



Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further Election Commitments and Other Measures) Bill 2011

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Contents

Purpose	3
Basis of policy commitment	4
Family Tax Benefit advance	4
Health checks for young Family Tax Benefit children	5
Part A Supplement	6
Health check requirement	6
What will be considered a health check	7
Child support income assessment change	9
Notice of compensation payments	10
Other amendments	11
Committee consideration	11
Policy position of non-government parties/independents	11
Position of major interest groups/commentators	12
Main Issues	12
Child health checks	12
Uptake of Healthy Kids Check program	12
Ongoing treatment	13
Evidence base	14
Financial implications	15
Key provisions	16

Schedule1—Family Tax Benefit advance	16
Schedule 2—health checks for young Family Tax Benefit children	17
Schedule 4—notice of compensation payments.....	19
Concluding comments	20

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House: House of Representatives

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Commencement: Sections 1–3 and Schedule 4 on Royal Assent; Schedules 1–3 and Schedule 5 on 1 July 2011.

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 Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further Election Commitments and Other Measures) Bill 2011 (the Bill) seeks to introduce the following measures:

- several changes intended to provide for more flexible advance payments of Family Tax Benefit
- payment of Family Tax Benefit Part A Supplement for a child turning four in a particular year, to be made conditional on the child undertaking a health check
- introduction of a new, more accurate, default income arrangement for the purposes of calculating a parent's child support assessment, in cases where that person has not lodged a tax return
- a requirement that payers of compensation, including insurance companies, notify Centrelink of those proposed payments in order to enable Centrelink to determine the social security entitlements of the compensation recipient or their partner, and
- minor amendments to the family assistance law and child support legislation to clarify technical or drafting matters, and to ensure the legislation operates as intended.

The first three of the above measures are election commitments and the fourth is a 2010-11 Budget measure.

Basis of policy commitment

Family Tax Benefit advance

Family Tax Benefit is a Commonwealth Government payment to help families with the cost of raising dependent children. Family Tax Benefit has two parts: Part A and Part B.

Family Tax Benefit Part A is the main payment designed to help with the cost of raising children. It is payable to a parent/guardian or an approved care organisation for a child aged under 21 years or a dependent full time student aged between 21 and 24 years.

Family Tax Benefit Part B is designed to provide extra assistance to families with one main income earner, including sole parent families with a dependent full time student up to the age of 18 years.

Currently, recipients of fortnightly payments of Family Tax Benefit Part A, or both Family Tax Benefit Part A and Part B, may be eligible to receive part of their payment in advance as a lump sum. If eligible, they can receive one advance payment during the six month period from 1 January to 30 June 2011. Generally, such lump sum payments tend to be used to help pay for unexpected expenses such as repair, or replacement, of household items (for example, whitegoods) or medical expenses.

The amount of a Family Tax Benefit advance payment may vary depending on when a recipient applies during the advance payment period. The recipient's ongoing Family Tax Benefit payments are reduced to repay the advance payment they receive.

In August 2010, under its election package, *Better access to family payments*, the Australian Labor Party (Labor) committed to simplifying, and making more flexible arrangements for, advance payments of Family Tax Benefit in order to help families meet unexpected costs.¹ This Bill implements the changes outlined in the election package. The changes include:

- individuals will now be able to nominate an amount in advance to suit their needs—this contrasts with the current approach in which a specified amount applies
- the amount that may be requested will be subject to an upper and lower limit:
 - the minimum will be 3.75 per cent of the maximum standard rate for a child aged under 13²
 - the maximum will be the greater of 7.5 per cent of their Part A rate, or 7.5 per cent of the maximum standard rate for a child under 13, less any existing advances³

1. J Macklin (Minister for Families, Housing, Community Services and Indigenous Affairs) and J Gillard (Prime Minister), *Better access to family payments*, media release, 4 August 2010, viewed 11 April 2011, <http://www.alp.org.au/federal-government/news/better-access-to-family-payments/>

2. For 2011-12, the minimum amount for most individuals will be \$160.96.

3. For 2011-12, the maximum advance available will be limited to \$1000.

- the amount payable will be subject to a remaining discretion to determine whether the individual should be entitled to a lesser amount based on financial hardship criteria—if it is decided that any amount of advance will place the individual in financial hardship, the individual will not be granted an advance
- instead of the current fixed repayment periods (1 January to 30 June, 1 July to 31 December), individuals will have some flexibility as to the period and rate of repayment of the advance
- while the default repayment period over which the advance will ordinarily be repaid by reduction of the individual's Family Tax Benefit Part A rate is 182 days (or 26 weeks), the Secretary may:
 - determine that the repayment period is shortened if satisfied that the individual would not suffer financial hardship
 - determine that the repayment period may be extended (producing a lower rate of reduction of their Family Tax Benefit Part A rate)—though, only in unusual and unanticipated circumstances, where the individual would suffer severe financial hardship if the request for an extension were not granted
 - grant a suspension of repayment in unforeseen and unusual circumstances
- the option of regular advances will continue to be available—individuals will be able to request that an advance of the minimum amount be paid to them and simultaneously request that similar advances be paid to them at regular intervals of 182 days.

