



Human Services Legislation Amendment Bill 2010

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Glossary

Abbreviation	Definition
ATO.....	Australian Taxation Office
CEO.....	Chief Executive Officer
CES.....	Commonwealth Employment Service
CSA	Child Support Agency
CSS.....	Child Support Scheme
CSA Act.....	<i>Child Support (Assessment) Act 1989</i>
CSRC Act.....	<i>Child Support (Registration and Collection) Act 1988</i>
CSDA Act	<i>Commonwealth Services Delivery Agency Act 1997</i>
DMPAT Act	<i>Data-matching Program (Assistance and tax) Act 1990</i>
DAFF	Department of Agriculture, Fisheries and Forestry
DHA	Department of Health and Ageing
DHS.....	Department of Human Services
DEEWR	Department of Education, Employment and Workplace Relations
FHCSIA.....	Department of Families, Housing, Community Services and Indigenous Affairs
FMA Act.....	<i>Financial Management and Accountability Act 1997</i>
HI Act.....	<i>Health Insurance Act 1973</i>
HIC.....	Health Insurance Commission
HSC Act.....	<i>Human Services (Centrelink) Act 1997</i>
HSM Act	<i>Human Services (Medicare) Act 1973</i>
MA Act	<i>Medicare Australia Act 1973</i>
NH Act	<i>National Health Act 1953</i>
PBS	Pharmaceutical Benefits Scheme

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PS ActPublic Service Act 1999

SS Act.....Social Security Act 1991

SSA Act Social Security (Administration) Act 1999

DSSDepartment of Social Security

Human Services Legislation Amendment Bill 2010

Date introduced: 25 November 2010

House: House of Representatives

Portfolio: Human Services

Commencement: The provisions of this Bill are to commence at a variety of times as set out in the Table in **Section 2**. In summary, the provisions either start on the date of Royal Assent or on 1 July 2011 or on another date as set out in the Table.

Links: The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bills home page, or through <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at the ComLaw website, which is at <http://www.comlaw.gov.au/>.

Purpose

To provide for the transfer of legislative powers, constraints and requirements from two separate statutory agencies across to the Department of Human Services (DHS).

Background

The proposed legislation provides for the incorporation of existing statutory agencies into the DHS. These agencies are Centrelink and Medicare Australia. The Bill also refers to the Child Support Agency (CSA) but only makes changes to the appointment of a Child Support Registrar; the CSA already being a part of the DHS. The vast bulk of the provisions in the Bill are mechanical and refer to transferring the legislative powers, constraints and requirements that currently apply to the various statutory authorities and agencies to the DHS. The Bill deletes references to the Chief Executive Officers (CEO) of Centrelink and Medicare Australia and replaces them with the terms of Chief Executive Centrelink and Chief Executive Medicare respectively, while repealing legislative provisions which established these statutory authorities. Currently, the Child Support Registrar is appointed by the Secretary of the DHS. The Bill will also ensure that the Child Support Registrar, the Chief Executive Centrelink and the Chief Executive Medicare are different persons.

Thus Centrelink and Medicare will no longer be separate statutory agencies with a CEO but will be a part of the DHS, as will their staff. The DHS itself will remain separate to those departments which have more of a legislation and policy focus. These departments are the Department of Families, Housing, Community Services and Indigenous Affairs (FHCSIA), the Department of Education, Employment and Workplace Relations (DEEWR), the Department of Health and Ageing (DHA) and the Department of Agriculture, Fisheries and Forestry (DAFF). The Bill also seeks to make consequential amendments to a number of relevant Commonwealth Acts removing references to these agencies and replacing them with references to the DHS.

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The incorporation of separate agencies into the DHS raises some general structural and data management issues.

The affected agencies

The Government announced major changes and reforms to its main service delivery arrangements in December 2009.¹ The reforms involve the incorporation of two major service delivery statutory agencies being Centrelink and Medicare Australia into the DHS as provided for in the Bill.

