# Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Bill 2011

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# Glossary

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<td>Child Care Quality Assurance</td>
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Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Bill 2011

Date introduced: 23 February 2011

House: House of Representatives

Portfolio: Employment Participation and Childcare

Commencement: Sections 1 to 3 on Royal Assent; Schedule 1, Part 1 and Schedules 4 and 5 on the day after Royal Assent; Schedule 1, Part 2 on 16 May 2009; and Schedules 2 and 3 on the 28th day after Royal Assent

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/bills/. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose

The primary purpose of the Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Bill 2011 (the Bill) is to provide for the implementation of a new national regulatory system for early childhood education and care prescribed under the new Education and Care Services National Law.

The Bill seeks to amend the A New Tax System (Family Assistance) Act 1999 (FA Act), the A New Tax System (Family Assistance) (Administration) Act 1999 (FAA Act) and a number of other relevant Acts to:

- allow greater scope for the recovery of debts from approved child care operators
- clarify when a child care service has stopped providing care for a child (and thus when the child care service or a carer is no longer eligible for Child Care Benefit)
- allow for instruments made under family assistance law to be considered part of family assistance law and thus be subject to the internal and external review mechanisms provided for in the FAA Act
- allow for the Minister to make guidelines for the release of protected information collected by Centrelink relating to education and care services for the purposes of the new Education and Care Services National Law, and
- provide greater scope to the Department of Education, Employment and Workplace Relations (DEEWR) to refuse approval of child care services.

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1. The Education and Care Services National Law is a key element in the new National Quality Framework for child care operators.

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In addition the Bill will allow for information which has been collected by Centrelink in relation to Child Care Benefit to be shared with state and territory bodies.

**Background**

In December 2009, the Council of Australian Governments (COAG) agreed to a National Quality Agenda for early childhood education and care and outside school-hours care. The aim of the new framework is to improve the quality of services and outcomes for children attending long day care, family day care, outside school-hours care and preschool. COAG has moved to provide national uniform standards, introduce a national ratings system for services providing care and education to young children, raise qualification requirements for staff in these services and lower staff-to-child ratios through a National Quality Standard. Implementing this agenda has meant overhauling a fragmented, inefficient and complex regulatory system in which the Commonwealth, states and territories have performed different, but overlapping, roles and providers operating across jurisdictional boundaries have had to deal with inconsistent state and territory regulations. State and territory governments are responsible for licensing childcare premises according to health and safety standards and structural aspects of the operation such as child-to-staff ratios. The Commonwealth accredits the quality of childcare services through the National Childcare Accreditation Council according to the Child Care Quality Assurance Standards. Accreditation is required for centres to be eligible services in regards to Child Care Benefit.

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5. Child Care Benefit assists families with the costs of using approved or registered child care services. Most long day care, family day care, before and after school care, vacation care and some in-home or occasional care services offer approved care. Registered care is provided by grandparents or other relatives, friends or nannies that are registered with the Family Assistance Office as carers. Individuals in preschools, kindergartens, outside school-hours care and some occasional care centres may also be registered as carers. Parents/carers using approved care services can currently claim Child Care Benefit for between 24–50 hours care per child per week (either as a fee reduction paid directly to the child care provider or as a lump sum at the end of the financial year). Child Care Benefit for registered care is paid when a claim is made to the Family Assistance Office, and can be for up to 50 hours of child care per week for a non school-aged child. Eligibility for Child Care Benefit requires parents/carers to meet an income test, have their child immunised (or be considered exempt from immunisation requirements) and meet residency requirements. For further information see the Centrelink website, viewed 27 April 2011, [http://www.centrelink.gov.au/internet/internet.nsf/payments/childcare_benefit.htm](http://www.centrelink.gov.au/internet/internet.nsf/payments/childcare_benefit.htm)

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The new national regulatory system will include a single, ongoing national approval process to replace the separate and specific arrangements in each state and territory. Each state and territory will have in place a single regulatory authority for granting approvals and monitoring compliance whilst a new national body, the Australian Children’s Education and Care Authority, will coordinate the new framework and monitor the implementation of the new regulatory system. These state and territory regulatory authorities will be the main point of contact for services in regards to regulation and will have primary responsibility for quality assessment processes. Services will no longer be accredited by the National Childcare Accreditation Council (NCAC). The new system will also mean that provider approvals will be recognised nationally so that an approved provider can apply for service approval in any state or territory without requiring a separate provider approval for that jurisdiction.