The Government estimates that around 1.5 million families would be eligible to make use of the above changes. The changes are similar to those introduced for pensioners through the *Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Act 2009*.⁴

Health checks for young Family Tax Benefit children

The Bill seeks to make the payment of the Family Tax Benefit Part A Supplement (the Part A Supplement) for a child turning four in a particular income year, conditional on the child having received a basic health assessment. This meets a commitment made by the Government in the 2010 election campaign under the banner, *Healthy start for school*.⁵ This is to be done by adding a new condition, the health check requirement, to the existing condition governing access to Part A Supplement (that is, satisfaction of all relevant Family Tax Benefit reconciliation conditions).

4. For further information on the measures in this Act, see D Daniels, L Buckmaster and P Yeend, *Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Bill 2009*, Bills Digest, no. 179, 2008–09, Parliamentary Library, Canberra, 23 June 2009, viewed 12 April 2011, <http://www.aph.gov.au/library/pubs/bd/2008-09/09bd179.pdf>

5. J Gillard (Prime Minister), *Healthy start for school*, media release, 11 August 2010, viewed 19 April 2011, <http://www.alp.org.au/agenda/education---training/healthy-start-for-school/>

Part A Supplement

The Part A Supplement is a payment to families eligible to receive Family Tax Benefit Part A at any time during the income year. It is paid for each eligible child in a family, and paid as a lump sum after the end of the income year.

The Part A Supplement was introduced by the Howard Government as part of the *Family Assistance Legislation Amendment (More Help for Families—Increased Payments) Act 2004*. The Bill introducing the Act was introduced on the night of the Federal Budget announcement in 2004. Commentators at the time suggested that the Part A Supplement was directed at addressing the problem of families incorrectly estimating their annual income and being required to repay the Government for overpayment of their Family Tax Benefit at the end of the year.⁶

In his Second Reading Speech for the Bill, the then Minister for Children and Youth Affairs, Larry Anthony said in relation to the Part A Supplement that:

As well as providing extra assistance to families, this lump sum will be available, if required, to offset any family assistance overpayment that may have occurred during a previous income year.⁷

Health check requirement

The Government's rationale for linking payment of the Part A Supplement to a child health check is that such checks:

... may detect developmental delays and conditions, such as problems affecting hearing and vision, which are problems that make it more difficult for children to learn when they start school. These checks will allow for early identification of health issues and intervention strategies before the child starts school.⁸

The Government has also argued that child health checks are particularly important for people on low incomes because of research indicating that disadvantaged children arrive at school less well prepared and that this disadvantage persists, and even widens, as children progress through school.⁹

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6. See for example L Taylor, 'A better deal for most parents', *Australian Financial Review*, 12 May 2004, p. 7, viewed 19 April 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F3AGC6%22>
 7. L Anthony (former Minister for Children and Youth Affairs), 'Second reading speech: Family Assistance Legislation Amendment (More Help for Families—Increased Payments) Bill 2004', House of Representatives, *Debates*, 11 May 2004, p. 28196, viewed 19 April 2011, http://parlinfo.parlinfo/genpdf/chamber/hansardr/2004-05-11/0105/hansard_frag.pdf;fileType=application%2Fpdf
 8. Explanatory Memorandum, Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further Election Commitments and Other Measures) Bill 2011, p. 24.
 9. J Gillard, op. cit.

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The Government estimates that around 92 000 children aged four, whose families receive income support at some point in the year, will be affected by this measure each year.¹⁰

This measure reflects a number of Rudd-Gillard Government priorities in the area of social policy. The *Healthy start for school* election commitment said that the measure is ‘part of the Gillard Labor Government’s modernisation of Australia’s welfare system—to spread the dignity and purpose of work, end the corrosive aimlessness of welfare and bring more Australians into mainstream economic and social life’.¹¹ This reflects the recent focus of Labor (and indeed the Coalition) on the idea that while welfare is necessary for the alleviation of disadvantage, it also has a role in maintaining or even causing disadvantage.¹² It also reflects the increasing use by the Labor Government of ‘welfare conditionality’ as a way of addressing some of the harmful effects of welfare dependency. The Government also argues that the measure is an example of its policy focus on the health and wellbeing of children and families.¹³

What will be considered a health check

The Bill does not establish precisely what health checks are to be required under this measure—these are to be set by Ministerial determination. Parents will be required to submit to Centrelink a certification from a medical professional that the checks have been carried out, though no details of the health assessment are required to be provided.¹⁴

It would be reasonable to assume that the Government intends that child health checks required under this measure will largely be provided under the existing Healthy Kids Check Medicare items introduced in July 2008. According to the relevant Department of Health and Ageing fact sheet:

The aim of the Healthy Kids Check is to improve the health and well-being of Australian children. The Healthy Kids Check promotes early detection of lifestyle risk factors, delayed development and illness, and provides the opportunity to introduce guidance for healthy lifestyles and early intervention strategies.

