

1986

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

DISABILITY SERVICES BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Community
Services, Senator the Hon Don Grimes)

DISABILITY SERVICES BILL 1986

OUTLINE

The purposes of this Bill are -

- (a) to provide for funding of services for persons with disabilities by replacing provisions of the Handicapped Persons Assistance Act 1974 with provisions that are more flexible and more responsive to the needs and aspirations of persons with disabilities; and
- (b) to enable the provision of rehabilitation services by the Commonwealth by replacing provisions contained in Part VIII of the Social Security Act 1947 with provisions that are more flexible and more responsive to the needs and aspirations of persons with disabilities.

Funding of Services for Persons with Disabilities

The "New Directions" Report of the Handicapped Programs Review, tabled in the Senate on 30 May 1985, recommended that the Handicapped Persons Assistance Act 1974 (the current Act) be replaced by new Disability Services Legislation.

Implicit in the Report's recommendations was a recognition of the following problems in relation to the current Act -

- . the range of service types which can be funded under the current Act is very limited, thereby preventing certain needs of persons with disabilities from being met;

- . the emphasis under the current Act has been on the provision of services, rather than on the outcomes that those services enable persons with disabilities to achieve;
- . there is no provision in the current Act to make organisations accountable to the Commonwealth for the quality of the services they actually provide; and
- . there is no provision in the current Act for the funding of research or development activity.

This Bill is intended to overcome these difficulties.

The Bill would enable the Minister to make grants of financial assistance to a State, the Northern Territory or an eligible organisation in relation to the provision of an eligible service for persons with disabilities.

The Bill would provide increased flexibility in the range of service types which could be funded by a mechanism enabling the Minister to approve classes of services as eligible services. Any such approval would be subject to a requirement that it be tabled in Parliament and be subject to disallowance in the same manner as regulations.

The Minister would also have the power to formulate principles and objectives to be furthered, and guidelines to be complied with in the administration of the new Act. These principles, objectives and guidelines would also be required to be treated in the same manner as regulations.

The Bill would require the Minister to be satisfied that the making of a grant of financial assistance would further the principles and objectives, comply with the guidelines and further the objects of the Act before making such a grant in relation to the provision of an eligible service.

The Bill would require grants to be made on terms and conditions and would provide that those terms and conditions may include terms and conditions with respect to the outcomes to be achieved by persons with disabilities. The Bill would further require the Minister to conduct a review of the extent to which the terms and conditions on which grants were made have been fulfilled, and in particular, the extent to which outcomes required by those terms and conditions have been achieved by persons with disabilities, at intervals of not more than 5 years. This review mechanism would make the State or eligible organisation accountable to the Commonwealth for the quality of the services they actually provide.

The manner for determining the amount of financial assistance payable to a State or eligible organisation in relation to the provision of an eligible service will be contained in regulations.

The Bill will also encourage innovation in the provision of services for persons with a disability by providing for financial assistance for research and development activities.

It is anticipated that some services funded under the current Act will not be able to meet the objects of, or the principles and objectives formulated under, the new Act.

Provision has been made in the Bill to enable continued funding of these services for a maximum of 5 years.

The organisations providing these services will be expected to take adequate steps towards meeting the objects of, and the principles and objectives under, the new Act. Provision is made in the Bill for grants to assist the upgrading of these services so they may become eligible for funding as eligible services.

Provision of Rehabilitation Services by the Commonwealth

Under Part VIII of the Social Security Act 1947 (Part VIII), the Secretary may provide, or arrange for the provision of treatment and training for certain categories of persons who are suffering from a physical or mental disability.

Two main problems have been identified in relation to the provisions in Part VIII. First, Part VIII is unnecessarily restrictive in that it is primarily concerned with the provision of treatment and training although other types of rehabilitation may be necessary in particular cases. The Bill would overcome this problem by enabling the Secretary to approve the provision of a rehabilitation program, which would not necessarily be limited to treatment and training.

Second, under Part VIII, the facilities and other things that the Secretary may provide in connection with that treatment and training have also been unnecessarily restricted. The Bill would increase the range of things that may be done in support of a rehabilitation program.

The Bill would also restrict rehabilitation programs to Australian citizens and Australian residents in the usual case, but will include provision for special arrangements to be entered into.

The Bill would provide for the costs of rehabilitation programs, except in the case of pensioners, beneficiaries, or persons receiving certain allowances under the Social Security Act 1947 and pensioners under Part III of the Veterans' Entitlements Act 1986, to be borne by the persons undergoing the rehabilitation program.

The Secretary will have a discretion to specify in an individual case, or in relation to a class of persons that the cost or part of the cost will not be borne by the person undergoing the program. In exercising this discretion, the Secretary would be subject to guidelines formulated in relation to the exercise of that discretion. These guidelines would be subject to a requirement that they be tabled in Parliament and be subject to disallowance in the same manner as regulations.