Centrelink

Centrelink was created in the 1996/97 Budget when the government announced the creation of a one-stop-shop service delivery agency that would eventually become Centrelink. The legislation to establish Centrelink was the *Commonwealth Services Delivery Agency Act 1997* (CSDA).² Prior to Centrelink, the mainstream welfare income support and supplement programs were delivered by the Department of Social Security (DSS); employment assistance programs were delivered by the Commonwealth Employment Service (CES). Both the DSS and the CES had their own separate network of community-based service delivery offices. Most of the DSS and CES suburban, country and regional offices had separate locations—a very small number were co-located. The savings to government of the replacement one-stop-shop structure derived from no longer having to maintain two separate networks of service delivery offices and from delivery of all income support/supplement and employment assistance programs by the one agency. There were also some staff savings as well (mainly from the former CES).

Medicare Australia

Medicare Australia replaced the Health Insurance Commission (HIC) from 1 October 2005.³ Medicare Australia provides the service delivery of major health programs such as Medicare, the Pharmaceutical Benefits Scheme, the Australian Childhood Immunisation Register and the Australian Organ Donor Register.

Child Support Agency

The CSA was established in 1988 when the Hawke government's child support and collection reforms were introduced. The CSA originally had its overall supervision undertaken by the Australian Taxation Office (ATO). It was considered the CSA should be supervised by the ATO as like

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1. C Bowen, Address to the National Press Club, 'Service delivery reform: designing a system that works for you', Canberra, 16 December 2009, p. 10, viewed 22 February 2011, http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/EWHV6/upload_binary/ewhv65.pdf;fileType=application%2Fpdf#search=%22bowen%22
 2. C Field, *Commonwealth Services Delivery Agency Bill 1996*, Bills Digest, no. 110, 1996–97, Parliamentary Library, Canberra, 1997, viewed 22 February 2011, <http://www.aph.gov.au/library/pubs/bd/1996-97/97bd110.htm#Contact>
 3. F Childs, *Human Services Legislation Amendment Bill 2005*, Bills Digest, no. 12, 2005–06, Parliamentary Library, Canberra, 2005, viewed 22 February 2011, <http://www.aph.gov.au/library/pubs/bd/2005-06/06bd012.pdf>

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organisations overseas had been placed within the taxation arm of government due to taxation being a principle method of collecting maintenance owed by payer parents. The CSA was transferred from the ATO to the Family and Community Services portfolio from 1 October 1998 by the Howard government. The CSA was then transferred to the then newly created DHS with the announcement of the fourth Howard Ministry on 22 October 2004.⁴

Uhrig examination of governance of statutory authorities

Arising from a 2001 election commitment, the Howard government appointed Mr John Uhrig AC to conduct a review of the governance practices of statutory authorities and office holders, with a particular emphasis on practices impacting on the business community. The objective of the review was to identify issues relating to existing governance arrangements and to provide options for improved arrangements.⁵

The review focussed on seven statutory authorities: the ATO, the Australian Consumer and Competition Commission, the Australian Prudential Regulation Authority, the Reserve Bank of Australia, the Australian Securities and Investment Commission, the HIC and Centrelink. Uhrig found that:

There is a lack of effective governance for several of the authorities considered by the review due to several factors including unclear boundaries in their delegation, a lack of clarity in their relationships with Ministers and portfolio departments, and a lack of accountability for the exercise of their power. This lack of governance arises primarily due to a 'hands off' attitude assumed by many when dealing with statutory authorities. This situation is often further complicated by the presence of a board, particularly those where it is impractical for government to provide the full governing powers required to be effective.⁶

Uhrig also concluded that a 'strong working relationship between the department and statutory authorities' within portfolios is 'a pre-requisite to supporting the relevant Minister in governance responsibilities'.⁷ Among the review's recommendations were using governance boards for statutory authorities 'only where they can be given the full power to act', and mechanisms for clarifying the relationship between government and statutory authorities.⁸

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4. J Howard, (Prime Minister), *Fourth Howard Ministry*, media release, Canberra, 22 October 2004, viewed 30 March 2011, http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/BR7E6/upload_binary/br7e63.pdf;fileType=application%2Fpdf#search=%22howard%20child%20support%22
 5. J Uhrig, *Review of the corporate governance of statutory authorities and office holders*, Canberra, 2003, viewed 22 February 2011, <http://www.finance.gov.au/financial-framework/governance/docs/Uhrig-Report.pdf>
 6. *ibid.*, p. 7.
 7. Uhrig, *Review of the corporate governance of statutory authorities and office holders*, op. cit., p. 64.
 8. Uhrig, *Review of the corporate governance of statutory authorities and office holders*, op. cit., pp. 11–12.