The Healthy Kids Check is to be delivered in conjunction with the four year old immunisation. In some states and territories, the four year old immunisation may be provided at an earlier or later

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10. J Collins (Parliamentary Secretary for Community Services), ‘Second reading speech: Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further Election Commitments and Other Measures) Bill 2011’, House of Representatives, *Debates*, 23 March 2011, p. 2867, viewed 27 April 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2011-03-23%2F0049%22>
 11. Ibid.
 12. See L Buckmaster, *The major parties and ‘corrosive’ welfare*, FlagPost, Parliamentary Library, Canberra, 20 August 2010, viewed 19 April 2011, <http://parliamentflagpost.blogspot.com/2010/08/major-parties-and-corrosive-welfare.html>
 13. J Collins, op. cit.
 14. J Gillard, op. cit.

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age. Children receiving this earlier or later immunisation will be eligible for the Healthy Kids Check if they are over the age of three years and under the age of five years.¹⁵

Healthy Kids Checks must include:

- information collection, including taking a patient history and undertaking or arranging examinations and investigations as required
- making an overall assessment of the child
- recommending appropriate interventions
- providing advice and information to the child's parent(s) or carer
- keeping a record of the health assessment, and offering the child's parent(s) or carer a written report about the health assessment, with recommendations about matters covered by the health assessment, and
- updating any relevant records, such as a parent-held child health record.¹⁶

Examinations and assessments provided under Healthy Kids Checks must include:

- height and weight (plot and interpret growth curve and calculate BMI)
- eyesight
- hearing
- oral health (teeth and gums)
- toileting, and
- allergies.¹⁷

According to the fact sheet:

a registered Aboriginal health worker or practice nurse can assist the medical practitioner in the information collection stage of the Healthy Kids Check and by providing the child's parent(s) or carer with information about any recommended interventions, at the direction of the medical practitioner.¹⁸

Further, the medical practitioner, practice nurse or registered Aboriginal health worker must note if a copy of the *Get Set 4 Life—habits for healthy kids guide* has been provided to the child's parent(s) or carer, and record evidence that the immunisation for a 4 year old child has been provided.¹⁹

15. Department of Health and Ageing, *Healthy Kids Check—Fact Sheet*, Department of Health and Ageing website, 7 May 2010, viewed 18 May 2011,

http://www.health.gov.au/internet/main/publishing.nsf/Content/Health_Kids_Check_Factsheet

16. Ibid.

17. Ibid. The check may also include such matters as diet; physical activity; lifestyle; developmental milestones; speech and language; fine gross motor skills; and behaviour and mood.

18. Ibid.

19. Ibid; Department of Health and Ageing, *Get Set 4 Life—Habits for Healthy Kids Guide*, Department of Health and Ageing website, 1 March 2011, viewed 18 May 2011,

http://www.health.gov.au/internet/main/publishing.nsf/Content/Health_Kids_Check_GetSet4Life+Guide

The Government also provides some funding through Specific Purpose Payments to the states and territories for carrying out Healthy Kids Checks for children about to enter school. The payment is 'intended to 'strengthen linkages' between the Medicare funded Healthy Kids Check and state-funded services'.²⁰ Total funding for 2011-12 is \$1.9 million.²¹

Child support income assessment change

The Bill seeks to introduce a new, more accurate, default income arrangement for the purposes of calculating a parent's child support assessment in cases where that person has not lodged a taxation return. This fulfils a commitment from the 2010 election campaign.²²

The Child Support Registrar (the Registrar) is authorised under the *Child Support Assessment Act 1999* and the *Child Support Registration and Collection Act 1988* to make decisions in child support cases. However, in practice, most decisions are made by officers and employees of the Child Support Agency (CSA), part of the Department of Human Services.

The CSA administers Australia's Child Support Scheme and supports separated parents to transfer payments for the benefit of their children. In doing so, the CSA provides support and assistance to both parents, including calculating, collecting and transferring child support.

Most CSA customers determine the level of child support payable through an administrative assessment based on a legislative formula, known as a formula assessment.²³ The formula considers such things as both parents' incomes, how much it costs to raise the children, and the level of care each parent provides.²⁴

A parent's income for child support purposes is calculated by using their adjusted taxable income (ATI), a component of which is their taxable income for the last relevant year of income. Currently, where a parent has not lodged a taxation return for the two previous financial years, and there is no information from which a parent's ATI can be determined, the Registrar may determine that the ATI is at least two-thirds of the annualised Male Total Average Weekly Earnings figure for the relevant September quarter.

