the range of benefits available to families. It is made up of several components, and elements of the former tax allowances can be seen in the way in which the benefits are calculated. The FTB is administered through the Family Assistance Office, and can be claimed through one of three methods:

- Direct payment from the Family Assistance Office. If a person is eligible for rent assistance or a Health Care Card they must claim the benefit as a direct payment
- As a tax offset
- As a lump sum from the Family Assistance Office

The FTB is officially made up of two parts including the following.

5 Family Tax Benefit Part A

Part A is available to families with children, where the family income is below certain thresholds. The rates are based on the number of children and the age of each child, who must not be receiving youth allowance. A child over 16 but under 25 is only eligible if a full-time student, and is means tested based on the income of the dependant.

- The family adjusted taxable income (ATI) is the sum of: taxable income; rental property losses included in taxable income; fringe benefits received; exempt pensions; certain foreign income and maintenance payments.
- If family ATI exceeds the threshold (currently $82 052), the base benefit is subject to shading out provisions.

Family Tax Benefit Part A also includes an additional component for low income families, in relation to children under 16. This additional amount is also subject to shading out provisions where income exceeds the threshold for the additional component (currently $31 755).

Further allowances available and paid on top of the FTB Part A include the ‘large family allowance’ where the claimant has more than three children, and the multiple birth allowance where three or more children are born together.

6 Family Tax Benefit Part B

Part B of the FTB is designed to assist single income families. This benefit replaced the sole parent rebate and the spouse rebate (with dependant child) from 1 July 2000.
Eligibility depends on the following criteria:

- There must be at least one child. A child must be under 18, and if over 15 must be studying full time.

- The benefit is based on the age of one child, with a higher rate available if the family includes at least one child under the age of five.

- Where a parent is a sole parent, there are no income tests applied to determine eligibility.

- Where the claimant has a spouse the benefit is based on the Adjusted Taxable Income of the lower income earner. The benefit is reduced by 30 cents for every dollar that the spouse earns over the threshold, currently $1824.

The interaction between the FTB and the existing dependent rebates was changed by the introduction of the FTB. If a taxpayer is eligible for the Part B benefit, it precludes eligibility for a number of the dependent tax rebates that may have formerly been available. The rebates that are affected are the ‘with child’ rate that can be claimed in relation to a dependant spouse, child-housekeeper or housekeeper, and the sole parent rebate which has been completely superseded.

There are still issues in relation to the remaining rebates. The income tests are different between the rebate and the FTB, as is the concept of a dependant child. As a rule of thumb, if a person has children the FTB will generally be available, and at a higher rate than the corresponding rebate as the income thresholds are higher, as can be seen in the following table.

<table>
<thead>
<tr>
<th>Eligibility</th>
<th>Family Tax Benefit Part B</th>
<th>Rebate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child &lt; 16</td>
<td>Dependent if income &lt; $8613</td>
<td>Notional only. Dependent if income &lt; $1409</td>
</tr>
<tr>
<td>Student 5 – 25</td>
<td>Dependent if income &lt; $8613 Must not be receiving government allowance</td>
<td>Notional only. Dependent if income &lt; $1785</td>
</tr>
<tr>
<td>Spouse</td>
<td>Must have dependent child or student If child &lt; 5 benefit = $2920 Spouse income &lt; $11 557 Child/student &gt; 5 benefit = $2036.70 Spouse income &lt; $8613</td>
<td>No dependent child = $1535 If dependent child = $1841 Spouse income &lt; $7641 Entitlement doesn’t vary with age of child</td>
</tr>
</tbody>
</table>

---

9 Income Tax Assessment Act 1936 subdivision A of division 17.
10 Income Tax Assessment Act 1936 [ITAA36] s 159J.
11 ITAA36 s 159J.
12 ITAA36 s 159L.
13 ITAA36 s 159K.
There are, however, still some circumstances where there is a mismatch between eligibility requirements for the two offsets. For example, the FTB is based on the annual income of the spouse for the entire year, even if they would not be classified as a dependent for income tax purposes for this whole period. Under the income tax rebate, there must be a spouse relationship (legal or de facto) for the spouse income to be taken into account. If a person with a child entered a spouse relationship during the year, and the new spouse gave up employment to care for the child, the income test under the income tax legislation would be based on earnings after the date that the spouse arrangement commenced but under the FTB legislation the full income for the year would be taken into account.  