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Statutory authority or department?

On the broader subject of the need for separate statutory authorities, Uhrig further commented that:

In comparison to the direct relationship between a Minister and the portfolio department, statutory authorities often operate with a greater level of separation. It is this separation, or 'independence', that creates the need for robust governance structures. The need for governance increases when independence is combined with power. Consequently, statutory authorities should be created only where there is sufficient need for:

- efficiency: that is, a clear purpose is required to achieve objectives and it is considered beneficial to undertake functions outside the portfolio department, or
- independence: when functions require a level of separation from government to ensure objectivity.⁹

Following on from the Uhrig review, in 2005 the Department of Finance and Administration noted that the government's policy preference was to 'curb unnecessary proliferation of Government bodies', and that 'Consequently, a function, activity or power should, if possible, be conferred on an existing department, or another existing Australian Government body, rather than on a new body'.¹⁰

Howard government response to the Uhrig review

The Howard government released its response to the Uhrig Report on 12 August 2004. In its legislative response the Government made the relationship between the Minister and the CEO of an agency a direct and a legally responsible contact relationship. The CEO of an agency could be directed by the Minister of the policy department and was directly responsible to that Minister.¹¹ The previous arrangement was to have a board that was appointed by the Minister and to have the CEO answerable to the board. The Howard Government response also saw the replacement of the HIC by Medicare Australia.¹² The net result saw far more direct linkage between the CEOs of agencies to the Minister of the relevant portfolio—CEOs were no longer answerable to an agency board but directly to the Minister. The current Bill's changes could be seen as an extension of these changes to the lines of responsibility.

9. *ibid.*, p. 7.

10. Department of Finance and Administration, *Government arrangements for Australian government bodies*, Australian Government, Canberra, August 2005, p. x, viewed 9 March 2011, <http://www.finance.gov.au/financial-framework/governance/docs/Governance-Arrangements-for-Australian-Government-Bodies.pdf>

11. F Childs, *Human Services Legislation Amendment Bill 2005*, Bills Digest, op. cit.

12. *ibid.*

The Uhrig Report also influenced the creation in October 2004 of a new DHS, within the Finance portfolio. A key element in establishing the DHS was the perceived need to separate the policy development and implementation functions, such as the delivery service of welfare payments.¹³

Separation of policy and service delivery functions

Currently, FHCSIA has responsibility for:

- Families
- Housing
- Community Capability and the Vulnerable
- Seniors
- Disability and Carers
- Women, and
- Indigenous Affairs

FHCSIA provides for the legislation and policy for the Age Pension, Disability Support Pension, Family Tax Benefit, Child Care Benefit, Maternity Payment, Carer Allowance and Carer Payment programs. Centrelink's role is the delivery of these programs to recipients.

Centrelink also delivers mainstream payments and services for DEEWR. These payments are primarily for those of working age and feature the Newstart Allowance¹⁴, Sickness Allowance, Youth Allowance, Parenting Payment – Single¹⁵, Parenting Payment – Partnered, ABSTUDY Payment, Austudy Payment, Partner Allowance and Widow Allowance. DEEWR does not use Centrelink for the delivery of its employment assistance arrangements—it delivers this assistance through Job Services Australia, but DEEWR provides for the legislation and policy.

The Child Support Scheme (CSS) is delivered through the CSA which is under the portfolio responsibility of the DHS.

In relation to the current reforms, the Government appears to be of the view that a continued separation between policy development and service delivery is desirable. In announcing the reforms, the Minister for Human Services stated that:

13. E Colman, 'Hockey fights for power in super portfolio', *The Australian*, 15 March 2005, viewed 22 February 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;orderBy=customrank;page=1;query=Author%3Acolman%20Date%3A01%2F03%2F2005%20%3E%3E%2031%2F03%2F2005%20Dataset%3Apressclp;rec=0;resCount=Default>

14. Newstart allowance is commonly referred to as the unemployment benefit.

15. Parenting Payment – Single is commonly referred to as the sole parent pension.

In 2004, the Howard Government created the Department of Human Services to place a greater emphasis on service delivery. Separating service delivery agencies from policy agencies was, to give the previous Government its due, a positive step.¹⁶

The Gillard Government aims to maintain the DHS as a separate service delivery department, meaning the policy and legislative elements of programs and payments will continue to be undertaken by the current main policy departments. The Minister further stated that:

Having a Minister, a Secretary, a Department focussed on service delivery means that, inevitably, there is greater concentration on finding the best ways to deliver our services, keeping the machine running as smoothly and efficiently as possible.¹⁷

The containment of service delivery functions in the DHS and their separation from the policy function has been a matter of comment in the past.¹⁸

Issues relating to the separation of policy and service delivery

The current reforms will not change the existing separation of legislation and policy functions from the service delivery function. Service delivery will no longer be undertaken by statutory agencies but rather by a large government department— the DHS. What will be important in this arrangement is the relationship between the legislation and policy departments and the service delivery department, the DHS.