The new regulatory regime and quality assurance standards have their legislative basis in the new Education and Care Services National Law.6 This law has so far been enacted in Victoria with effect from 1 January 2012. The National Law which is a schedule to the Victorian Act can now be adopted by the Parliaments of other states and territories by reference to the Victorian legislation. Other jurisdictions are moving towards the passage of legislation referring to the Victorian Act with the exception of Western Australia which will pass corresponding legislation.

Sharing protected information

Expansion of sharing to state and territory regulatory authorities

The devolution of quality accreditation to state and territory regulatory authorities means that state and territory bodies will be responsible for assessing services against key criteria relevant for child care operators to gain approval from DEEWR. Parents and carers using child care centres approved by DEEWR are able to claim for Child Care Benefit and Child Care Rebate—the Government’s main forms of assistance for families to help with the costs of child care. Approved child care services are able to receive Child Care Benefit and Child Care Rebate on behalf of eligible families and provide these benefits in the form of fee reductions. For a child care service to be approved by DEEWR it must be both licensed by the relevant state and territory authority, and accredited for quality.

With state and territory authorities to be primarily responsible for both licensing and quality accreditation under the new regulatory system, DEEWR will be reliant on the assessment of these authorities to ensure that Child Care Benefit and Child Care Rebate are being paid in regards to services that provide quality care, are staffed by personnel with appropriate qualifications, are

6. Education and Care Services National Law Act 2010 (Vic), viewed 9 May 2011,

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financially viable and are being managed by suitable operators with a good record in the provision of child care services.

The new regulatory system and the increased reliance by DEEWR on the assessments of state and territory authorities will require an expansion of the existing information sharing arrangements to include sharing with state and territory regulatory authorities for the purpose of the new Education and Care Services National Law.

Implied authorisation

The amendments in this Bill must be considered in the context of the introduction of the Human Services Legislation Amendment Bill 2010 (the Human Services Bill) into the House of Representatives on 25 November 2010 and the subsequent enactment of the Human Services Legislation Amendment Act 2011 on 25 May 2011.

The purpose of the Human Services Bill was to provide for the incorporation of Centrelink and Medicare Australia into the Department of Human Services (DHS). The effect of the enactment of the Human Services Legislation Amendment Act 2011 is that Centrelink and Medicare Australia will join the Child Support Agency under the umbrella of DHS which will, from 1 July 2011, become a ‘one-stop’ service delivery department.\(^7\)

This integration means that it is likely that DHS will hold the same piece of information about a person under more than one program (and consequently more than one secrecy provision may apply). The Minister for Human Services and Minister for Social Inclusion, Tanya Plibersek, recognised the need to protect customer privacy, stating that:

> Information will only be shared where that sharing is authorised by law or where the customer consents ... The current program secrecy provisions, which apply strict rules about the handling of customer information, will continue to apply.\(^8\)

The provisions of the Human Services Bill were referred to the Senate Community Affairs and Legislation Committee (Community Affairs and Legislation Committee) for inquiry and report.\(^9\)

Issues about protection of client information were canvassed by the Community Affairs and Legislation Committee as part of its inquiry. According to the submission by DHS:

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9. The details of the terms of reference, the submissions to the Community Affairs and Legislation Committee and the final report can be viewed at: http://www.aph.gov.au/Senate/committee/clac_ctte/human_services/index.htm

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The Government is conscious of the need to protect customer data, therefore the individual databases of each agency will not be merged. The Department of Human Services will not use customer information collected for the purposes of one program for another program, unless the use of information in this way is authorised by law and already occurs or, alternatively, the customer gives informed consent to the additional use.\textsuperscript{10}

Having received this assurance from DHS, the Community Affairs and Legislation Committee reported that:

The Department advised the Committee that a privacy framework has been developed to ensure that privacy considerations are consistently managed across the reform process. The framework is supplemented by ongoing Preliminary Privacy Impact Assessments, which analyse privacy risks generated by the reform. According to the Department, these risks have to date been low due to the reform being based on informed customer consent in relation to the use and disclosure of personal information.