In addition, income for these tests is defined differently. Separate Net Income is defined for tax purposes as income less all expenses incurred in earning that income. This allows a deduction for work related expenses than cannot be claimed in calculating taxable income, for example, child care and travel to work are not excluded. Separate net income does, however, include exempt income. There are also some statutory additions, such as net capital gains.

Adjusted Taxable Income is defined differently under the *Family Assistance Act*. It is based on taxable income, but includes certain pensions and benefits that would be exempt under the *Income Tax Assessment Act*. It also includes reportable fringe benefits, rental property losses are added back, and deductions that may be allowed in calculating SNI are not deducted if they are not allowable as income tax deductions.

**C Baby Bonus**

The most recent incentive for families has been provided through the First Child Tax Rebate, commonly referred to as the ‘Baby Bonus’.  

The main elements of the Baby Bonus are:

- It is available to parents following the birth, adoption or taking legal responsibility for the first child after 1 July 2001;
- It is an income tested offset of up to $2500 pa until the child turns five years of age;
- Low income earners (earning less than $25 000 in the claim year) have a minimum entitlement of $500 pa;
- It is prorated to take account of the number of days that the parent has the responsibility for the child;
- It may be claimed through the tax system, by direct claim from the ATO, or transferred to a spouse.

---

14 Schedule 3 of the *Family Assistance Act 1999* addresses death or separation during the year but does not address a couple that is formed during the year.

15 ITAA36 s 159J(6).

16 *Family Assistance Act 1999* Schedule 3.

The maximum entitlement is 20 per cent of the tax liability in the ‘Base Year’, that is, the year that the person became responsible for the child or the preceding year. The selection of the base year is fundamental to the claim. Either year is available, as the date of the child event will affect the date that work ceases, and therefore income and tax paid by the claimant:

It is usually beneficial for the primary person to elect as the base year the income year which has the higher taxable income. This will provide a higher basic income tax liability, and therefore maximise their entitlement. The base year will generally be the income year before the event year, as there is usually a period of absence from the workforce in the event year which will reduce the primary person’s basic income tax liability for that year.

In some cases it may be more beneficial for the primary person to choose the event year as the base year. This will occur where the child event happens towards the end of the income year, or where the primary person has a lower basic income tax liability in the income year before the event year.18

This is then reduced by reference to the taxable income in the year of the claim.19 There must be a reduction in income for the offset to be available, with a minimum amount of $500 being available where a person’s income in the claim year is less than $25 000.

D Social Security Payments

The origins of the FTB can be traced through the evolution of benefits formerly payable to families.

Benefits have been directly payable to Australian families since the introduction of Child Endowment in 1941. Child Endowment rates varied depending on the number of children in the family, but were not income or asset tested. It was payable to the mother. In 1976, when the tax deductions were removed, Child Endowment was renamed Family Allowance and substantially increased.

In 1983 a Family Income Supplement was introduced to assist low income working families not already receiving social security benefits. Originally the supplement was paid to the head of the household, but the following year it became payable to the person entitled to receive family allowance. Eligibility was pegged to the income test used for access to the disadvantaged persons’ health care scheme available at the time.

Since 1978, Family Allowance had been progressively restricted where the child was receiving certain government benefits. Income testing for Family Allowance was introduced in 1986 in relation to 16- and 17-year-olds, (the entitlement for children over that age had been removed the previous year), and in 1987 for all recipients.

---

19 ITAA97 s.61–420.
Under the income test the full rate of Family Allowance was payable if family income was up to $50,000, plus $2500 per child. The benefit was shaded out after that point by $.25 for each extra dollar earned. The shading out remained until 1991 after which the allowance cut out as soon as the threshold was reached. The asset test, which remained until 2000, was introduced about this time.

The Family Allowance was renamed the Basic Family Payment in 1993. Over this period indexation of the amounts paid and the thresholds were adopted, and the income thresholds started to include foreign income and fringe benefits.