Ideally, the analysis, development and introduction of policy and legislation takes into account the actual service delivery environment and its difficulties. Whether this is best achieved by separating the functions or co-locating them is a key consideration. It is not desirable to have policy or legislation with a service delivery objective that is then frustrated by difficulties at the delivery end; nor is it desirable to have difficulties in service delivery that arise due to problems with the originating policy or legislation.

In the context of the recent Advisory Group on Government Administration Reform's review of the Australian Public Service, some concern has also been expressed about the separation of policy and service delivery, and it has been suggested that there should be greater involvement of service delivery staff in policy development.¹⁹

16. C Bowen, Address to the National Press Club, 'Service delivery reform: designing a system that works for you', Canberra, 2009, p. 5, op. cit.

17. Ibid., p. 6.

18. P Gourley, 'Human Services: Why six into one simply won't go', *Public Sector Informant*, Canberra, October 2005, viewed 3 March 2011, http://parlinfo/parlInfo/download/library/jrnart/E6HH6/upload_binary/e6hh610.pdf;fileType=application/pdf#search=%22Departmental%20reorganisation%22

19. T Moran (Secretary of the Department of Prime Minister and Cabinet), 'Challenges of public sector reform', *Public Administration Today*, 1 April 2009, Canberra, p. 10, viewed 3 March 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;orderBy=customrank;page=0;query=Title%3>

Co-located servicing and the Hub

A central tenet of the service delivery reforms will be co-located servicing. The Minister said:

The most visible aspect of the Government's service delivery reform plan will be a move to co-locate Human Services agency offices to make it more convenient for Australians to deal with government.²⁰

The aim is to create servicing Hubs.

In January, we'll be turning the sod on a new community hub, a purpose-built building which will house all the Human Services agencies – Centrelink, Medicare, Commonwealth Rehabilitation Services, Australian Hearing and visiting Child Support services. We are in discussions with other government and nongovernment agencies about locating there to make it a truly one-stop shop. I can announce today that, by the end of 2010, there will be at least another 20 co-located offices around Australia and, by 2012, around 40 offices will house Medicare, Centrelink and CSA under one roof.²¹

The aim is to have all Centrelink and Medicare offices co-located by 2014.

Ms Plibersek said that by the end of 2014 all Centrelink, Medicare and Child Support offices will be co-located so Australians everywhere will be able to access services in single locations.²²

The delivery of co-located servicing is not entirely new. Currently, the delivery of family assistance in terms of the Family Tax Benefit (FTB) and the Child Care Benefit (CCB) programs have for some period been provided out of Medicare Australia offices as well as Centrelink offices.

Information-sharing

The Bill does not authorise information held on the separate Centrelink, Medicare Australia and CSA databases to be reconciled. This may only occur where the customer consents or where reconciliation is already permitted by law. The Government has indicated that:

Apart from the limited data that is already shared between agencies like Medicare and Centrelink, no more information will be shared, unless the individual concerned asks us to share the information for their convenience.²³

[A%22public%20sector%20reform%22%20Dataset%3Alcatalog.jrnart,jrnart88;rec=1;resCount=Default](#); Advisory Group on the Reform of Australian Government Administration, *Ahead of the game: Blueprint for reform of Australian government*, Canberra, March 2010, p. 41, viewed 3 March 2011, http://www.dpmmc.gov.au/publications/aga_reform/aga_reform_blueprint/docs/APS_reform_blueprint.pdf

20. Ibid., p. 10.

21. Ibid., p. 12.

22. T Plibersek, (Minister for Human Services), *Nine more Medicare-Centrelink offices to co-locate*, media release, Canberra 18 November 2010, viewed 24 February 2011, http://www.mhs.gov.au/media/media_releases/2010/11/18_november_2010_-_nine_more_medicare-centrelink_offices_to_co-locate.php