As further evidence of its commitment to protecting personal information, the Department advised that it is currently developing a consent model to ensure that information is appropriately managed and shared. The Department’s submission did not describe the model itself but stated that the model ‘emphasises adequate levels of notice, control and choice for individuals’.\textsuperscript{11}

Despite this, on the day after the Community Affairs and Legislation Committee report, during the debate of the Human Services Bill some 55 Government amendments were introduced, including amendments which are in identical terms to item 4, item 8 and item 12 of Schedule 4 to this Bill.\textsuperscript{12} The terms of the commencement provisions of the Human Services Legislation Amendment Act 2011 prevent the provisions from being enacted, and commencing, twice.

What remains, therefore, are provisions in the Human Services Bill, duplicated in this Bill, which are at odds with the commitment which was formerly stated to seeking the informed consent of customers of DHS to any additional use of their information.\textsuperscript{13}

\textsuperscript{13} Note that Item 7A of Section 2 of the Human Services Legislation Amendment Act 2011 states that if the provisions in this Bill are assented to before 1 July 2011, the relevant provisions of the Human Services Bill do not commence at all, so there is no overlap.

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The FAA Act, the Social Security (Administration) Act 1999 (SSA Act) and the Student Assistance Act 1973 (SA Act) all have provisions relating to confidentiality of ‘protected information’.  

Those provisions outline the purposes for which a person may obtain protected information, and that a person may record, disclose or use protected information for certain specific purposes. Generally, information provided by someone applying for a payment can only be used for the purposes of assessing their eligibility and rate of that payment—although the purposes for which a person may record, disclose or use protected information have been expanded to include some sharing of information for the purpose of a number of Commonwealth programs.

The Bill amends the FAA Act, the SSA Act and the SA Act so that a person may record, disclose or use information if the record, disclosure or use made of the information is made ‘with the express or implied authorisation of the person to whom the information relates’.

The question of what is ‘consent’ was determined by the English Court of Appeal in Bell v Alfred Franks & Bartlett Co Ltd. In that case, Lord Justice Shaw said:

... the only practical and sensible distinction that can be drawn is that if acquiescence can arise out of passive failure to do anything, consent must involve a positive demonstrative act, something of an affirmative kind ... The only sense in which there can be implied consent is where a consent is demonstrated, not by language but by some positive act other than words which amounts to an affirmation of what is being done and goes beyond mere acquiescence in it.

Similarly, Lord Justice Megaw said:

... if something falls within the description ‘acquiescence’, it is not consent. The difference which is pointed out between the two in this context is that ‘consent’ involves some affirmative acceptance, not merely a standing by and absence of objection. The affirmative acceptance may be in writing, which is the clearest obviously; it may be oral; it may conceivably even be by

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14. ‘Protected information’ is defined in section 23 of the Social Security Act 1991 as (a) information about a person that is or was held in the records of the Department or of the Agency; (b) information about a person obtained by an officer under the family assistance law that is or was held in the records of the Australian Taxation Office or Medicare Australia; (ba) information about a person obtained by an officer under the family assistance law that was held in the records of the Health Insurance Commission; (c) information to the effect that there is no information about a person held in the records of one or more of: the Department, the Agency, the Australian Taxation Office and Medicare Australia. A definition in similar terms is contained in section 3 of the A New Tax System (Family Assistance) (Administration) Act 1999. A definition of ‘protected information’ is also contained in section 3 of the Student Assistance Act 1973.

15. For example, the Family Homelessness Prevention and Early Intervention Pilot under subsection 202(2) of the Social Security (Administration) Act 1999 and subsection 162(2) of the A New Tax System (Family Assistance) (Administration) Act 1999.

16. Item 4, Item 8 and item 12 of Schedule 4 to the Bill.


18. Ibid., at 347.

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conduct, such as nodding the head in a specific way in response to an express request for consent. But it must be something more than merely standing by and not objecting.\(^{19}\)

It is of concern then, that the Bill makes a very significant change by allowing information to be recorded, disclosed or used with merely the implied authorisation (consent) of the person to whom it refers.