The Bill will also make some other minor changes in relation to the current rehabilitation arrangements under Part VIII.

FINANCIAL IMPACT STATEMENT

It is expected that the Bill will be proclaimed to commence on 1 July 1987.

It is estimated that expenditure on services for persons with disabilities under this Bill will be \$139.2 m in 1987-88 and \$151.4 m in 1988-89.

It is estimated that expenditure on the provision of rehabilitation services by the Commonwealth under this Bill will be \$3.9 m in 1987-88 and \$6 m in 1988-89.

DISABILITY SERVICES BILL 1986

PART I - PRELIMINARY

Clause 1: Short Title

This clause provides that the Act could be cited as the Disability Services Act 1986.

Clause 2: Commencement

This clause provides for the dates on which various Parts of the Act would come into operation.

Clause 2(1) provides that the Act (other than Part II) would come into operation on a day to be fixed by proclamation.

Clause 2(2) provides that Part II of the Act would come into operation on a day to be fixed by proclamation, which may be the same day or a later day than the day fixed under clause 2(1).

It is expected that 1 July 1987 will be the day fixed for commencement under both clauses 2(1) and 2(2).

Clause 3: Objects

This clause would list the objects of the Act and would require the Act to be construed and administered in accordance with those objects.

Part of the object contained in clause 3(a) and the objects contained in clauses 3(b) to (e) concern Part II of the Bill.

Part of the object contained in clause 3(a) and the object contained in clause 3(f) concern Part III of the Bill.

Clause 4: Interpretation

This clause would provide definitions of the terms "officer" and "Secretary" used in the Act.

Clause 5: Principles, objectives and guidelines

This clause would provide that the Minister may formulate principles and objectives to be furthered, and guidelines to be complied with, in the administration of the Act.

By clause 32, any principle, objective or guideline would be required to be formulated in writing.

By clause 31, sections 48, 49, 49A and 50 of the Acts Interpretation Act 1901 would apply in relation to such a principle, objective or guideline. The principle, objective or guideline would be required to be notified in the Gazette and be laid before each House of the Parliament and would be subject to disallowance in the same manner as regulations.

Clause 6: Extension of Act to certain external Territories

This clause would provide that the Act extends to the Territories of Cocos (Keeling) Islands and Christmas Island.

PART II - FUNDING OF SERVICES FOR PERSONS WITH DISABILITIES

Division I - General

Clause 7: Interpretation

This clause would provide definitions of a number of terms used in Part II of the Bill. The effect of these terms is explained in the notes to the clauses where they appear in Part II.

Clause 8: Target group, &c.

This clause would provide a description of the target group for the purposes of Part II and a rule to enable the funding of a service although the service is not provided exclusively for persons included in the target group.

The current definition of "disabled person" in sub-section 3(1) of the Handicapped Persons Assistance Act 1974 is built upon the concepts of permanent incapacity for work and permanent blindness.

Clause 8(1) would describe the target group to be served by Part II of the Act. The target group would consist of persons with a disability, and would be based upon 3 elements -

- . the nature of the impairment resulting in the disability;
- . the length of time the person is likely to have the disability; and
- . the effect of the disability.

Clause 8(1)(a) would require the disability to be attributable to an intellectual, sensory or physical impairment or a combination of such impairments.

Clause 8(1)(b) would require the disability to be permanent or likely to be permanent.

Clause 8(1)(c) would require the disability to result in a substantially reduced capacity of the person with the disability for communication, learning or mobility and the need for ongoing support services. The effect of the disability would no longer be measured in the terms of permanent incapacity for work as under the current Act.

Clause 8(2) would provide a rule to enable the funding of a service where it is provided predominantly for persons within the target group notwithstanding that it is also provided for some persons not within the target group.

Clause 9: Approval of Services

A major criticism of the Handicapped Persons Assistance Act 1974 (the current Act) is that the Act only provides for the funding of a limited number of types of services, some of which are inappropriate for meeting the needs of persons with disabilities.

This clause would provide a mechanism to introduce greater flexibility in determining the types of services which can be funded.

Clause 9(1) would provide that the Minister may approve a class of services for the purposes of Part II if the Minister is satisfied that the provision of such services would further the objects in clause 3 and the principles and objectives formulated under clause 5 and also comply with the guidelines formulated under clause 5.

By clause 31, sections 48, 49, 49A and 50 of the Acts Interpretation Act 1901 would apply in relation to such an approval. The approval would be required to be notified in the Gazette and laid before each House of the Parliament and would be subject to disallowance in the same manner as regulations.

Clause 9(2) would, without limiting the generality of clause 9(1), provide a list of the kinds of services the Minister may approve under that sub-section. Each of these services is defined in clause 7, and is described below.