The Government has also stated that personal health information will be excluded from the reform changes.²⁴

The two agencies that the Bill proposes to incorporate into the DHS (Centrelink and Medicare Australia) and also the CSA have separate databases containing different personal data and information on individuals. In the vast majority of cases the data held in the different agency databases for a person will likely match up. But this will not apply in all cases; one database may be more up-to-date than another if one agency has more frequent contact with an individual than another agency. However, the incorporation of several separate agencies into the DHS raises the issue of the extent to which the government might in the future wish to reconcile the various records that exist for individuals. The DHS may well find itself grappling with this and related issues arising from the existence of different separate databases holding differing information on individuals.

The Medicare Australia database was originally the HIC database and the Centrelink database was originally the DSS database. In the past these different databases have had differing standards of proof of identity requirements. For all agencies, the proof of identity requirements were far less stringent in the 1970s and even up to the late 1980s than today.

Data matching

Currently, Centrelink conducts data matching with other departments and agencies (mainly the ATO and the Department of Veterans' Affairs). In the 2009-10 year Centrelink also data matched with:

- the Australian Securities and Investments Commission
- the ATO, other than as per the *Data-matching Program (Assistance and Tax) Act 1990*
- the Commonwealth Superannuation Administration
- DEEWR
- the Department of Health and Ageing
- the Department of Immigration and Citizenship
- the Defence Housing Authority
- public and private education providers
- State and territory departments of corrective services
- State and territory registrars of births, deaths and marriages.²⁵

The Bill proposes to amend the *Data-matching Program (Assistance and tax) Act 1990* (DMATA) in order to change the definition of 'assistance agency' and replace the current reference to the

23. C Bowen, Address to the National Press Club, 'Service delivery reform: designing a system that works for you', Canberra, 2009, pp. 20–21, op. cit.

24. C Bowen, Address to the National Press Club, 'Service delivery reform: designing a system that works for you', Canberra, 2009, p. 21, op. cit.

25. Centrelink, *Annual Report 2009-10*, Canberra, 2010, Chapter 5: Address Fraud, Compliance And Payment Accuracy, viewed 24 February 2011, <http://www.dhs.gov.au/publications-policies-and-plans/annual-reports/centrelink/0910/chapter05/06.html>

Services Delivery Agency (that is, Centrelink) with the DHS. Currently, the information held by Medicare Australia is not included in data matching and the Bill does not propose to alter that.

Committee consideration

The Bill has been referred to the Senate Community affairs Committee for inquiry and report by 22 March 2011. Details of the Senate Committee inquiry are at the [Committee's inquiry's webpage](#).

Financial implications

The Government has estimated that the reforms will result in annual savings for government in the order of 'several hundred million dollars' in future years.²⁶ Savings will result from the consolidation of existing agencies' 'IT, finance, property management, procurement and human resources' and from 'freeing up back office resources'. Co-location of offices may also lead to savings.²⁷ The Government has also indicated that any staff reductions resulting from the reforms 'will occur primarily through natural attrition'.²⁸

Key provisions

Background

As noted at the beginning of this Bills Digest, the Bill's provisions deal with what could be seen as a technical change to the machinery of government allowing for the incorporation of government statutory agencies into the DHS. These agencies are Centrelink and Medicare Australia. The vast bulk of the provisions in this Bill refer to placing the legislative powers, constraints and requirements, to and for the DHS, that currently apply to these agencies that are being rolled into the DHS. The Bill deletes references to the CEO of Centrelink and the CEO of Medicare Australia and replaces them with the terms of Chief Executive Centrelink and Chief Executive Medicare respectively. These organisations will no longer be separate agencies with a CEO but will be a part of the DHS. The Bill also provides amendments to many Commonwealth Acts that are used by these agencies to remove references to the agencies and replacing them with references to the DHS. In the context of the pre-existing policy decisions this is a largely mechanistic Bill.

26. C Bowen, Address to the National Press Club, 'Service delivery reform: designing a system that works for you', Canberra, 2009, p. 31, op. cit.

