

6. Family Assistance and Child Support

Contents

Summary	147
Grandparents and mature age carers	147
Child Care Benefit and Child Care Rebate	148

Summary

6.1 This chapter discusses two areas of law: child support and family assistance. These laws may be relevant to mature age persons, in particular when they raise grandchildren. Specific barriers to work for mature age persons within these laws have not been identified. Consequently, the ALRC does not propose reforms to child support or family assistance laws.

Grandparents and mature age carers

6.2 Mature age persons may be eligible for family assistance and child support when they care for children—frequently grandchildren.¹ In 2009–2010, there were 16,000 Australian families in which grandparents were raising children 17 years or younger.² There are a number of reasons why grandchildren may be in the principal care of their grandparents, including: family violence; drug or alcohol misuse; child abuse or neglect; the incarceration or death of a parent; and due to problems arising from mental or physical illness or intellectual disability.³

6.3 Mature age persons may also be eligible for family assistance and child support—or be liable to pay child support—as parents. The ALRC has not examined workplace barriers that affect parents as a group, as reforms to address workforce disincentives to parents of all ages are beyond the scope of this Inquiry.

1 The two primary family assistance payments that grandparents and other mature age non-parent carers may be eligible for are Family Tax Benefit and Child Care Benefit. They may also be eligible for other payments including: Child Care Rebate; Baby Bonus; Maternity Immunisation Allowance; and Double Orphan Allowance.

2 Australian Bureau of Statistics, *Family Characteristics, Australia, Cat No 4442.0* (2009–10). Arrangements for care may be formal (when carers have legal responsibility for children), or informal (by private agreement): FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 30 August 2012, [2.1.1.85].

3 E Baldock, 'Grandparents Raising Grandchildren because of Alcohol and Other Drug Issues' 76 *Family Matters* 70; B Horner and others, 'Grandparent-headed Families in Australia' (2007) 76 *Family Matters* 76, 77; COTA National Seniors, *Grandparents Raising Grandchildren* (2003), prepared for the Minister for Children & Youth Affairs, [3.3.1], [5.3], [6.5.2].

6.4 Generally, the ALRC and stakeholders in this Inquiry have not identified particular barriers to participation in the workforce, or other productive work, for grandparents and other mature age carers in family assistance and child support laws.⁴ Consequently, the ALRC has not proposed reforms to these laws.⁵ The section below explores two family assistance payments that the ALRC has given particular consideration—Child Care Benefit (CCB) and Child Care Rebate (CCR). Both payments have specific policy objectives relevant to this Inquiry.

6.5 The ALRC acknowledges that when grandparents raise grandchildren, this may constitute a barrier to workforce participation in itself—though not a legal barrier. Grandparents may find their ‘employment and retirement plans thrown into chaos’, and be forced to give up work to look after the children.⁶ However, raising grandchildren may have a converse effect on grandparents’ participation in the paid workforce and they may need to continue working beyond their planned retirement date.⁷

6.6 Raising grandchildren is productive work with significant benefits to children whose parents cannot care for them—and by extension, significant benefits to society. The benefits to children have been described as:

reducing separation trauma, providing greater stability, preserving significant attachments, reinforcing cultural identity, and preserving the family unit.⁸

Child Care Benefit and Child Care Rebate

6.7 CCB and CCR are usually only paid to parents and carers who satisfy a work/training/study test. Grandparents who raise their grandchildren do not need to satisfy the test to be eligible for these benefits. If they were also required to satisfy the test, it might be argued that this would encourage these grandparents to participate in the paid workforce or in voluntary work. This section briefly considers CCB and CCR, and concludes that family assistance policy should not be changed to require grandparents to satisfy the work/training/study test to be eligible for CCB or CCR.

4 Following the writing of this chapter, the ALRC received a submission from the Brotherhood of St Laurence which stated that the Age Pension should be included among the Centrelink payments for eligibility for Jobs, Education and Training Child Care Fee Assistance: Brotherhood of St Laurence, *Submission 54*. The ALRC notes that grandparents who are principal carers of grandchildren are eligible for an alternative benefit for certain child care fees, that is, Grandparent Child Care Benefit: *A New Tax System (Family Assistance) Act 1999* (Cth) s 82A; *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth) pt 3 div 4 subdiv CA; FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 30 August 2012, [2.6.8], see also [2.8.2.10].

5 In the Issues Paper, the ALRC asked what changes, if any, should be made to family assistance and child support laws and policy to remove barriers to mature age participation in the workforce and other productive work: Questions 31 and 33. Relevant statutes include: *A New Tax System (Family Assistance) Act 1999* (Cth); *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth); *Child Support (Registration and Collection) Act 1988* (Cth) and the *Child Support (Assessment) Act 1989* (Cth). The policy guides are: FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 30 August 2012 and Child Support Agency, *The Guide—CSA’s Online Guide to the Administration of the New Child Support Scheme* (2012) <www.guide.csa.gov.au/> at 04 September 2012.

6 COTA National Seniors, *Grandparents Raising Grandchildren* (2003), prepared for the Minister for Children & Youth Affairs, [6.2.2].