(a) accommodation support services

Under section 6 of the current Act, the Minister may approve residential accommodation provided for persons undertaking training, activity therapy, sheltered employment or other employment.

This provision creates an unnecessary nexus between accommodation and other services provided under that Act, and has in practice encouraged segregated accommodation for persons with disabilities, and together with the capital funding arrangements, the provision of accommodation in large institutions.

"Accommodation support services" is defined in clause 7 to mean services to assist persons with disabilities to develop or maintain suitable residential arrangements in the community.

The new definition places emphasis on the suitability of the accommodation and its provision in the community in an attempt to encourage smaller scale desegregated accommodation more suited to the needs of persons with disabilities.

(b) advocacy services

No provision is made for the funding of this kind of service under the current Act.

"Advocacy services" is defined in clause 7 and covers 3 types of advocacy services which represent the interests of persons with disabilities -

- . self-advocacy services assist persons with disabilities to represent their own interests;
- . citizen-advocacy services facilitate persons in the community to assist persons with disabilities, or their families or other persons who provide assistance for them, to represent their interests; and
- . group-advocacy services facilitate community organisations to represent the interests of groups of persons with disabilities.

(c) competitive employment training and placement services

Under section 4 of the current Act, the Minister may approve training provided at premises. This provision gives no indication of the type of training which should be encouraged.

A new definition of "competitive employment training and placement" is included in clause 7 to encourage at least 3 specific types of training, all directed to assist persons with disabilities to obtain and retain paid employment in the work-force.

The 3 listed are -

- . services to increase the independence, productivity or integration of persons with disabilities in work settings;

- . employment preparation and employment or vocational training services; and
- . services to assist the transition of persons with disabilities from special education, or employment in supported work settings, to paid employment in the workforce.

(d) independent living training services

There is no provision in the current Act which specifically encourages the provision of this kind of service.

"Independent living training services" is defined in clause 7 to mean services to assist persons with disabilities to develop or maintain the personal skills and self-confidence necessary to enhance their independence and self-reliance in the community.

(e) information services

No provision is made for the funding of this kind of service under the current Act.

"Information services" is defined in clause 7 to mean services to facilitate access to information by -

- (a) persons with disabilities; and
- (b) the persons who provide care for, or assistance to, persons with disabilities (including their families).

The definition also specifically includes services providing information generally to persons in the community where the information is necessary to enable persons with disabilities to live full lives as members of the community.

(f) print disability services

No provision is made for the funding of this kind of service under the current Act.

This term is defined in clause 7 to include services which facilitate access to, or the use of, printed materials by persons who have disabilities which would prevent them from using such materials in their standard form.

(g) recreation services

Under section 7 of the current Act, the Minister may approve recreational facilities for persons undertaking training, activity therapy or sheltered employment or living at approved residential accommodation under that Act.

There are two difficulties with the current provision. First, it is restricted to persons undertaking other activities or living in accommodation approved under the current Act. Second, it encourages the provision of segregated facilities.

The "New Directions" Report of the Handicapped Programs Review recognised that persons with disabilities should have access to a range of sport and recreational options in the general community (page 68 of the Report).

A new definition of "recreation services" is included in clause 7 which is not restricted to persons undertaking other activities funded under the Disability Services Bill or living in accommodation funded under the Bill. The definition also removes the encouragement for segregated facilities that arises under the existing Act.

The new definition specifically encourages the provision of services to facilitate the integration of, and participation by, persons with disabilities in recreation and leisure activities available generally to persons in the community.

(h) respite care services

No provision is made for the funding of this kind of service under the current Act.

The "New Directions" Report of the Handicapped Programs Review recognised the need for more respite care programs to provide short term and intermittent relief to persons providing care for persons with disabilities and for persons with disabilities themselves (page 32 of the Report).

The new definition of "respite care services" in clause 7 would include respite care services of this kind.

(j) supported employment services

Under section 5 of the current Act, the Minister may direct that paid employment provided by an eligible organisation at particular premises is sheltered employment.

The "New Directions" Report of the Handicapped Programs Review identified a number of problems in relation to sheltered employment. In particular, problems were identified with the unchallenging and inappropriate work frequently found and the low level of wages paid (chapter 9 of the Report).

A new definition of "supported employment services" is included in clause 7 which increases the range of services that can be funded by removing the current requirement that the employment be provided at particular premises.

Division 2 - Grants for Eligible Services and Research and Development Activities

Clause 10: Financial assistance for eligible services

This clause would provide the mechanism for the making of grants of financial assistance in relation to the provision of eligible services under the Bill.

"Eligible services" is defined in clause 7 to mean a service included in a class of service approved by the Minister under clause 9.