The Family Income Supplement was renamed the Family Allowance Supplement in 1987, but remained separate from Family Allowance until 1996 although they were paid together. The entitlements were increased, but shading out of entitlements for Family Allowance Supplement was introduced, at $.50 for each dollar over the threshold and an assets test at which the benefit cut out was introduced in 1988. In 1993 the supplement was renamed the Additional Family Payment, and merged with the additional pension or benefit available to a social security recipient. This amount became payable to the principal carer not the social security recipient.

In 1996 the Basic Family Payment and the Additional Family Payment were merged to become the Family Payment, only to be renamed ‘Family Allowance’ in 1998, partly because the community had not adopted the new name.20

Therefore the complexity of the FTB that was introduced in 2000, and to a lesser extent the Family Tax Allowance before it, can be traced directly to the original Family Allowance and Family Allowance Supplement.

The Family Allowance was originally a universal benefit, available to assist all families with the cost of raising their children. This became affluence tested, that is, the most affluent families were no longer able to access the allowance.

Simultaneously an additional benefit was available to those families requiring income support—the Family Allowance Supplement. This was always income tested. When the two benefits were merged, both goals were incorporated into the one payment—thus resulting in the application of two different thresholds and different age limits for children within the same benefit, now FTB Part A.

It is worth noting that the income thresholds applied at the commencement of the FTB, and when adjusted for inflation, are not significantly different from the thresholds originally applied to the Family Allowance.

II FAMILY POLICY GOALS

There are a number of different policy objectives that can be achieved through family policy. These include:

- **Equity**—ensuring that families bear an appropriate tax burden incorporating horizontal equity, which recognises that families have additional costs;

- **Safety Net**—ensuring that families have sufficient income to meet necessary expenses such as food, clothing, shelter and education costs;

- **Workforce participation**—women are still the primary carers for families, and therefore family policy (including access to personal income) affects the choices that women make in relation to the extent to which they participate in the workforce;

- **Fertility rates**—the current debate is focusing on the falling birth rate, and how transfer payments may be used to encourage women to choose to have more children.

A *Equity*

Equity is a theoretical goal that economists and politicians alike strive to achieve. It can be traced back to Adam Smith, who said:

> The subjects of every state ought to contribute towards the support of the state, as nearly as possible, in proportion to their respective abilities; that is in proportion to the revenue they enjoy under the protection of the state.21

The *Asprey Report*22 discussed the principle of equity as one of the goals of a good taxation system:

> It is usually taken for granted that the best available measure of an individual's 'well-being' is his income. The 'burden of taxation' is thought of primarily in terms of the proportion of a man's income that goes in paying taxes, whether they be taxes levied formally on that income or indirectly by elements of tax in the price of the goods and services he buys. Horizontal equity is then taken to require that two persons with the same income pay the same taxes (at least in the first place and 'other things being equal'), while vertical equity would require that, of two individuals with different incomes, the one with the larger should pay more by some correct amount.23

---

22 Above n 1.
23 Ibid para 3.9.
In the context of family support policies, it is generally acknowledged that equity principles dictate that a person supporting a family is not in the same position as a person on the same income with no dependents. Therefore, if horizontal equity is the goal, then the mere fact of having children should entitle a person to the relevant payment or tax concession, as they are in a different position from another person earning the same income by virtue of that fact. The current FTB is not universally available, as affluent families do not have access to the benefit. Accordingly it could be argued that the equity test is not met.

However it can equally be argued that an affluent person can afford to pay for the cost of raising their children and does not need government assistance. In fact an application of the benefit principle would suggest that the person with the family is receiving more benefit from the taxes that they do pay as a family accesses more government services than an individual, and therefore they should not receive tax concessions.

B Safety Nets

Safety nets are clearly designed for policy objectives other than achieving horizontal equity. While tax equity considers the amount that a person should contribute to general revenue, this is a form of redistribution of wealth, which draws on general revenue to assist families in need.

The classic illustration of the safety net theory is the comment made by The Hon R J Hawke in 1987, when he promised that by 1990 ‘no Australian child will live in poverty’. This statement was made when he announced the Family Income Supplement that was introduced for low income families.

This supplement followed changes that had been introduced by the government following the Economic Statement of May 1987. Among the cost cutting measures introduced at that time was a measure to means test access to the Family Allowance, consistent with tests applied to other social security measures.