7 Ibid, [6.2.2].

8 B Horner and others, ‘Grandparent-headed Families in Australia’ (2007) 76 *Family Matters* 76, 77.

6.8 CCB is an income-tested payment that assists eligible parents and non-parent carers with the cost of child care.⁹ Other CCB objectives are to provide incentives for parents and carers with low and middle incomes to participate in the workforce and community, and to support parents and carers to ‘balance work and family commitments’.¹⁰ CCB is available to parents or carers responsible for child care costs when the children attend approved child care services.¹¹

6.9 Most parents and carers and their partners must meet a work/training/study test to receive up to 50 hours of CCB a week when children are cared for by approved child care services. To satisfy the test, parents and carers must undertake 30 hours per fortnight of work (including voluntary work in certain circumstances), training or study. If they do not meet this test, they may receive CCB at a lower weekly limit of 24 hours.¹²

6.10 The work/training/study test does not apply to grandparents who are the ‘principal carers’ of a child in approved care.¹³ Grandparent principal carers may therefore receive up to 50 hours weekly CCB without meeting this test.¹⁴ ‘Principal carers’ are sole or major providers of ongoing daily care who make day to day decisions about the child.¹⁵ ‘Grandparent’ is defined broadly to mean the ‘natural, adoptive or step grandparent or great grandparent of the grandchild’. It also includes a grandparent’s or great-grandparent’s current or former partner.¹⁶

6.11 Parents and carers who are eligible for CCB are also eligible for CCR, even if their CCB entitlement is nil due to their income.¹⁷ CCR is not income tested. It covers 50% of out-of-pocket child care expenses for approved child care up to a maximum legislated amount per year (currently \$7,500 per child).¹⁸ The policy aims of CCR are to:

- assist families with the cost of approved child care,
- provide incentives for families with dependent children to participate in the community, and

9 *A New Tax System (Family Assistance) Act 1999* (Cth) addresses eligibility for CCB at pt 3 div 4.

10 FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 30 August 2012, [1.2.4].

11 Approved services include: long day care services; family day care services; in-home care services; occasional care services; and outside school hours care services. These services are approved for the purposes of family assistance law: *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth) ss 194, 195(1). CCB is also available when child care is provided by a person who has been approved as a registered carer—for example grandparents, friends, relatives or nannies: *A New Tax System (Family Assistance) Act 1999* (Cth) ss 41(2), 45.

12 *A New Tax System (Family Assistance) Act 1999* (Cth) ss 53, 54; FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 30 August 2012, [2.6.3.10]. Parents and carers may also be eligible for more than the default rate when they meet other conditions provided for in the legislation.

13 FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 30 August 2012, [2.6.3.10].

14 As noted above, grandparents receiving an income support payment may also be eligible for Grandparent Child Care Benefit—a higher rate of CCB.

15 FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 30 August 2012, [1.1.P.125].

16 *Ibid*, [1.1.G.15]. See also *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth) s 50R.

17 *A New Tax System (Family Assistance) Act 1999* (Cth) ss 57EAA, 57EA, 57F.

18 *Ibid* ss 84A, 84F; FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 30 August 2012, [1.2.7].

- support parents in balancing work and family commitments.¹⁹

6.12 As for CCB, applicants and their partners must meet a work/training/study test to be eligible for CCR. Applicants and their partners are not required to meet a minimum number of hours to satisfy this test—they need only have a work, or work-related commitment (as provided for in the legislation and the *Family Assistance Guide*) at some point during the week for which CCR is claimed.²⁰ As for CCB, grandparents and great-grandparents who are principal carers are not required to meet this test to receive CCR.²¹

6.13 The ALRC does not consider that grandparents' exception to the work/training/study test for CCB and CCR should be removed in order to extend a workforce incentive to mature age cohorts of carers. In consultations, stakeholders did not express support for such a reform. The Brotherhood of St Laurence stated in response to this issue that the 'aim of legislation should be not to penalise older Australians who are not in the workforce but to ensure there are not barriers to their participation'.²²

6.14 In the ALRC's view, removing the exception may dismantle a source of financial support for grandparents raising grandchildren. This is undesirable given the reasons that children may be in grandparents' care, the significant benefits that flow from such arrangements and the financial impact of raising grandchildren. Additional expenses include 'clothing, bedding, home modifications and perhaps even extensions'.²³ Further, the ALRC has been advised that the exception for grandparents from the work/training/study test has been considered international best practice.²⁴

19 FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 30 August 2012, [1.2.7].

20 *A New Tax System (Family Assistance) Act 1999* (Cth) s 14; FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 30 August 2012, [2.9], [2.6.3.10].

21 FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 30 August 2012, [2.6.3.10].

22 Brotherhood of St Laurence, *Submission 54*.

23 E Baldock, 'Grandparents Raising Grandchildren because of Alcohol and Other Drug Issues' 76 *Family Matters* 70, 75.

24 Social Policy Research Centre, *Correspondence*, 8 August 2012; Social Policy Research Centre, *Consultation*, Sydney, 24 July 2012.