Clause 10(1) would provide that the Minister may approve the making of a grant of financial assistance to a State or eligible organisation in relation to the provision by the State or eligible organisation of an eligible service for persons included in the target group.

Under the current Act, grants can only be made to an eligible organisation. Clause 10(1) extends the operation of the new Act by providing that grants of financial assistance may be made to a State in relation to the provision of an eligible service.

"State" is defined in clause 7 to include the Northern Territory.

"Eligible organisation" is defined in sub-section 3(1) of the current Act. A new definition is included in clause 7 with several changes from the current definition.

The new definition would -

- . omit the requirement that an organisation not be conducted or controlled by, or by persons appointed by, the Commonwealth or a State Government (this criteria is considered unnecessary as the new Act will provide for grants to the States);
- . omit the reference to particular types of bodies that are automatically eligible organisations if they satisfy the other criteria in the definition (reference to these is unnecessary as they are automatically eligible if incorporated and not carried on for the purpose of profit or gain);
- . omit the reference to trustees (a body of trustees could be approved under the new paragraph (d)); and
- . include a reference to tertiary institutions (some of which may provide, for example, independent living training services).

Clause 10(2) provides, without limiting the generality of clause 10(1), a list of matters with respect to which a grant under that clause may be made. These matters include - recurrent expenditure, the cost of acquiring land, the cost of acquiring, erecting, altering or extending buildings and the cost of acquiring, altering or installing equipment.

Clause 10(3) would provide that the Minister must be satisfied that the making of a grant would further the objects set out in clause 3 and the principles and objectives formulated under clause 5 and would comply with the guidelines formulated under clause 5 before approving the making of a grant under clause 10(1).

Clause 10(4) would provide that where the Minister approves the making of a grant of financial assistance under clause 10(1), the Minister shall, subject to the regulations -

- . determine the amount of the financial assistance (it is intended to include the manner in which the amount of financial assistance is calculated for an eligible service in the regulations);
- . determine the times at which, and the instalments in which the financial assistance is to be paid (by clause 10(6), any instalments must be paid within 5 years after the approval of the making of the grant); and
- . specify the terms and conditions on which the financial assistance is granted (by clause 15(1), the financial assistance is not payable to an eligible organisation unless the organisation enters into an agreement on these terms and conditions).

Clause 10(5) would provide that the terms and conditions on which assistance is granted may include:

- (a) the purposes for which the assistance may be applied;
- (b) the amounts to be applied by the State or eligible organisation and the source of the amounts (to enable, amongst other things, provision for matching requirements such as those in the current Act, if considered desirable);

- (c) the outcomes to be achieved by persons in the target group and the rights of those persons in relation to the provision of the service or otherwise (to give organisations specific goals in relation to persons with disabilities so their success in meeting them can be reviewed, decisions on further assistance can be based on the outcomes they achieve and to give persons with disabilities rights in relation to the services provided to them);
- (d) the furnishing of information;
- (e) the provision of certificates;
- (f) the repayment of financial assistance (to include part of the effect of sub-section 31(3) of the current Act);
- (g) the giving of security (to include the other part of the effect of sub-section 31(3) of the current Act);
and
- (h) the use and disposal of and recovery of amounts that are, under the terms and conditions, to be taken as representing the Commonwealth's interest in land, buildings and equipment acquired as a result of the application of financial assistance.

Clause 10(6) would provide that financial assistance paid in instalments shall be paid within 5 years from the date of approval.

Clause 11: Review of outcomes of financial assistance for
eligible services

This clause would require the Minister to ensure that reviews are conducted at intervals of not more than 5 years, of the extent to which States or eligible organisations have fulfilled the terms and conditions of their grants and, in particular, of the extent to which the outcomes required by those terms and conditions have been achieved by persons in the target group.

By clause 3(d), one of the objects of the Bill is to ensure that the outcomes achieved by persons with disabilities by the provision of services be taken into account in the granting of financial assistance for those services.

Clause 12: Financial assistance for research and
development activities

One problem with the current Act is that it has no provision for the funding of research and development. By clause 3(e), one of the objects of the Bill is to encourage innovation in the provision of services for persons with disabilities.

This clause would provide for financial assistance for research and development activities.

Clause 12(1) would provide that the Minister may approve the making of a grant of financial assistance to a person in relation to a research or development activity being undertaken or to be undertaken by the person.

"Research or development activity" is defined in clause 7 to mean:

- (a) research concerning the provision of services for persons in the target group;

- (b) the investigation of the need for services for persons in the target group;
- (c) the initiation of services for persons in the target group;
- (d) the planning of the provision of eligible services for persons in the target group;
- (e) the development of proposals for the provision of eligible services for persons in the target group;
- (f) the development or implementation of training programs for persons providing eligible services or the families of, and other persons who provide care and assistance for persons in the target group;
- (g) the investigation of outcomes achieved by persons in the target group by the provision of eligible services; and
- (h) other activities approved by the Minister for the purposes of this definition.