The notion of limiting support to those families that need it can be seen in the means testing that has applied to the various benefits available at different times. This can be described as ‘affluence testing’ as the thresholds allow access to benefits for all except the most well-off families. While the spouse rebate available through the taxation system and the FTB Part B are based on the earnings of the secondary income earner, other benefits, such as the FTB Part A or Family Tax Incentive, were based on family income levels.

There are clearly issues that need to be addressed in determining the income levels at which such support is needed, however such discussion is beyond the scope of this paper.

---

24 ALP Election Policy launch (23 June 1987).
C Workforce Participation

Access to child care arrangements has been seen as the major barrier to the participation in the workforce by women, as women have traditionally taken the major responsibility for caring for children.

The issue of participation in the workforce by women is a question that has been around since before World War II, but it became a major factor in government policy as men returned from the war. The men resumed jobs that had been held by women who had joined the workforce to keep the home front operating while their men were serving overseas.

Women in the workforce at this time (Second World War) were seen as absolutely necessary to the war effort … but they did have childcare provided. Once the war was finished and the men returned, the women were quickly sent back from whence they came, and the childcare facilities were closed down. We would not see the provision of workplace childcare again until the 1970’s.25

Under income tax law there has been no availability of deductions for child care as a cost of work. In *Lodge v FC of T*26 the High Court held that the cost, while work related, was of a character that precluded tax deductibility:

> the expenditure was incurred for the purpose of earning assessable income, and it was an essential prerequisite of the derivation of that income. Nevertheless its character as nursery fees for the appellant’s child was neither relevant nor incidental to the preparation of bills of cost, the activities or operations by which the appellant gained or produced assessable income.27

An alternative approach was more successful in *Ruth Nancy Coleman v FC of T*28. Senator Coleman relied on the concessional deduction provisions (subsequently re-enacted as a rebate) to claim a tax deduction for the cost of a housekeeper engaged to care for herself, her husband and her five-year-old son while she fulfilled her parliamentary duties. Such a deduction was only available to married persons in special circumstances. The majority of the Board of Review found that special circumstances existed:

> In our opinion the extremely busy public life of the taxpayer and the need to maintain through the housekeeper a continuity of stable home life for the taxpayer’s son constituted special circumstances because of which it is just to allow the deduction.29

---


26 *Lodge v FC of T* High Court 72 ATC 4174.

27 Ibid (Mason J), 4176.

28 Case J70: *Ruth Nancy Coleman v FC of T* (public hearing) 77 ATC 579.

29 Ibid, R K Todd and L C Voumard at 583.
An appeal to the Supreme Court by the Commissioner of Taxation was not upheld on the basis that the decision of the board did not involve a question of law\textsuperscript{30}.

A similar result arose in Case M83 80 ATC 613, where the housekeeper was caring for a severely disabled child. These cases, however, have not changed the Commissioner’s practice, of limiting special circumstances to circumstances where the person is not cohabiting with their spouse.\textsuperscript{31}

It should also be noted that the amount that can be claimed as the deduction/offset is capped under the relevant legislation, and would not come at all close to the cost of such arrangements.

1 Child Care Subsidies

The Women’s Electoral Lobby (WEL) and other feminist economic organisations argue that child care is a prerequisite for many women to be able to work, and this needs to be recognised through appropriate funding for women using childcare:

> WEL urges governments to support the provision of quality childcare that is accessible on an equitable basis, the costs of which should be shared by parents, governments, employers and other stakeholders.\textsuperscript{32}

The introduction of child care subsidies progressively from 1984 recognised that child care is a cost of working, although it is not recognised as such in the taxation system.

> As I have said, it is a work related deduction, like many others. The government will always have the right and retain the right to make adjustments to any of those deductions. We at least recognise that, in order to work, women and families need decent child care, decent income support, a proper industrial relations environment and appropriate deductions for the cost of their employment, amongst which I would number that particular allowance.\textsuperscript{33}

Child care subsidies have been retained in various forms since their introduction in 1984, when they were limited to not-for-profit day care centres. In 1990 this was extended to include commercial centres, and by 1994 it was re-enacted as the Childcare Cash Rebate.