Both the Revised Explanatory Memorandum\(^{20}\) and the Supplementary Explanatory Memorandum\(^{21}\) for the Human Services Bill are silent about the significance of the amendments. The Explanatory Memorandum to this Bill sets out the rationale for the change as follows:

... the Secretary or anyone else is not able to use that information for purposes other than those specifically prescribed in the family assistance law, social security law, and Student Assistance Act, even with the consent of the person concerned. It is not clear that information Centrelink holds for family assistance, social security, or student assistance purposes can be used by Centrelink to facilitate provision of payments and services by Centrelink that stand outside those laws ... even with the consent of the individuals concerned.

The amendments ... make it clear that a person can record, disclose or otherwise use protected information with the express or implied authorisation of the person to whom the information relates.\(^{22}\)

Unfortunately, there is no indication in any of the explanatory material of how DHS will determine that the necessary authorisation has been ‘implied’. What must be avoided is a process which is akin to acquiescence.

It should be noted that the 2011–12 budget reforms feature a rationalisation and amalgamation of the IT functions and services of the agencies which will transform DHS into a ‘one-stop’ service delivery department. The rationale for the amendments then, may be the need to eventually create a single IT platform for DHS.\(^{23}\)

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19. Ibid., at 350.

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No requirement for guidelines for the disclosure of information

The current provisions for the disclosure of information in the FAA Act, SS Act and SA Act requires the minister to make guidelines guiding the department’s discretion in releasing information which is considered in the public interest, or to release information to the heads of other government agencies, or to persons authorised by those to whom the information relates. Currently, however, there are only guidelines for the disclosure of information considered in the public interest.

The proposed amendments will change the provisions in the relevant Acts so that the minister may make guidelines for the disclosure of information to other agencies or to those authorised by the individuals to whom the disclosed information relates. Other proposed amendments will recognise that there may be no guidelines setting out the framework of the exercise of the discretion in this disclosure.

This flexibility is likely due to the unchartered waters this Bill proposes to take, that is, the use of personal and protected details/data to apply rigour to the approval and monitoring of child care centres. No detail is contained in the Explanatory Memorandum as to what circumstances would be required for such guidelines to be created. In effect, the amendments will allow for the disclosure of protected information to government agencies or authorised persons without any guidelines, so that there may be no minimum standard which applies to the sharing of information.

Approval of child care services

The Bill also contains a number of other amendments relating to the approval of child care services and to the treatment of fee calculations.

The proposed amendments relating to the approval of child care services (for the purposes of Child Care Benefit) give greater power to DEEWR to approve, or refuse to approve, a child care service. Current provisions specify that the Secretary must grant approval to a service if specified conditions are met. It does not specify that the Secretary must refuse approval if any, or all, of the conditions for approval are not met. The amendments will clarify that the Secretary must refuse approval to a child care service if one or more of the requirements for approval are not met. The proposed amendments state that it is a condition of approval, and continued approval, that all services comply with the relevant requirements of Commonwealth, state and territory laws in which the service operates.

The amendments in this schedule allow for a broader consideration of child care operators during the approval process and the ongoing approvals process. It is not clear whether this will result in more centres being refused approval or whether greater use of sanctions will be made.

A recurring criticism of the current regulatory system has been the reluctance of DEEWR to make use of sanctions to enforce quality assurance standards. The 2009 Senate Education, Employment and Workplace Relations Committee report of the Inquiry into the Provision of Childcare cited the ‘extreme reluctance of DEEWR to effectively enforce the CCQA [Child Care Quality Assurance]
standards when they have been breached’. The Productivity Commission, in its report on regulatory burdens in the child care sector, was also critical of DEEWR’s avoidance of the use of strict sanctions such as the removal of accreditation stating that, ‘if sanctions are not utilised in an appropriate manner poor performers will have less incentive to improve the quality of their services and at the same time the authority and credibility of NCAC accreditation decisions are undermined’. The NCAC has previously argued that the reluctance of DEEWR to sanction services is, in part, due to linking compliance quality assurance standards with Child Care Benefit funding—holding that DEEWR has been reluctant to withdraw Child Care Benefit funding as this will impact on parents.