20. Australian Government, *Australia's federal relations: budget paper no. 3: 2010–11*, Commonwealth of Australia, Canberra, 11 May 2011, p. 45, viewed 20 May 2011, http://cache.treasury.gov.au/budget/2010-11/content/bp3/download/bp3_spp.pdf

21. Australian Government, *Australia's federal relations: budget paper no. 3: 2011–12*, Commonwealth of Australia, Canberra, 10 May 2011, p. 38, viewed 20 May 2011, http://www.aph.gov.au/budget/2011-12/content/download/bp3_03_Part_2.pdf

22. J Gillard, *Modernising Australia's welfare system*, media release, 11 August 2010, viewed 16 May 2011, <http://www.scribd.com/doc/35693525/Modernising-Welfare-Fact-Sheet>

23. Child Support Agency, *What is a formula assessment?*, Child Support Agency website, viewed 20 May 2011, http://www.csa.gov.au/child_support_formula/formula_assessment.php

24. Child Support Agency, *Your child support assessment*, Child Support Agency website, viewed 20 May 2011, http://www.csa.gov.au/child_support_formula/your_child_support_assessment.php

According to the Explanatory Memorandum, ‘this can understate a parent’s capacity to pay child support [leading to] less money being transferred to the benefit of children’.²⁵ In her second reading speech, the Parliamentary Secretary for Community Services, Julie Collins, said that one in four child support assessments are incorrect due to late or non-lodgement of tax returns.²⁶

Under the changes proposed in the Bill, from 1 July 2011, where a parent has not lodged a taxation return, the Registrar will instead calculate the parent’s default income by using the parent’s previous taxable income, indexed by growth in wages. The Government expects this measure to result in an increase in the average rate of Child Support payments and, consequently, to reduce the amount paid out in Family Tax Benefit by \$78.6 million over the next four years (the level of entitlement to Family Tax Benefit will decrease as access to Child Support increases).²⁷

Notice of compensation payments

The Bill seeks to introduce a requirement that payers of compensation, including insurance companies, notify Centrelink of proposed payments in order to enable Centrelink to determine the social security entitlements of the compensation recipient or their partner. This would implement a measure from the 2010-11 Budget, *Streamlining notification processes for compensation recipients*.²⁸

According to the Australian Government’s *Guide to social security law*:

It is a fundamental principle of the social security system that people who are unable to work because of a compensable injury are prevented from receiving income support from both the social security and compensation systems for the same period. These rules are designed to ensure that people who find themselves in this situation receive income support from those with the primary responsibility to provide the support i.e. statutory compensation schemes and insurers.²⁹

Currently, a person who receives a compensation payment is obliged to advise Centrelink within seven days after the day on which the person becomes aware that he or she has received, or is to receive, a compensation payment.³⁰

25. Explanatory Memorandum, p. 32.

26. J Collins, op. cit.

27. Australian Government, *Budget measures: budget paper no. 2: 2011–12*, Commonwealth of Australia, Canberra, 2011, pp. 197, viewed 19 May 2011, <http://cache.treasury.gov.au/budget/2011-12/content/download/bp2.pdf>

28. Australian Government, *Budget measures: budget paper no. 2: 2010–11*, Commonwealth of Australia, Canberra, 2011, 11 May 2010, p. 187, viewed 16 May 2011, http://www.aph.gov.au/budget/2010-11/content/bp2/download/bp2_expense.pdf

29. Australian Government, ‘4.13.1.30 Effect of Compensation on Compensation Affected Payments’, *Guide to social security law*, 4 January 2010, viewed 16 May 2011, http://www.fahcsia.gov.au/guides_acts/ssg/ssguide-4/ssguide-4.13/ssguide-4.13.1/ssguide-4.13.1.30.html

30. *Social Security Administration Act 1999* subsection 72(3)

The change proposed in this Bill will require organisations that pay compensation to advise Centrelink directly, at least 14 days before a compensation payment is made to a social security recipient or partner. Payments subject to the new requirement will include payments made for personal injury in the form of:

- a payment of damages
- a payment under a Commonwealth, State or Territory scheme of insurance or compensation, including a payment under a contract entered into under such a scheme
- a payment in settlement of a damages claim or a claim under such an insurance scheme, and
- any other compensation or damages scheme.³¹

The requirement applies to both lump sum and staged payments, and those made within or outside Australia.

Importantly, any debt to the Commonwealth that arises as a consequence of failure to give notice to Centrelink of a compensation payment, will be owed by the person (the payer or insurer) required to give notice.

The Bill does not remove the requirement in the social security law that a person must advise Centrelink within seven days after the day on which the person becomes aware that he or she has received, or is to receive, a compensation payment. The amendments create an additional requirement for an insurer to give notice in advance of making a payment to a person.

Other amendments

The Bill also includes minor amendments intended to clarify several family assistance child support provisions.

Committee consideration

At its meeting of 12 May 2011, the Senate Selection of Bills Committee deferred consideration of the Bill until its next meeting.³²

Policy position of non-government parties/independents

The non-government parties/independents have not publicly expressed a position on the measures in the Bill.

31. **New subsection 17(7)** *Social Security Act 1991* which is inserted by **item 3 of Schedule 4** to the Bill.