These child care subsidies were not originally means tested as they were seen as an entry cost to the workforce, however, means testing has since been introduced. Under the current system, introduced with the FTB, eligibility for the Child Care Benefit depends on both the claimant (who must be eligible for the FTB), and the child care centre (which must meet certain requirements). There may also be limits on the number of hours per week for which a person can claim child care.

The Hon Dr Carmen Lawrence stated in 1997:

\textsuperscript{30} FC of T v Coleman, 78 ATC 4355.

\textsuperscript{31} See ATO ID 2002/281.

\textsuperscript{32} Women’s Electoral Lobby, National Policies, (December 2000) at <www.wel.org.au>

\textsuperscript{33} Carmen Lawrence, Minister for Human Services and Health, Hansard 7 February 1995, 584.
In the same way, for instance, that the tools of trade are tax deductible, so women requiring decent child care in order to work should have it recognised as a non means tested cost of employment. Means testing the childcare cash rebate has signalled that the government believes that women’s work related expenses are to be treated differently to men’s, despite the observation by the Minister responsible for women’s interests that child care is a genuine work related expense.34

There are clearly two competing principles at work here: should child care be subsidised as a cost of employment, or is it a benefit that should be restricted to those who need assistance with the cost of child care?

(a) Baby Bonus

The baby bonus was an initiative of the Liberal Party, which was taken to the 2001 election. Documents issued at the time indicated that the incentive was available to assist families experiencing a drop in income after the birth of their child:

Recognising the family experiences a fluctuating income where the mother leaves the workforce to look after a child the coalition will introduce a system which effectively averages income over 5 years and allows a mother to claim back the tax paid on her income in the year prior to the birth of her child.35

The form of this offset breaches the principle of vertical equity, as the offset is based on the amount of tax that the claimant has paid in the base year. Clearly a person on a higher income will have paid more tax, and therefore, over a five year period, will benefit more from the tax offset.36 While the minimum and maximum claims go some way to addressing this issue, it is possible for a high income earner who leaves work, and does not return to work before the child’s fifth birthday, to receive $12 500 through the offset; while a low income earner may receive as little as $2500. Although the rebate is available for the first child born after introduction of the offset, in circumstances where a person has left the workforce following the birth of a previous child the offset is of less value as the claimant may only qualify for the base rate of $500.

It is still too early to see the effect that the offset will have on the working patterns of women. The ATO has indicated that the budget estimates for the take up of the baby bonus have been revised down by $105 million in the 2002–03 and 2003–04 financial years37. The ATO was unable to say how much of the lower than expected take up rate was due to women choosing to remain in the workforce, and thus losing eligibility for the offset due to the operation of the income test.

---

36 Senate Estimates Committee hearings, 22 February 2002.
37 Senate Estimates Committee hearings, June 2003.
Note that the maternity allowance (a lump sum payment of currently $833.52 to a mother on the birth of her child to assist with the cost of a new baby) was not removed with the introduction of the baby bonus. The maternity allowance was reintroduced in 1997, two decades years after the former maternity allowance was removed.

2 Maternity Leave
There has been much debate recently in relation to a system of paid maternity leave that will give women the security of a guaranteed job following a decision to take time out of the work force. Part of the debate is over whether such a scheme should be funded by the public purse or by employers, and the extent of the support that should be provided from each. At this stage the federal government has not shown any will to proceed with such a scheme.

D Fertility Rates
A public policy area that is receiving much attention at the moment is the declining birthrate in Australia, as in most other Western countries. The birthrate has been declining during the last three decades and, at 1.75 in 2000, is currently below the replacement rate.

This has significant implications in relation to the future economic policies of the nation. As the population ages, it has implications for health and welfare spending and the taxation burden on the next generation will be increased.

Therefore the focus of family policy is moving away from equity for families with children, to encouraging people to take on the responsibilities of having more children. This is reflected in the introduction of the baby bonus and the current debate on maternity leave.

A paper published recently by the Menzies Institute argues that the best way to increase the fertility rate in Australia is to use a combination of gender equity measures and strategies that encourage a male breadwinner model to ensure that women have the choice to withdraw from the work force to care for children.