The Explanatory Memorandum for the Bill states that the language and structure of the FAA Act relating to the approval, and refusal of approval, of services for the purposes of family assistance law ‘has been a source of interpretational difficulties for the Department [DEEWR] in approving or refusing to approve child care services’. Clarifying the language of the FAA Act so that a child care service must be refused approval when relevant requirements are not met will remove the interpretational difficulties faced by DEEWR and will add weight to the threat, or use, of sanctions by state and territory regulatory bodies under the new National Quality Framework.

Other measures

Debt recovery

The proposed amendments under Schedule 1 to the Bill will allow greater scope for the recovery of debts owed by approved child care services. Approved child care services can pass on Child Care Benefit to families using the service, in the form of fee reductions. Fee reduction amounts are just one form of payment that child care services can receive under the FAA Act, the Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007, and other schemes administered by DEEWR. Approved child care services can also receive enrolment advance amounts, business continuity payments, Jobs Education and Training (JET) Child Care fee assistance (for eligible individuals undergoing training while their child is receiving care from an approved service) and payments under the Child Care Services Support Program. These amounts can, in certain circumstances (such as overpayments, recalculation of fees or if the service’s approval is suspended), become a debt due to the Commonwealth. Currently debts can be recovered through different means but primarily through setting off the debt against further payments to the service in the form of fee reductions (through Child Care Benefit) or enrolment advance amounts.

27. Explanatory Memorandum, p. 35.

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The amendments proposed in Schedule 1 will also allow for debt recovery through other amounts the Government may provide to the service, including:

- acquittal payments
- JET Child Care fee assistance
- other payments DEEWR provides to the service (as determined by a legislative instrument)
- any of the same amounts provided to another service operated by the same operator.

The amendments will give greater power to DEEWR to collect debts by setting off any amounts that would otherwise be paid to an approved child care service. It will also allow for amounts going to another service operated by the same operator (where one operator runs a number of different child care centres or service) to be set off. This will allow, for example, for debts amassed by a service that has ceased operating to be recovered through amounts being directed to another service which is run by the same individual or organisation that ran the service which ceased.

Child care absences

The proposed amendments contained in Schedule 2 allow for greater clarification of when exactly a service has stopped providing care to a particular child and is thus no longer able to claim child care benefit in respect of that child. Children can be absent from care, in certain circumstances, for long periods and it is not always clear whether this is a permanent or temporary absence. The FA Act allows for a period of up to 42 days of a child’s absence from care for an individual or service to still claim Child Care Benefit eligibility (known as an ‘initial absence’). However, this period of ‘initial absence’ cannot be claimed for any period after a service has permanently ceases providing care to a child.

The proposed amendments make stylistic changes to the FA Act to clarify this point and allow the minister to specify, through a legislative instrument, the exact circumstances of a child’s absence from care which will be taken to mean that the service has permanently ceased providing care to that child.

Scope of family assistance law

Schedule 3 aims to clarify that legislative instruments made under the FA Act and FAA Act should be considered ‘family assistance law’ for the purposes of the provisions in these Acts relating to the review of decisions, delegation of powers, obligations, offences et cetera. Currently, while these instruments are considered to be part of family assistance law in effect, and decisions can be made based on these instruments, there is some doubt as to whether these instruments are part of ‘family assistance law’ in the legislative context.
Committee consideration

At its meeting of 3 March 2011, the Senate’s Selection of Bills Committee resolved that the Bill not be referred to committee.\(^{28}\)

Financial implications

According to the Explanatory Memorandum, there are no direct financial impacts from this Bill.\(^{29}\)

Key provisions

Schedule 1—set off and recovery amounts

Items 1–32 of Schedule 1 to the Bill amend the A New Tax System (Family Assistance) (Administration) Act 1999.

Item 1 inserts a new definition into subsection 3(1) of the A New Tax System (Family Assistance) (Administration) Act 1999 for the term ‘child care service payment’. Payments referred to by this term include fee reduction amounts paid to child care services in respect of a parent/carer’s Child Care Benefit payment, enrolment advance amounts, advance acquittal payments made to a child care service (where an advance paid to the service is less than the service reduced its fees), Jobs Education and Training Child Care fee assistance payments or other payments specified by a legislative instrument. Item 2 inserts new subsection 3(4A) to empower the minister, by legislative instrument, to nominate other payments made to child care services under a scheme or program administered by the Department, as child care service payments.