32. Selection of Bills Committee, *Report no. 6 of 2011*, Senate, 12 May 2011, viewed 23 May 2011, http://www.aph.gov.au/Senate/committee/selectionbills_ctte/reports/2011/rep0611.pdf

Position of major interest groups/commentators

The only measure in the Bill to have attracted significant public commentary is the making of payment of the Part A Supplement for a child turning four in a particular income year conditional on the child having received a basic health assessment.

Main Issues

Child health checks

Most of those who have commented publicly on the measure appear to accept that there is some merit in seeking to ensure that the health of children is checked from an early age, albeit with some caveats.³³ There has been criticism of the measure based mainly on experience with the Medicare funded Healthy Kids Checks since their introduction in 2008.

Uptake of Healthy Kids Check program

Some commentators have questioned the benefit of linking child health checks to the measures in this Bill on the grounds that uptake of the Medicare Healthy Kids Checks has not been as high as government estimates.³⁴

According to Lesley Russell of the Menzies Centre for Health Policy, in the first two years following its introduction, Medicare data shows that only 81 463 Healthy Kids Checks were done, at a cost of \$3.79 million.³⁵ She noted that this was 'well below what was anticipated for a nation with some 260 000 four-year olds, and a program that was budgeted to cost \$25.6 million over four years'.³⁶

New item numbers for claiming benefits for Healthy Kids Checks were introduced from May 2010. These allowed for longer consultations for a wider range of health checks and attracted higher benefits. It should be noted that while the previous item numbers were restricted to checks aimed at young children, the new item numbers include health checks for a broader range of patients, including adults.

Since the introduction of the new item numbers and descriptors, some 560 000 services have been provided. However, the majority of these are not for the Healthy Kids Check for younger children.

33. See, for example, B Kaye, 'Expanded kids check gets cautious support', *Medical Observer*, 17 May 2011; A Pesce, *Healthy kids check needs stronger evidence base*, media release, Australian Medical Association, 11 August 2010, viewed 17 May 2011, <http://ama.com.au/node/5953>

34. See, for example, L Russell, 'Gillard's plans for compulsory child health checks slammed', *Crikey*, 12 August 2010, viewed 17 May 2011, <http://www.crikey.com.au/2010/08/12/gillards-plans-for-compulsory-child-health-checks-slammed/>

35. Ibid.

36. Ibid.

From May 2010 to March 2011, some 57 417 services (or just 10 per cent of all health checks) were provided to children aged 0–4.

This does suggest a modest increase in numbers of children undergoing health checks (achieved over just a 10 month period) but, arguably, still represents a less than substantial uptake of the program. Nevertheless, this is not in itself an argument against the child health checks measure in this Bill. Arguably by linking the measures in this Bill to the completion of a Healthy Kids check, the Government could be also trying to increase the number of children undergoing a Healthy Kids Check.

Ongoing treatment

There has also been criticism that the design of the Healthy Kids Check program does not include any requirement for follow-up or ongoing treatment for health problems identified in a health check.³⁷ According to these critics, the one-off nature of the checks reduces the potential effectiveness of the program. As Russell argues, ‘there is nothing to require that children get the follow-up medical care, eyeglasses, hearing assistance or speech therapy they might need’.³⁸

Russell suggests the approach taken by the US Medicaid program (the federal/state program that provides health care for the poor) as an alternative model:

... the Medicaid Early Periodic Screening, Diagnosis, and Treatment (EPSDT) program is an exemplar of what should be done.

EPSDT is a mandatory set of services and benefits for all individuals under the age of 21 who are enrolled in Medicaid, designed to address physical, mental, and developmental health needs. Screening services to detect physical and mental conditions must be covered at periodic intervals, as well as diagnostic and treatment coverage.

The treatment component of EPSDT is broadly defined and must include the necessary health care, diagnostic services, treatment and other measures that are needed to correct or ameliorate physical and mental illnesses and conditions discovered by the screening services. In order to ensure access to needed services, assistance in scheduling appointments and transportation assistance to keep appointments must also be provided.³⁹

Adopting such an approach in Australia would add considerably to the cost of the overall program. However, it would also, most likely, add to the program’s effectiveness. It could also be argued that the additional costs of such an approach could be offset by the lower than expected uptake of the Healthy Kids Check program to date, as well as cost savings that would be realised if health problems were treated sooner, before they became more complex and more expensive to treat.

37. B Kaye, op. cit; L Russell, op. cit; A Pesce, op. cit.

38. L Russell, op. cit.

39. Ibid.

Evidence base

There has also been criticism of what some have argued is the inadequate evidence base for the Healthy Kids Checks. For example, an April 2010 paper in the *Medical Journal of Australia* examined whether the components of the Healthy Kids Check are supported by evidence-based guidelines or reviews.⁴⁰ The paper found that:

By filling a gap between maternal and child health nurse screening and examinations of selected children by school nursing services, the [Healthy Kids Check] has the potential to play a key role in childhood developmental surveillance, whereby professionals work with parents to detect specific problems over the course of time. However, despite the limitations of the search methods we used, the evidence behind the [Healthy Kids Check] is not compelling and its components are ill defined and lack rationale. The [Healthy Kids Check] could be refined to better reflect the available evidence. For example, guidelines that discussed fluoride exposure for oral health were based on high levels of evidence, and information on a child's exposure to fluoride should be sought. On the other hand, screening for chronic otitis media and questioning about toilet habits are not supported by evidence and should be removed from the [Healthy Kids Check].