By clause 31, sections 48, 49, 49A and 50 of the Acts Interpretation Act 1901 would apply in relation to an approval given under paragraph (h) of this definition. The approval would be required to be notified in the Gazette and laid before each House of the Parliament and would be subject to disallowance in the same manner as regulations.

Clause 12(2) provides, without limiting the generality of clause 12(1), a list of matters with respect to which a grant under that clause may be made. These matters include recurrent expenditure, the cost of acquiring land, the cost of acquiring, erecting, altering or extending buildings and the cost of acquiring, altering or installing equipment.

Clause 12(3) would provide that the Minister must be satisfied that the making of a grant would further the objects set out in clause 3 and the principles and objectives formulated under clause 5 and would comply with the guidelines formulated under clause 5 before approving the making of a grant under clause 12(1).

Clause 12(4) would provide that where the Minister approves the making of a grant of financial assistance under clause 12(1), the Minister shall, subject to the regulations -

- . determine the amount of the financial assistance (it is intended to include the manner in which the amount of financial assistance is calculated for a research or development activity in the regulations);
- . determine the times at which, and the instalments in which, the financial assistance is to be paid; and
- . specify the terms and conditions on which the financial assistance is granted (by clause 15(1), the financial assistance is not payable to a person unless the person enters into an agreement on these terms and conditions).

Clause 12(5) would provide that the terms and conditions on which assistance is granted may include:

- (a) the purposes for which the assistance may be applied;
- (b) the amounts to be applied by the person and the source of the amounts;
- (c) the furnishing of information;
- (d) the provision of certificates;

- (e) the repayment of financial assistance (to include part of the effect of sub-section 31(3) of the current Act);
- (f) the giving of security (to include the other part of the effect of sub-section 31(3) of the current Act);
- (g) the use and disposal of and recovery of amounts that are, under the terms and conditions, to be taken as representing the Commonwealth's interest in land, buildings and equipment acquired as a result of the application of financial assistance; and
- (h) the use, disposal and ownership of anything produced by the research or development activity.

Clause 12(6) would provide that the term "person" includes a State or eligible organisation.

Division 3 - Grants for Prescribed Services

Clause 13: Financial assistance for prescribed services

A major concern with the changed emphasis in this Bill is that a number of prescribed services under the current Act may not comply with the objects of the Bill listed in clause 3 and the principles and objectives likely to be formulated under clause 5. Clause 10(3)(a) will prevent the making of a grant of financial assistance in relation to these services.

This clause was inserted to provide a transitional period of 5 years during which the Minister can make grants to prescribed services.

"Prescribed service" is defined in clause 7 to have the same meaning that the term had in the current Act immediately before the commencement of Part II of the Bill.

Clause 13(1) would provide that where the Minister is of the opinion -

- (a) that the making of a grant of assistance to an eligible organisation in relation to the provision of a prescribed service is in the interests of persons in the target group;
- (b) that the eligible organisation will take adequate steps towards meeting the objects set out in clause 3 and the principles and objectives formulated under clause 5; and
- (c) that the making of the grant would comply with the guidelines formulated under clause 5,

then the Minister may approve the making of the grant, even though the Minister is not satisfied that the objects, principles and objectives would be furthered by so doing.

Clause 13(2) provides, without limiting the generality of clause 13(1), a list of matters with respect to which a grant under that clause may be made. These matters include - recurrent expenditure; the cost of acquiring land; the cost of acquiring, erecting, altering or extending buildings and the cost of acquiring, altering or installing equipment.

Clause 13(3) would provide that where the Minister approves the making of a grant of financial assistance under clause 13(1), the Minister shall, subject to clause 13(5) and the regulations -

- . determine the amount of the financial assistance (it is intended to include the manner in which the amount of financial assistance is calculated for a prescribed service in the regulations);
- . determine the times at which, and the instalments in which, the financial assistance is to be paid; and
- . specify the terms and conditions on which the financial assistance is granted (by clause 15(1), the financial assistance is not payable to an eligible organisation unless the organisation enters into an agreement on these terms and conditions).

Clause 13(4) would provide that the terms and conditions on which assistance is granted may include:

- (a) the purposes for which the assistance may be applied;
- (b) the amounts to be applied by the eligible organisation and the source of the amounts (to enable, amongst other things, provision for matching requirements such as those in the current Act, if considered desirable);
- (c) the outcomes to be achieved by persons in the target group and the rights of those persons in relation to the provision of the prescribed service or otherwise (to give organisations specific goals in relation to persons with disabilities so their success in meeting them can be reviewed, decisions on further assistance can be based on the outcomes they achieve and to give persons with disabilities rights in relation to the services provided to them);
- (d) the furnishing of information;
- (e) the provision of certificates;

- (f) the repayment of financial assistance (to include part of the effect of sub-section 31(3) of the current Act);
- (g) the giving of security (to include the other part of the effect of sub-section 31(3) of the current Act);
and
- (h) the use and disposal of and recovery of amounts that are, under the terms and conditions, to be taken as representing the Commonwealth's interest in land, buildings and equipment acquired as a result of the application of financial assistance.