Item 3 amends the wording of paragraph 66(2)(bb) to specify that, otherwise inalienable payments (such as Child Care Benefit and enrolment advances specified in subsection 66(1)), are subject to the setting off of debt against the various payments set out in the proposed new section 87A (inserted by item 10). Items 5 and 6 similarly amend paragraph 66(2)(cb) and paragraph 66(2)(cc) respectively so that they refer to ‘various payments’ rather than the specific kind of payments currently referred in these paragraphs.

Item 7 inserts the term ‘the first service’ into subsection 82(2) which details methods of recovery of debts owed by an approved child care service. Item 8 repeals paragraphs 82(2)(a) and (b) and inserts a new paragraph 82(2)(a) allowing for debts to be set off against one or more child care service payments to be made to either the ‘first service’ or another approved child care service operated by

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\(^{29}\) Explanatory Memorandum, Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Bill 2011, p. 4.

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the person who operates the first service. These items allow for debts owed by an operator to be recovered through the setting off of any payments going to that same operator. Under the current provisions, only payments going to the particular service which holds the debt are able to be set off.

**Item 10** repeals current sections 87A and 87B and inserts a new section 87A giving the Secretary the power to make determinations regarding the setting off of debts owed to the Commonwealth against one or more child care service payments to be paid to the service (or another service operated by the same person).

**Item 24** inserts proposed subsections 219RA(1A), (1B) and (1C) detailing how a notification of a decision by a childcare service to cease operating, effects the payment to that service of an enrolment advance. Current provisions at section 219RA detail the circumstances in which the Secretary must pay an enrolment advance.

**Items 27–30** amend section 219RC which provides for the setting off of enrolment advances when enrolment ceases. **Item 29** substitutes new words with the effect that amounts that must be set off in certain cases when an enrolment at a service has ceased, can be set off against one or more child care service payments to be paid to that particular service or any other child care service operated by the same person. **Item 30** inserts new subsections 219RC(2) and (3) detailing when the Secretary must set off an amount equal to the amount of a enrolment advance following the notification of a decision to cease operating a service.

**Schedule 4—protected information**

**Items 3–6 of Schedule 4** to the Bill amend Division 2 of Part 6 of the *A New Tax System (Family Assistance) (Administration) Act 1999* which contains the confidentiality provisions.

**Item 3** inserts new subsection 161(1A) into the *A New Tax System (Family Assistance) (Administration) Act 1999*. Existing section 161 allows for the lawful disclosure of information for the purposes of the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988*. The proposed new subsection will allow for the lawful disclosure of information for the purposes of:

- the new Education and Care Services National Law applying as a law of a state or territory
- another law of a state or territory which applies the Education and Care Services National Law as a law of that state or territory
- regulations made under the Education and Care Services National Law, or
- a state or territory law that corresponds to the provisions of the National Education and Care Services National Law.

The Education and Care Services National Law refers to the schedule to the *Education and Care Services National Law Act 2010* of Victoria. The new subsection expands the exceptions to the confidentiality provisions of the *A New Tax System (Family Assistance) (Administration) Act 1999*.
contained in section 161 from a limited number of Commonwealth laws to a number of state and territory laws and regulations.

Item 4 inserts new paragraph 162(2)(f) so that a person may make a record of, disclose or otherwise use protected information with the express or implied authorisation of the person to whom the information relates. The *A New Tax System (Family Assistance) (Administration) Act 1999* currently allows a person to obtain protected information only if the information is obtained for the purposes of:

- family assistance law
- the *Dental Benefits Act 2008*
- the Family Homelessness Prevention and Early Intervention Pilot
- the Child Care Management System Pilot, or

  - for the purposes for which the information was disclosed under section 167 (which prevents officers being required to disclose information—for example, by a court—because of their powers, duties or functions, except for the purposes of family assistance law), or
  
  - under section 168 (which allows the Secretary to disclose certain information considered in the public interest, or disclose information to other federal departments/agencies or to a person expressly or implicitly authorised by the person to whom the information pertains to receive it).