Guidelines are also inconsistent in their recommendations. Most of the components of the [Healthy Kids Check] are not supported by evidence-based guidelines relevant to primary care, though a number of consensus-based guidelines are supportive. Some components of the eyesight check, hearing tests and the use of caries risk-assessment tools have not been validated in the general practice setting.⁴¹

The paper concluded that:

Appraisal of guidelines that endorse the non-mandatory components of the [Healthy Kids Check] and that identify other useful preventive health measures is required. The uptake and utilisation of the [Healthy Kids Check], and its perceived usefulness by health care providers and parents, could inform the program as a whole. Longer-term evaluation should ascertain how well parents comply with follow-up recommendations and the program's impact on health outcomes.⁴²

The Australian Medical Association (AMA) has also emphasised the absence of adequate evidence for child health checks, arguing that 'if Labor wants to link the Healthy Kids Check with payment of the end of year supplement under Family Tax Benefit Part A, it should first consult with the medical profession and gather the evidence to support this approach'.⁴³

40. K Alexander and D Mazza, 'The Healthy Kids Check—is it evidence-based?', *Medical Journal of Australia*, vol. 192, no. 4, 2010, pp. 207-10, viewed 17 May 2011, http://www.mja.com.au/public/issues/192_04_150210/ale10184_fm.html

41. Ibid.

42. Ibid.

43. A Pesce, *Healthy kids check needs stronger evidence base*, media release, Australian Medical Association, 11 August 2010, viewed 17 May 2011, <http://ama.com.au/node/5953>

It should be noted that the Government's recent mental health package outlined in the 2011–12 Budget included a measure under which an Expert Group will be established 'to advise on the inclusion of an evidence-based mental health and wellbeing check as part of the current Healthy Kids Check'.⁴⁴

A further criticism has been that targeting the Healthy Kids Checks to four year olds is inconsistent with evidence that such checks need to take place earlier in a child's development in order for them to be effective.⁴⁵ It has been reported that as part of the Budget mental health package, the Government expanded the child health checks measure to include three year olds and that this had been welcomed by some doctors.⁴⁶ However, the relevant Government fact sheet makes it clear that Healthy Kids Checks have been available to three year olds since at least May 2010 (the fact sheet refers to children being eligible for the scheme if they are 'over the age of three years and under the age of five years').⁴⁷

Nevertheless, it should be noted that the measure in this Bill requiring child health checks in order to receive the Part A Supplement are specifically directed at children turning four in a particular income year. As such, it appears that a Healthy Kids Check undertaken on a three year old child may not meet the requirements of this Bill.

Financial implications

In brief, the Government estimates that the financial impact of the measures in the Bill will be:

- Family Tax Benefit advance—\$62.4 million over five years to 2014-15 (with an additional \$2.9 million for Centrelink capital costs)⁴⁸
- health checks for young Family Tax Benefit children—\$12.1 million over five years to 2014-15 (with an additional \$1.5 million for Centrelink capital costs)⁴⁹
- child support income assessment change—savings of \$78.6 million over four years to 2013-14,⁵⁰ and
- notice of compensation payments—savings of \$34.0 million over four years to 2013-14.⁵¹

No financial impact is expected for the other amendments in the Bill.

44. N Roxon (Minister for Health and Ageing), J Macklin and Mark Butler (Minister for Mental Health and Ageing), *Budget—national mental health reform*, Ministerial statement, Australian Government, Canberra, 10 May 2011, p. 24, viewed 18 May 2011, http://budget.australia.gov.au/2011-12/content/download/ms_health.pdf

45. Ibid; B Kaye, op. cit.

46. Ibid.

47. Department of Health and Ageing, op. cit. It is possible that three year olds have always been eligible for the Healthy Kids Check and that the May 2010 fact sheet was simply a clarification of this.

48. Australian Government, *Budget measures: budget paper no. 2: 2011–12*, op. cit., p. 188.

49. Ibid, p. 190.

50. Ibid, p. 197.

51. Explanatory Memorandum, p. 2.

Key provisions

Schedule 1—Family Tax Benefit advance

Items 1–8 of Schedule 1 to the Bill amend the *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act). **Items 1–4** repeal definitions relating to the existing system of advance payments and insert a definition of **‘repayment period’** and a concept of **‘standard reduction’** required under the new system of flexible advances.

Item 6 and 7 repeal and replace clauses 5 and 25A of Schedule 1 to the Family Assistance Act. The new clauses are in similar terms and provide for an individual who is entitled to be paid family tax benefit by instalment to repay a family tax benefit advance in the manner set out in **new Division 4** of Part 5 of Schedule 1 to the Family Assistance Act.