Clause 13(5) would prevent the payment of financial assistance under clause 13(1) after 30 June 1992.

Clause 14: Financial assistance for upgrading of
prescribed services

This clause would provide a mechanism to enable eligible organisations providing a prescribed service to upgrade or modify their service so they can become eligible for a grant of financial assistance under clause 10.

Clause 14(1) would provide that where an eligible organisation is providing a prescribed service for persons in the target group, the Minister may approve the making of a grant of financial assistance to the organisation to enable it to take the necessary steps to become eligible for a grant of assistance under clause 10.

Clause 14(2) provides, without limiting the generality of clause 14(1), a list of matters with respect to which a grant under that clause may be made. These matters include recurrent expenditure, the cost of acquiring land, the cost of acquiring, erecting, altering or extending buildings and the cost of acquiring, altering or installing equipment.

Clause 14(3) would provide that the Minister must be satisfied that the making of a grant to an eligible organisation would further the objects set out in clause 3 and the principles and objectives formulated under clause 5 and would comply with the guidelines formulated under clause 5 before approving the making of a grant under clause 14(1).

Clause 14(4) would provide that where the Minister approves the making of a grant of financial assistance under clause 14(1), the Minister shall, subject to clause 14(6) and the regulations -

- . determine the amount of the financial assistance (it is intended to include the manner in which the amount of financial assistance is calculated for upgrading of a prescribed service in the regulations);
- . determine the times at which, and the instalments in which, the financial assistance is to be paid; and
- . specify the terms and conditions on which the financial assistance is granted (by clause 15(1), the financial assistance is not payable to an eligible organisation unless the organisation enters into an agreement on these terms and conditions).

Clause 14(5) would provide that the terms and conditions on which assistance is granted may include:

- (a) the purposes for which the assistance may be applied;

- (b) the amounts to be applied by the eligible organisation and the source of the amounts;
- (c) the furnishing of information;
- (d) the provision of certificates;
- (e) the repayment of financial assistance (to include part of the effect of sub-section 31(3) of the current Act);
- (f) the giving of security (to include the other part of the effect of sub-section 31(3) of the current Act); and
- (g) the use and disposal of and recovery of amounts that are, under the terms and conditions, to be taken as representing the Commonwealth's interest in land, buildings and equipment acquired as a result of the application of financial assistance.

Clause 14(6) would prevent the payment of financial assistance under clause 14(1) after 30 June 1992.

Division 4 - Miscellaneous

Clause 15: Agreements with respect to terms and conditions of grants

Sub-section 31(1) of the current Act provides for the making of grants on terms and conditions. Sub-section 31(2) provides that before making the grant, the Minister may require the organisation to enter into an agreement with respect to the terms and conditions.

Clause 15(1) would provide for a different arrangement. The Minister would approve the making of a grant of financial assistance to a person. However the financial assistance is not payable until the person enters into an agreement containing the same terms and conditions as those on which the grant was made.

Sub-section 31(4) of the current Act provides a rule for treating an agreement as being varied where the Minister varies the terms and conditions of a grant with the agreement of the organisation.

Clause 15(2) provides a similar rule where the Minister, with the consent of a person, varies the terms and conditions on which a grant was made to a person.

Clause 15(3) would provide that the term "person" includes an eligible organisation, but does not include a State.

Clause 16: Agreements may be entered into with transferees of land, &c.

Section 31A of the current Act is a complicated provision which enables the Minister to enter into agreements with transferees of land or buildings in relation to which a capital grant has been made under the current Act.

Clause 16(1) is a considerably simplified version of this provision with the following changes -

- . the operation of the clause extends to equipment as well as to land and buildings;

the terms and conditions of the agreement which the Minister may enter into with the transferee are no longer limited to some or all of the original terms and conditions; and

the terms and conditions upon which the new agreement may be entered into are not restricted to those relating to the land, building or equipment (compare sub-section 31A(1) of the current Act).

Clause 16(2) would provide a definition of "person" for the purposes of clause 16(1).

PART III - PROVISION OF REHABILITATION SERVICES BY THE COMMONWEALTH

Division 1 - General

Clause 17: Interpretation

This clause would provide definitions of 3 terms used in Part III of the Act.