27. C Bowen, Address to the National Press Club, 'Service delivery reform: designing a system that works for you', Canberra, 2009, pp. 18, 23 op. cit

28. C Bowen, Address to the National Press Club, 'Service delivery reform: designing a system that works for you', Canberra, 2009, p. 22 op. cit

Schedule 1—Amendment of *Medicare Australia Act 1973*

Medicare Australia Act 1973

Part 1—Amendments

Schedule 1 refers to amendments to the *Medicare Australia Act 1973* (MA Act) for the closure of Medicare Australia and its transfer to the DHS. **Part 1** of **Schedule 1** largely is made up of changing the current references to the CEO of Medicare in the MA Act to references to the Chief Executive Medicare.

Item 2 will change the name of the MA Act to the *Human Services (Medicare) Act 1973* (HSM Act).

Items 3 and 22 change the name of the authorised officer in the MA Act from CEO to Chief Executive Medicare. **Item 27** sets out the description of the new officer – the Chief Executive Medicare and he/she is to be a Senior Executive Service member of the DHS and to be appointed by the Secretary of the DHS. **Item 32** inserts a description of the functions of the Chief Executive Medicare.

Other amendments include repeal provisions. For example, **item 24** repeals Part II of the MA Act which had established Medicare Australia, the result being Medicare Australia ceases to exist as a separate entity. **Item 56** abolishes Division 2 of Part IIA which had established the office of CEO of Medicare Australia.

There are also amendments to confirm that the secrecy provisions that currently apply within the different statutory agencies will continue to apply when the different programs come within the DHS (**item 222, new section 43A**).

Item 66 proposes a **new section 8RA** to be placed into the MA Act referring to the use of information obtained under the current section 8P of the MA Act. The current section 8P allows the CEO of Medicare to collect information but there are not any provisions setting out what the CEO can do with any information obtained. **Proposed 8RA** will allow the use of the information gathered to be used under sections 124F²⁹ and 124FF³⁰ of the *Health Insurance Act 1973* (HI Act) and also section 133 of the *National Health Act 1953* (NH Act).³¹ The two sections of the HI Act provide for extensive powers to take action against a practitioner ranging from taking no action, counselling, the practitioner up to disqualified as a recognised practitioner for the HI Act and to recover monies paid under the HI Act. Section 133 of the NH Act refers to prosecution for offences against the Pharmaceutical Benefits Scheme (PBS).

29. Section 124F of the HI Act provides for extensive powers to take action in relation to a practitioner, viewed 10 March 2011, http://www.austlii.edu.au/au/legis/cth/consol_act/hia1973164/s124f.html

30. Section 124FF of the HI Act, provides for extensive powers to take action in relation to pathology or diagnostic servicing, http://www.austlii.edu.au/au/legis/cth/consol_act/hia1973164/s124ff.html

31. Section 133 of the NH Act, viewed 10 March 2011, http://www.austlii.edu.au/au/legis/cth/consol_act/nha1953147/s133.html

Currently, the power of the CEO of Medicare Australia to request information under section 8P of the MA Act is to a degree restricted by section 8R of the MA Act. Section 8R says, in part:

Offences

(1) A person must not refuse or fail to comply with a notice under section 8P

(1A) However, the person is only required to comply with the notice to the extent that the person is capable of doing so.³²

Section 8R further details that:

(3) Without limiting what may be taken to be a reasonable excuse for the purposes of subsection (1B), it is, for the purposes of that subsection, a reasonable excuse for refusing or failing to comply with the notice if compliance would have the effect of disclosing the contents of a part of a record that is a part containing clinical details relating to a patient.³³

This provides some privacy and confidentiality protections so a practitioner cannot be compelled to disclose information about a patient's clinical records. This privacy issue was a concern to the Parliament when the original *Health Insurance Amendment (Compliance) Bill 2010* was debated.³⁴ That original Bill was not passed by the Parliament before the Parliament was prorogued for the 2010 Election.