Item 8 of Schedule 1 to the Bill inserts **new Division 4** which consists of new clauses 40–51. **New clause 40** contains the formula for calculating the amount by which a person’s Family Tax Benefit Part A is to be reduced in order to repay a family tax benefit advance. The **‘repayment period’** begins at one of three points contained in **new paragraphs 40(3)(a)(i)–(iii)** and extends for 182 days, or another period which is determined by the Secretary.

Under **new clause 41** the **‘standard reduction’** for a family tax benefit advance is calculated according to a formula.

The Secretary may determine that the **‘repayment period’** is less than 182 days only if the Secretary is satisfied that the shorter period is appropriate in the circumstances which are prescribed in **new paragraphs 42(a)** and **42(b)**.

Where a person’s Family Tax Benefit Part A rate is insufficient to recover a family tax benefit advance, the Secretary has the discretion, in **new clause 45**, to create a debt.

New clauses 46 and 47 contain discretions for the Secretary to change the **‘repayment period’** to a shorter or longer period, if the person makes a formal request. The Secretary may shorten the repayment period if he or she is satisfied that the person would not suffer severe financial hardship if the number of days was decreased. Similarly the Secretary may lengthen the repayment period if he or she is satisfied that the person suffer severe financial hardship if the number of days was not increased.

In addition, **new clause 49** authorises the Secretary to suspend the repayment period if a person makes a formal request and the Secretary is satisfied that **first** there are special circumstances affecting the repayment of the family tax benefit advance that could not reasonably have been foreseen at the time that the person requested the advance, and **secondly**, the person would suffer severe financial hardship if the person’s Part A rate was reduced during that period.

Items 9–16 of Schedule 1 to the Bill amend the *A New Tax System (Family Assistance) (Administration) Act 1999* (Family Assistance Administration Act).

Items 11 and 12 insert definitions of *‘maximum amount’* and *‘minimum amount’* in relation to Family Tax Benefit advance payments.

Item 13 repeals and replaces **Division 2 of Part 3** of the Family Assistance Administration Act which relates to the payment of family tax benefit advances.

New section 34 sets out the form that a request for a family Tax Benefit advance must take. A request may be withdrawn or varied. However, if a request is withdrawn **new subsection 35(3)** provides that it is taken never to have been made.

New section 35A provides the circumstances in which a person is entitled to family tax benefit advance, including, in **new subsection 35A(2)** those circumstances in which a person is excluded from being paid a family tax benefit advance.

New section 35B provides the mechanism for payment of a family tax benefit advance of the minimum amount at regular intervals of 182 days. The amount of the family tax benefit advance is set out in **new section 35C**.

Item 14 of Schedule 1 to the Bill repeals and replaces section 71A. Under **new section 71A**, where a person who has been paid a family tax benefit advance was not entitled to all, or part, of that advance, the amount paid which is in excess of the person’s entitlement is a debt due to the Commonwealth.

Item 20 in Part 3 of Schedule 1 to the Bill provides for a transitional advance payment in order to maintain an advance payment to families who currently receive continuous advances.

Schedule 2—health checks for young Family Tax Benefit children

Items 1–4 of Schedule 2 to the Bill amend the Family Assistance Act. In particular **item 3** inserts **new section 61A** into **Division 1 of Part 4** to the Family Assistance Act. **New subsection 61A(5)** empowers the Minister to specify requirements, by legislative instrument, relating to the health of children which are *‘health check requirements’*. The Minister may also, by legislative instrument, determine that children of a specified class are exempt from the health check requirement, or are deemed to meet the health check requirements. **New subsections 61A(1)** and **61A(2)** set out how the new health check requirement applies to individuals who are parents of an FTB child and to individuals who are non-parent carers of an FTB child respectively.

Items 6–8 amend the Family Assistance Administration Act. **Item 6** inserts **new subsections 107(3A)** and **107(3B)** which provide an exception to the general rule in subsection 107(1) about the date of effect of a review decision. The new subsections relate to payment of family tax benefit by

instalment to a person to whom new section 61A applies, and effectively provide an exception to the existing time limit on the date of effect of a review.

Item 7 inserts **new paragraphs 109D(4)(d) and 109D(4)(e)** to provide for new time limits within which the Secretary may review decisions relating to payment of the family tax benefit more than 52 weeks after the date that the decision was notified where new section 61A applies.

Similarly **item 8** inserts **new paragraphs 109E(3)(d) and 109E(3)(e)** to provide further exceptions whether the date of effect rules do not limit the available of arrears of family tax benefit.

Schedule 3—changes to child support income assessment

The provisions in Schedule 3 to the Bill amend the *Child Support (Assessment) Act 1989* (CSA Act). Under the CSA Act, the taxable income of both parents is used to calculate their child support assessment. A parent's taxable income is generally the amount of taxable income assessed when a person lodges a taxation return for a financial year. However, existing section 55J provides that when a parent has not lodged a taxation return for a financial year, the Child Support Registrar may make a determination of the parent's adjusted taxable income. **Item 3 of Schedule 3** to the Bill amends section 55J so that the Child Support Registrar may make such a determination only in certain circumstances.