Clause 18: Target group

The clause would provide a description of the target group for the purposes of Part III.

The current provisions determining who the Secretary may provide treatment and training for under Part VIII of the Social Security Act 1947 (Part VIII) are paragraph 135(1)(a) and sub-section 135A(2). These are unnecessarily complicated provisions and have been replaced with a simple description of the target group.

Under this clause, the target group would be based upon 3 elements -

- . the age of the person;
- . the nature of the impairment resulting in a disability; and
- . the effect of the disability.

Clause 18(a) would confine the target group to persons aged 14-64 (inclusive) ie people of working age.

Clause 18(b)(i) would require the person to have a disability that is attributable to an intellectual, sensory or physical impairment or a combination of such impairments to be within the target group.

Clause 18(b)(ii) would require the disability to result in a substantially reduced capacity to obtain or retain unsupported paid employment or to live independently.

"Unsupported" is defined in clause 17 in relation to employment, to mean unsupported by services provided to assist persons with disabilities to retain paid employment.

Division 2 - Rehabilitation Services

Clause 19: Exercise of powers

This clause would prevent the Secretary from exercising a power conferred by clauses 20(1) or 22(3) unless such exercise would -

- (a) further the objects set out in clause 3 and the principles and objectives formulated under clause 5; and
- (b) comply with the guidelines formulated under clause 5.

Clause 20: Provision of rehabilitation programs

Under sub-section 135(1) of the Social Security Act 1947, the Secretary may provide, or arrange for the provision of treatment and training. It is considered unnecessarily limiting to restrict the Secretary to providing treatment and training.

This clause would increase flexibility by enabling the provision of a rehabilitation program which would not be restricted only to treatment and training.

Clause 20(1) would provide that where the Secretary is satisfied that the provision of a rehabilitation program would result in a substantially increased capacity of a person in the target group to obtain or retain paid employment or to live independently, the Secretary may approve the provision of the rehabilitation program, together with any follow-up program considered necessary or desirable by the Secretary.

Clause 20(2) would enable the Secretary to take such measures and enter into such arrangements as the Secretary considers necessary or desirable for the purpose of determining whether the provision of a rehabilitation program should be approved.

Clause 20(3) would provide examples of things that the Secretary may provide, or arrange for the provision of, for the purposes of clause 20(2) (ie diagnostic and assessment services, accommodation, transportation and personal support services).

Some of the matters that treatment and training may include under Part VIII are listed in sub-section 135(2). By paragraph 135(1)(b), the Secretary may provide or arrange for the provision of such facilities and other things as are necessary in connection with treatment or training.

These general provisions appear to be limited by later specific provisions under Part VIII which provide for the payment of fares and living expenses in certain circumstances (section 135C), provision of replacements and aids and for the maintenance of articles so provided (section 135K) and provision of books, equipment, appliances and tools of trade for which the person to whom it is provided is liable to pay the cost in certain circumstances (section 135L).

Clauses 20(4) to (6) would, in replacing these provisions in Part VIII, simplify and extend their operation to provide the widest possible flexibility in the measures the Secretary may take in providing a rehabilitation program for a person in the target group.

Clause 20(4) would provide that where the Secretary approves the provision of a rehabilitation program for a person, the Secretary may take such measures and enter into such arrangements as the Secretary considers necessary or desirable to ensure that the rehabilitation program is provided.

Clause 20(5) provides a list of examples of things that the Secretary may provide, or arrange for the provision of, for the purposes of a rehabilitation program, some examples of which are -

- (a) employment training, educational courses and mobility and independent living training courses;
- (b) diagnostic and assessment services;
- (c) accommodation, transportation and personal support services;

- (d) prostheses and aids including home, work-place and vehicle modifications;
- (e) the maintenance and repair of prostheses and aids;
- (f) books, tools and other equipment; and
- (g) any other goods and services the Secretary considers necessary or desirable.

Clause 20(6) would provide that the Secretary may, in connection with the provision of rehabilitation programs, provide, or arrange for the provision of buildings, plant, equipment, amenities, facilities and other things the Secretary considers necessary or desirable, including accommodation, transportation, recreational, leisure and social amenities and facilities.

Clause 21: Restriction of rehabilitation programs to Australian citizens, &c.

This clause would restrict rehabilitation programs to Australian citizens or residents in Australia whose continued presence is not subject to a limitation as to time imposed under a law of Australia.

Clause 22: Cost of rehabilitation programs

The general rule under Part VIII is that the cost of treatment and training and the cost of any medical examination for the purpose of determining eligibility for treatment and training shall be borne by the Commonwealth (section 135J). A specific exception is created in the case of persons who are entitled to recover, or who actually receive compensation (section 135R).