E Income Distribution within the Family
A further policy consideration that is reflected in the evolution of family payments is ensuring that the benefit is received in the hands of the person with primary care of the family. It has long been argued by feminist economists that it is not appropriate for payments relating to children to be paid through the taxation system, as this places control of the money in the hands of the primary income earner who receives the tax concessions—and this is frequently not the primary carer.

38 Sex Discrimination Commissioner, Paid Maternity Leave: A Time to Value (11 December 2002); see also the Workplace Relations Amendment (Paid Maternity Leave) Bill 2002, a Private Members Bill introduced to the Senate by Senator Stott Despoja.

This was noted by The Hon Justice KW Asprey J in the following reservation to the Asprey Report:

In my opinion, in the world of today a married woman should be treated both under the general law and in the taxation system as an individual in her own right and, in relation to the income which is both morally and legally her own, she should pay no more and no less tax than if she were a single person.40

A recent British study found that there are still issues related to the distribution of income in households, with women being seen as primarily responsible for the costs of raising children. Factors that influence the distribution of income within the household include whether the income is paid to the woman and whether the couple perceived the breadwinner role to be held by the man.41

For many years there has been an acknowledgement of this principle in family support payments. The partners of people receiving welfare payments have been entitled in their own right to a separate payment, and from 1994 the Home Child Care Allowance/Parenting Payment transferred entitlement from the taxpayer to the non-earning spouse. In the most recent tax benefit, the baby bonus, it is reflected in the methods of claim that are available to the claimant. The baby bonus can be claimed as a direct refund, or transferred to the working spouse as an offset.

III SIMPLIFICATION

Simplification is not achieved merely by reducing the number of benefits and rolling them into a single entitlement.

It is clear from the discussion so far that the family transfer payment system is anything but simple. The major complications relate to the overlap between the welfare and taxation system, with corresponding differences between the eligibility requirements for each.

In 1975, while in discussion about the deductions available in respect of dependent children, the Asprey Committee made the following observation:

It is untidy to have two instruments of policy for the same purpose. The Committee sees advantages in the suggestion made in the Interim Report of the Commission of Inquiry into Poverty (1974) that the dependent child allowance be abolished and child endowment correspondingly increased.42

It would be interesting to see what the authors would say about the system that is in place today.

40 Above n 1, Chapter 10, K W Asprey Reservation appended to Asprey Report.
42 Above n 1, para 12.14.
The system is further complicated when the various methods of payment are taken into account:

- Tax offsets are of limited value where families are not earning sufficient income to claim the full amount of the offset.

- Direct payments are useful in meeting the ongoing expenses of a family, but carry an inherent risk as the amount paid must be reconciled back to the income earned during the full year. I note here that under the previous arrangements a family could obtain the benefit of fortnightly reductions in tax if they were claiming a spouse rebate. Although there were instances where a taxpayer had to repay the credit previously allowed, for example due to spouse earnings, the issue of underestimating income did not have the impact that it has had under the FTB arrangements.

- Direct payments can be directed to the primary carer, assisting the appropriate distribution of income within a household.

A further complication arises in determining whether a benefit should be available to all families as a horizontal equity measure, or whether it should be limited to families in need, for example by means testing family income. FTB Part A is an effective example of how complex the formulas can become when benefits are combined. FTB Part A was supposed to simplify the system, but incorporates two different income levels, with shading in, to determine entitlement, and is based on four different age bands for the children—two age bands apply for each of the two income tests. These do not match up at all with the age or income requirements for the FTB Part B.

The issue that has caused most public outcry in relation to the FTB has arisen due to the administration of the income tests. The problem is that FTB entitlements are based on family adjusted taxable income, which is calculated on an annual basis. However, direct payments are made fortnightly based on an estimate of income, and if the estimate is inaccurate it can result in a significant debt that needs to be repaid.

The four areas where the income test arrangements are most likely to result in an overpayment are:

- Low income families claiming the additional Part A payment where income cannot be reliably estimated. Given that many families at this income level are in casual employment, it may be very difficult to make reliable estimates.

- Families claiming FTB Part B where the secondary income earner earns more than is estimated. Again the secondary income earner is often receiving income irregularly, which causes problems in estimating income.

- Cases where maintenance from a former spouse is received in a lump sum or increased during the year.