The proposed amendments in this Bill should now be considered in conjunction with the proposed amendments to the HI Act in the *Health Insurance Amendment (Compliance) Bill 2010*.³⁵ That Bill presents substantive amendments to the HI Act for the powers of the CEO of Medicare to request and obtain information from practitioners. Those proposed amendments will strengthen the powers to compel practitioners to provide information on request and also still provide some protection of patient clinical records.³⁶

Items 69 to 71 propose several substantive new provisions to the MA Act to allow for the obtaining of information by the CEO of Medicare Australia. The provisions generally refer to the fact that we now live in an electronic computer age to run and maintain business activities. The amendments refer to the search and seizure provisions in Part IID of the MA Act, the main purpose being to bring

32. Section 8R of the MA Act, viewed 10 March 2011, http://www.austlii.edu.au/au/legis/cth/consol_act/maa1973164/s8r.html

33. Ibid., section 8P.

34. M Biggs, *Health Insurance Amendment (Compliance) Bill 2009*, Bills Digest, no. 37, 2009–10, Parliamentary Library, Canberra, 15 October 2009, viewed 10 March 2011, <http://www.aph.gov.au/library/pubs/bd/2009-10/10bd037.htm#Contact>

35. M Biggs, A Boxall, S Scully, J Tomaras, *Health Insurance Amendment (Compliance) Bill 2010*, Bills Digest, no. 51, 2010–11, Parliamentary Library, Canberra, 25 November 2010, viewed 10 March 2011, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=BillId_Phrase%3A%22r4490%22%20Dataset%3Abillsdgs;rec=0

36. Ibid., pp. 7–8.

these provisions up-to-date and into closer alignment with more recent changes to the *Crimes Act 1914* search and seizure provisions.

Item 87 presents a proposed **new section 43A** covering secrecy provisions. The provisions refer to the use and disclosure of information obtained by the DHS where more than one Act has secrecy provisions applying to that information. The provisions cover situations where a person has provided information to more than one program, for example, to the CSA and also to Centrelink. This, in part refers to the reconciliation of a person's records on different databases. Essentially, where a person provides more than one program a change of information, that information may be used for other updates of changes, where the primary legislation allows it. However, where the primary program's legislation does not allow for the information to be shared or used for another programs' records, that restriction is to continue. Certainly, the *Social Security (Administration) Act 1999* (SSA Act) is quite restrictive and narrow in its application of information sharing provisions. Essentially, information obtained under the SSA Act can only be used for the purposes of the SSA Act and also the *Social Security Act 1991* (SS Act).

The other legislation that comes into play in reference to information sharing is the DMPAT Act. See the Data matching content above. The DMPAT Act currently does allow the exchange of individual data between departments and agencies and for action to be taken on changing of records. There are proposed amendments to the DMPAT Act in **Schedule 4** of this Bill, but they are not substantive, entailing name changes. The amendments do not propose any change to or expansion of the current data matching processes.

Part 2—Transitional provisions

The transitional provisions in **Part 2** of **Schedule 1** refer to amending the MA Act for the transfer of Medicare Australia to the DHS. This involves the abolition of Medicare Australia and transferring it to be a part of the DHS and also for the transfer of Medicare Australia employees to the DHS. The transitional provisions also refer to the powers that are exercised by the CEO of Medicare Australia under other acts, like the *Public Service Act 1999* (PS Act) and the *Financial Management and Accountable Act 1997* (FMA Act). The Bill provides for the Secretary of the DHS to have powers under the PS Act and the FMA Act. The Chief Executive Medicare is not to have powers under these two acts unless acting as a delegate of the Secretary. Note too that there is provision for the Minister to further amend these transitional provisions by Declaration. The reader is referred to the Explanatory Memorandum for further explanation of this **Part 2**.

Schedule 2—Amendment of the *Commonwealth Services Delivery Agency Act 1997*

Commonwealth Services Delivery Agency Act 1997

Item 2 amends the CSDA Act to change the name of the Act to the *Human Services (Centrelink) Act 1997* (HSC Act). **Item 7** inserts a new term in the definitions section of the CSDA Act being Chief Executive Centrelink. Thereafter, there are amendments to delete references to the CEO of Centrelink replacing them with references to the Chief Executive Centrelink. **Item 23** inserts a **new**

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section 7 setting out the description of the new officer – the Chief Executive Centrelink and that he/she is to be a Senior Executive Service member of the DHS and to be appointed by the Secretary of the DHS. These are very like the amendments in **Schedule 1** that delete references to the CEO of Medicare Australia, replacing it with Chief Executive Medicare. The amendments arise from the abolition of Centrelink as a separate statutory agency, being changed to be a part of the DHS.