Item 5 inserts **new sections 58 and 58AA** to set out those circumstances. **New section 58** contains a stepped process for the Child Support Registrar to follow:

First, according to new subsection 58(2) **where there is information, other than a taxation return**, and the amount specified in that information relates to the person's last relevant year of income or allows the amount of adjusted taxable income to be worked out and the amount worked out is a reasonable approximation of the person's adjusted taxable income for that year, the Child Support Registrar can determine that the amount is the person's adjusted taxable income for that year.

Secondly, according to **new subsection 58(3)**, where there is a **taxation assessment** for the year of income before the last relevant year of income, the Child Support Registrar may determine that the person's adjusted taxable income for the last relevant year of income is that amount multiplied by the **'ATI indexation factor'**. The ATI indexation factor is calculated according to the formula in **new section 58AA**.

Thirdly, according to **new subsection 58(4)**, where there is no taxation assessment for the previous year but there is a taxation assessment for an earlier year of income, the Child Support Registrar may determine the person's adjusted taxable income for the last relevant year of income as the greater of:

- the amount worked out by multiplying the parent's adjusted taxable income for the earlier year of income by the **'ATI indexation factor'** or
- the amount that is equal to two-thirds of the **'annualised MTAW figure'** for the relevant September quarter in relation to the child support period.

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Existing section 5A of the CSA Act contains a detailed definition of the term '**annualised MTAW figure**'. **Item 2** inserts **new subsection 5A(5)** to expand the definition and clarify that once the Australian Statistician published an amount in respect of a September quarter, not later amended amount is to be used in calculating the '**annualised MTAW figure**' for the purposes of determining adjusted taxable income.

Schedule 4—notice of compensation payments

The provisions of Schedule 4 to the Bill amend the *Social Security Act 1991* (SSA). Existing Part 3.14 of the SSA requires Centrelink to take compensation payments into account when determining eligibility for Centrelink payments that provide income support. To that end, subsection 17(2) contains a comprehensive definition of '**compensation**' as including, but not limited to, a payment of damages, a payment made under a scheme of insurance or compensation under a Commonwealth, state or territory law, a payment in settlement of a claim for damages or a claim under such an insurance scheme.

The provisions of Part 3.14 of the SSA operate so that income support which is paid to a person while he or she is waiting to receive compensation may need to be repaid. In addition, a person may not be able to receive Centrelink payments for a period of time, or the Centrelink payment may be reduced, because of the compensation. The existing provisions of Part 3.14 of the SSA will continue to operate as they have always done.

The amendments in **Schedule 4 to the Bill** add a **new Division 2A** to Part 3.14 of the SSA. **New Division 2A** contains new obligations which are directed towards insurers. **New subsection 17(7)** inserts a comprehensive definition of the term '**recompense**' which is drafted in similar terms as the definition of '**compensation**'. As with that definition, '**recompense**' specifically excludes payments which are in the form of criminal compensation.

New sections 1167A and 1167B require a payer of recompense, or an insurer who is liable to indemnify a payer of recompense, to notify the Secretary in a form approved by the Secretary, at least 14 days before such a payment is made. The rationale for this measure is that Centrelink will be able to calculate any overpayment of income support and recover that amount from the payer of recompense, or the insurer, before any lump sum is released. The effect of this measure is to reduce any potential overpayment to an income support recipient.

New subsection 1184EA sets out the consequences for a payer of recompense, or an insurer who is liable to indemnify a payer of recompense, in the event of a failure to give notice as required. In that case, a debt due to the Commonwealth is incurred by the payer of recompense, or the insurer, which is equal to the difference between:

- the amount of the payments made before, on or after the failure to give notice, and
- the amount of those payments that it is reasonable to suppose would have been payable if the person had given notice as required.

There is no guidance about the number of payments that it is 'reasonable to suppose' would have been paid. This decision will rest with Centrelink.

Concluding comments

This Bill implements several Government commitments affecting families from the 2010 election campaign and a budget measure from the 2010–11 Budget. It also includes several minor family assistance amendments.

The only controversial measure in the Bill is the provision to make the payment of the Part A Supplement for a child turning four in a particular income year conditional on the child having received a basic health assessment. This has been criticised on the grounds that uptake of the Medicare Healthy Kids Checks has not been as high as the Government had anticipated. Some have also criticised the design of the Healthy Kids Check program for not including any requirement for follow-up or ongoing treatment. Others have suggested that the evidence base for Healthy Kids Checks in their current form is not strong.

In relation to the first criticism, the Government could reasonably respond that the measure in the Bill may lead to increased uptake of the Healthy Kids Checks by providing families with a financial incentive for ensuring (or, more accurately, a financial disincentive for not ensuring) that such checks are carried out. The two other main criticisms are perhaps more fundamental and raise questions about the overall effectiveness and appropriateness of the program.

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