- Where a child leaves full-time education and enters the workforce, or receives government benefits, disqualifying them from being classified as a dependant for FTB purposes.
In the first year of operation of the FTB, such debts were written off if they were less than $1000, however, the problem has continued to be of such magnitude that the Commonwealth Ombudsman has conducted an inquiry into the administration of the FTB. In the period from 1 July 2000 – 3 September 2002 there were 1855 complaints to the ombudsman in relation to the assessment of FTB, including overpayments and debt recovery issues.

The major issues identified by the ombudsman relate to the difficulty in estimating adjusted taxable income where income is irregular, or there is a substantial change during the year, or where maintenance payments from a former partner were involved. The method of recovering debts was seen as being arbitrary, in that claimants were not informed of the amount of any overpayment until an expected tax refund was reduced by the amount of the overpayment. Finally, the system requires a tax return to be lodged by the end of the following financial year to allow the FTB entitlement to be reconciled. Where tax returns were lodged late—even with extensions being formally granted to the tax agent—the FTB was denied.

Although the ombudsman did make a number of recommendations, the report acknowledges the inherent difficulties in income reconciliation:

> the analysis suggests that, even if my recommendations are adopted in full, the scheme is likely to continue to result in significant numbers of unavoidable debts for families.

There have been some administrative changes announced by the government which allow a number of options when claiming FTB fortnightly:

- Payments for the rest of the year may be reduced if an overpayment based on revised income details is likely;
- Part payment may be deferred and claimed at the end of the year—eg, FTB Part B may be deferred with Part A being claimed, or the base rate may be claimed with the additional amount for low income families being deferred until the end of the year;
- Where the income of older children is uncertain, the benefit for those children may be deferred and claimed in a lump sum when earnings for that child are known.

There has been discussion internationally of the Australian system of reconciling estimates of income to annual earnings. The UK government in particular argues that

---

43 Commonwealth Ombudsman, Own Motion Investigation into Family Assistance Administration and Impacts on Family Assistance Office Customers (2003).

44 Ibid, para 7.

45 Ibid, para 34.

when designing its new Tax Credit system it has learned from the Australian experience. 47

IV THE POLITICS OF FAMILY PAYMENTS

Finally, while examining the evolution of family transfer payments it has been impossible to avoid seeing the link between historical developments in the system and federal elections. Most of the major changes in the system over the past 20 years can be linked to a federal election.

Just prior to the 2001 federal election the WEL summarised the differences between the positions of the political parties as follows:

The Coalition has a very traditional view of families, ie two parents, mothers at home, men at work. The recent attempt to pay a little baby bonus was a badly designed ideological exercise. The ALP has too often used families as a mantra, but not as cynically in this election as the Coalition. The Democrats and Greens are offering real alternatives to support all families, such as paid maternity leave. The Greens and the Democrats also take a stand for all families including gay or lesbian, Indigenous or refugee families. 48

The following table matches federal elections with changes in family policy.


<table>
<thead>
<tr>
<th>Year</th>
<th>Elected</th>
<th>Family Policy Initiatives</th>
</tr>
</thead>
</table>
| 2001 | Howard: Lib | Baby Bonus—effective from 1 July 2000  
ALP policy addressed working families, including child care issues and support for low income families |
| 1998 | Howard: Lib | Family Tax Benefit—in conjunction with A New Tax System  
The ALP promised improved child care and a Tax Credit for Working Families, for families earning less than $70 000 based on the number of children in the household. |
| 1996 | Howard: Lib | Family Tax Incentive introduced, increasing tax threshold for families with dependent children |
| 1993 | Keating: ALP | Home Child Care Allowance and Parenting (Home Child Care) Allowance introduced allowance payable to person caring for children at home  
Child Cash Care Rebate—increased availability of child care assistance  
Coalition Fightback! package promised increases to family allowance (means tested), tax benefits for child care paid, and Dependant Spouse Rebate |
| 1990 | Hawke: ALP | Extensions to Child Care Fee Relief to include private child care  
Liberals promised tax rebates for children, and child care rebates extended to private child care |
| 1987 | Hawke: ALP | Family Allowance Supplement introduced—the source of the statement ‘By 1990 no Australian child will live in poverty’ |
| 1984 | Hawke: ALP | Child Care Subsidies introduced  
Note that if elected the coalition promised to introduce a measure of income splitting in calculation of tax payable |

A review of the current position also shows a clear policy distinction between the objectives of the two major political parties. ALP policy in the most recent elections has focussed on working families through child care incentives, industrial relations and the working families’ tax credit.