The new paragraph (f) inserted by item 4 of Schedule 4 to the Bill allows for a person to record, disclose or use protected information with the express or implied authorisation of the person to whom the information relates—that is, outside of the purposes of family assistance law, the provisions regarding the Secretary’s disclosure powers, or, for the purposes of the other Acts and programs listed in subsection 162(2). This broadens the scope for the disclosure of protected information from a limited number of specified circumstances to any circumstance for which the person to whom the information relates has given some express or implied authorisation.

Item 6 repeals existing section 169 which requires the minister to make guidelines for the Secretary to disclose information as provided for in section 168 and inserts new section 169 stating the minister *may* make guidelines for such disclosure. The Explanatory Memorandum for the Bill states that no such guidelines have ever been made and there has never been a perceived need to make guidelines for the disclosure of information to other agencies or authorised persons.  

Items 8–15 make similar amendments to the confidentiality provisions in the *Social Security (Administration) Act 1999* and the *Student Assistance Act 1973* as are proposed for the *A New Tax System (Family Assistance) (Administration) Act 1999*, described above.

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30. Explanatory Memorandum, *Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Bill 2011*, p. 32.

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These amendments allow for protected information collected under these Acts to be disclosed with the express, or implied, authorisation of the person to whom the information relates; and for the making of guidelines by the minister to guide in the exercise of the power to disclose information to a state or territory regulator body for the purpose of the Education and Care Services National Law, to be optional rather than obligatory.

Schedule 5—other amendments

Items 1–20 of Schedule 5 to the Bill amend the A New Tax System (Family Assistance) (Administration) Act 1999.

Item 10 adds new subsections 195(5) and 195(6) stating that the Secretary must refuse to approve a child care service for the purposes of family assistance law if not satisfied that one or more of the conditions for approval (outlined in subsection 195(1)) are met. Current provisions only state when a service may be refused approval which is only in circumstances such as where the service has been suspended under other provisions or has been convicted of an offence under the Act. Current provisions do not oblige DEEWR to refuse to approve a service when the conditions of approval are not met.

Item 11 repeals subsection 196(3) and inserts a new subsection 196(3) clarifying the conditions for continued approval in regards to Commonwealth, state and territory laws. The new subsection 196(3) makes the continued approval of a service conditional on that service complying with all Commonwealth, state and territory legal requirements in relation to the operation of the service, the provision of care by the service, the construction of the premises of the service and the equipment at the premises of the service. Current requirements under the Act make continued approval conditional only on compliance with relevant requirements under Commonwealth, state and territory law ‘relating to child care’. The new subsection broadens the scope of a service’s compliance requirements to all laws relevant to the operation of the centre, the provision and quality of care, and the safety of the building and its equipment. The proposed new subsection aligns continuing approval requirements under family assistance law with the new requirements regarding quality and safety under the National Quality Standards for child care services.

Concluding comments

The Bill makes a number of amendments to the FAA Act to improve the accountability of child care services under the new National Quality Agenda and strengthen the ability of DEEWR to ensure compliance with requirements under family assistance law. The proposed amendments will give greater scope to DEEWR in acting to recover debts owed by services and in refusing to approve services that do not meet requirements. This strengthening of the compliance system is important considering the numerous criticisms that have been made regarding the regulation of the child care sector in the past.

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The new regulatory system that is to come into being in 2012 will shift responsibility for accrediting child care services from the National Childcare Accreditation Council to state and territory regulatory authorities. State and territory authorities will therefore be responsible for both licensing child care services and accrediting the quality of their care—key criteria for services to be approved by DEEWR and thus to be eligible for receiving Child Care Benefit on behalf of parents in the form of fee reductions.

The proposed amendments in this Bill make significant changes to the way in which protected information acquired under family assistance and social security law can be shared.

First, there will be sharing of protected information to allow state and territory authorities to better regulate education and care services by providing them with information on compliance activities undertaken in relation to these services, financial information about services and information about those managing child care and education services. Previously, however, protected information acquired for the purposes of family assistance or social security law would only be disclosed for the purposes of those laws—for example, information gathered about a payment recipient would only be shared with another government department for the purpose of determining eligibility for or rates of that payment.

Secondly, there is an expansion of the power to use protected information where the person to whom that information refers gives their implied authority to do so.

The Bill contains important amendments allowing for the implementation of COAG’s National Quality Framework and will go some way to addressing deficiencies in government regulation of the child care sector.