Part 2–Transitional provisions

The transitional provisions in **Part 2–Transitional provisions** are very much like the transitional provisions in **Part 2 of Schedule 1**. However, the provisions in **Schedule 2** refer to the CEO of Centrelink and the Chief Executive Centrelink. The provisions also refer to the transfer of Centrelink employees to the DHS as well as the powers that are exercised in reference to Centrelink under other acts, like the PS Act and the FMA Act. The Bill provides for the Secretary of the DHS to have powers under the PS Act and the FMA Act. The Chief Executive Centrelink is not to have powers under these two acts unless acting as a delegate of the Secretary. The reader is referred to the Explanatory Memorandum for a fuller explanation of the transitional provisions.

Schedule 3–Amendment of the *Child Support (Registration and Collection) Act 1988*

Much of the powers in the CSS supportive legislation are vested in the ‘Child Support Registrar’. The Child Support Registrar as a position is defined in and has powers under the major legislative supports of the CSS, being the *Child Support (Assessment) Act 1989* (CSA Act) and the *Child Support (Registration and Collection) Act 1988* (CSRC Act). The CSRC Act provides for the establishment of a Child Support Register³⁷ and also provides for powers against the Register to the Child Support Registrar.³⁸ The CSA Act does not need to be amended for the changes presented in this Bill as section 6 of the CSA Act details that the definitions set out in the CSRC Act also apply to the CSA Act, unless otherwise specified.³⁹ The Bill also provides for the Chief Executive Centrelink, the Chief Executive Medicare and the Child Support Registrar to be separate persons.

Child Support (Registration and Collection) Act 1988

Schedule 3, while shorter, is similar to **Schedules 1 and 2** in that it deletes references to the CEO of Centrelink and changes these references to Chief Executive Centrelink. In this case the amendments are made to the CSRC Act.

37. *Child Support (Registration and Collection) Act 1988*, section 13, viewed 7 March 2011, http://www.austlii.edu.au/au/legis/cth/consol_act/csaca1988427/

38. *Ibid.*, section 10.

39. *Child Support (Assessment) Act 1989*, section 6, viewed 7 March 2011, http://www.austlii.edu.au/au/legis/cth/consol_act/csa1989294/

Item 8 deals with the position of the Child Support Registrar.⁴⁰ It proposes to amend the current section 10, the definitions section, by adding **new subsections (2), (3) and (4)**, which provide that the position of the Child Support Registrar is to be filled by an SES employee in DHS appointed by the Secretary by way of a written instrument and for that person to not also be the Chief Executive Centrelink and/or the Chief Executive Medicare. Being a written instrument and not a legislative instrument, such a written instrument is not required to be tabled in the Parliament.⁴¹

Changes are also made to the definitions of the Services Delivery Agency which is changed to references to Centrelink. Similar amendments to the CSRC Act are also made changing references from the CEO of Medicare Australia to the Chief Executive Medicare.

Schedule 4—Consequential amendments

Schedule 4 contains many amendments to many different Acts. This is due to the fact that many Acts contain the terms and references to the CEO of Medicare Australia and/or the CEO of Centrelink and need to be changed to the Chief Executive Medicare and the Chief Executive Centrelink.

Item 56 proposes to amend the definition of ‘assistance agency’ in subsection 3(1) of the DMAT Act and replace the reference to the Services Delivery Agency (that is, Centrelink) with the DHS. This will allow the DHS to continue the current data matching arrangements. The reader is referred to p. 12 of the Digest above for the context of this amendment.

Concluding comments

Within the parameters of the government’s policy changes this Bill contains largely mechanistic provisions arising from the closure of the separate service delivery agencies of Centrelink and Medicare Australia and the rolling of these organisations into the DHS.

This absorption of these separate agencies into one government department raises various issues, including the management of their hitherto separate customer databases. These separate databases have been in existence for some time but there has never been a reconciliation of the records held.

The service delivery reforms will see a rationalisation of government servicing at the service delivery level. However, this rationalisation also raises the elementary issue as to whether there is a continued need for service delivery of Government programs to be separate from the legislative and policy arm of Government.

40. *Child Support (Registration and Collection) Act 1988*, section 10, op. cit.

41. M Coombs, *Acts Interpretation Amendment (Legislative Instruments) Bill 2005*, Bills Digest, no. 11, 2005-06, Parliamentary Library, Canberra, 8 August 2005, viewed 9 March 2011, <http://www.aph.gov.au/library/pubs/bd/2005-06/06bd011.pdf>

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