On the other hand, coalition policy emphasises choice, and provides incentives for women to leave the workforce, as demonstrated through the Baby Bonus and the tightening—during their first term of office—of access to child care benefits.

However, there are many other factors that influence a parent when deciding whether to work or stay at home with their family, and government support for families is only a minor contribution toward the cost of raising children. While family policy is becoming a significant issue in elections, it still ranks behind the economy, health and education for most voters.49

V CONCLUSIONS

If there are two conclusions that must be drawn from this analysis, they must be that the current system of transfer payments to families fails the tests of both equity and simplicity.

There is always a problem in determining whether a concession is equitable, as the concepts of vertical and horizontal equity carry inherent tensions: is it more important to ensure all families have the same access to a concession, or should the concession be targeted at families in need.

If we consider the traditional test of horizontal equity, all families should receive some level of government support to assist in the cost of raising children. Using this measure, the FTB is inequitable as not all families are able to access the benefit; however, the current design of the Baby Bonus, which is available regardless of income level, would meet this test.

Most people would, however, argue that more affluent taxpayers do not require taxpayer support, in which case the FTB would be seen as equitable. By extension, the Baby Bonus would be perceived as inequitable as higher benefits are paid to those who are in higher income brackets.

The equity argument can be seen most clearly in relation to child care benefits. Is the purpose of the benefit to acknowledge that child care is a cost of going to work, or is it a subsidy to assist those parents who cannot afford appropriate care for their children? If it is a cost of working, would it be more appropriately incorporated into taxation laws, rather than paid as a subsidy?

No-one who has had to grapple with the FTB system would argue that it is simple. As it has evolved, different tests have been incorporated for different purposes and it seems that there has been little attempt to make these tests consistent. This has resulted in the confusion discussed previously. It also disempowers taxpayers as they are unable to determine their own entitlements and, by default, leave matters in the hands of the Family Assistance Office.

The literature suggests that it is more appropriate to make sure that family payments are paid to the primary carer, and Australia has progressively adopted this principle for many years. However, we must acknowledge that this adds to the complexity of the system as alternative payment methods lead to problems such as those experienced when reconciling estimated and actual income.

There are currently at least three parliamentary inquiries under way that overlap to the extent that they all consider issues that are relevant in family policy. These inquiries include:
There are also a number of other inquiries being conducted at departmental level, including the paper on paid maternity leave released by the Federal Sex Discrimination Commissioner,\textsuperscript{50} and the ombudsman's report into the administration of the FTB.\textsuperscript{51}

This suggests that there is widespread dissatisfaction with the system as it currently exists.

The final word on these issues belongs to those who are regularly using the system, as shown in these two extracts from Senate Committee hearings:

The family payments proposal that we make about a single payment for children as opposed to the three payments—or more than three payments now because there is the baby bonus and all the others as well—is based on those principles of recognising the number of dependants and of treating all families equitably, neutrally, so that payments go to everybody regardless of whether they use child care or not or whether they have a partner who is in unpaid employment or not. We have discovered, particularly through talking to our members, that there is a huge number of families who, while they all get Family Tax Benefit part A, miss out on either of the other two major payments, that is, Family Tax Benefit part B and the child-care benefit.\textsuperscript{52}

League members believe there is urgent need to arrange family incentives and rebates through the tax system where applicable, rather than relying on complex welfare payments that are expensive to administer. I have a heap of literature here, and you almost need a degree to plough through it—it is a real maze.\textsuperscript{53}

\textsuperscript{50} Above n 38, Paid Maternity Leave: A Time to Value.
\textsuperscript{51} Ibid.
\textsuperscript{52} Evidence to Community Affairs References Committee: Poverty and Financial Hardship, Sydney, 27 May 2003, (Mrs Beard).
\textsuperscript{53} Evidence to Community Affairs References Committee: Poverty and Financial Hardship, Hobart, 2 May 2003, (Mrs Roberts; Dr Gartlan; Mrs Gartlan representing Catholic Women’s League Tasmania).