This clause would provide a different general rule for Part III of the Bill. The cost of the rehabilitation program and of determining whether the rehabilitation program should be approved would be borne, in the case of a pensioner or beneficiary, by the Commonwealth, but in other cases, by the person. A discretion would be included to enable the Secretary to direct in a particular case, or in relation to a specified class of persons that specified costs or a part of the costs would not be borne by the person.

Clause 22(1) would provide a general rule that the cost of and incidental to a rehabilitation program for a pensioner or beneficiary, and of determining whether such a program should be approved under clause 20(1), shall be borne by the Commonwealth.

Clause 22(2) would provide that, subject to clause 22(3), the cost of and incidental to a rehabilitation program for a person who is not a pensioner or beneficiary and of determining whether the provision of such a program should be approved under clause 20(1), shall be borne by the person.

Clause 22(3) would enable the Secretary to direct that clause 22(2) does not apply in relation to specified costs or a part of the costs in relation to a specified person or persons included in a specified class of persons.

By clause 19, before making a direction under clause 22(3), the Secretary would need to be satisfied that the direction, amongst other things, complied with the guidelines formulated under clause 5.

By clause 31, these guidelines would be required to be laid before each House of the Parliament and would be subject to disallowance in the same manner as regulations.

Clause 22(4) would define "pensioner or beneficiary" to mean a person who is qualified or eligible to receive a pension, benefit or certain allowances under the Social Security Act 1947 or a service pension, wife's service pension or carer's service pension under Part III of the Veterans' Entitlements Act 1986.

Division 3 - Miscellaneous

Clause 23: Recovery of costs of rehabilitation programs borne by the Commonwealth

Provision is made for the recovery of the cost of treatment and training under Part VIII in the case of a person entitled to receive compensation by section 135R of the Social Security Act 1947.

This clause would continue the effect of section 135R, with 2 significant changes -

- . a new mechanism is included in the definition of "compensation" in clause 23(1) to enable the exclusion of payments for criminal injury compensation from recovery under this clause; and
- . a new mechanism is included in clauses 23(4) and 23(9) to enable the Secretary to make a payment to a person undertaking, or who has undertaken, a rehabilitation program, of the whole or part of an amount recovered under this clause (to enable special circumstances to be taken into account).

Clause 23(1) provides definitions of "compensation" and "cost" for the purposes of clause 23.

The definition of "compensation" is similar to the current definition in sub-section 135R(1). A change has been included in the definition to exclude a payment made under a law, or a provision of a law, of the Commonwealth or a State or Territory prescribed for the purposes of the definition.

This change was included to provide a mechanism to enable criminal injuries compensation payments to be excluded from recovery under clause 23.

The definition of "cost" reflects the current definition in sub-section 135R(1) with the following changes -

- . the reference to rehabilitation allowance in that definition is omitted in the new definition as it is unnecessary;
- . the reference to section 135D is replaced by a reference to the equivalent provision in the Bill (clause 24);
- . the reference to section 135K is omitted as the matters covered under that section are now included in the rehabilitation program and can be recovered under the normal rule in clause 23(2); and
- . the cost of a rehabilitation program for the purpose of recovery would only include such parts of the cost that are borne by the Commonwealth.

Clauses 23(2) and (3) are similar provisions to sub-sections 135R(1A) and (1B) respectively in Part VIII and would have a similar effect.

Clause 23(2) would provide that where a person who is undertaking or has undertaken a rehabilitation program, recovers or receives compensation from another person, or the Secretary notifies the person that he or she is entitled to recover or receive compensation from another person, the first-mentioned person is liable to pay to the Commonwealth an amount equal to the cost of the rehabilitation program.

Clause 23(3) would provide that where the Secretary is satisfied that special circumstances exist, the Secretary may release a person from all or part of any liability under clause 23(2).

Difficulties have arisen in practice with the current equivalent of clause 23(3), because, as soon as the cost of treatment and training has been paid to the Secretary, the person's liability is extinguished. The Secretary is then precluded from releasing the person from liability even though special circumstances may exist which justify so doing.

Clauses 23(4) and (9) would overcome this difficulty.

Clause 23(4) would provide that where the Secretary is satisfied that special circumstances exist whereby the whole or a part of an amount paid to or recovered by the Commonwealth by or from a person should be refunded to that person, the Secretary may make a refund accordingly.

Clause 23(9) would provide that where the Secretary is satisfied that special circumstances exist whereby the whole or part of an amount paid to or recovered by the Commonwealth from the person liable to pay compensation should be paid to the person entitled to receive compensation, the Secretary may make a payment accordingly.

Clauses 23(5) and (6) are similar provisions to the current sub-sections 135R (2) and (3) respectively, and would have a similar effect except for a minor change in clause 23(6).

Clause 23(5) would provide that the Secretary may serve a notice on the person liable to pay compensation to a person who is undertaking or has undertaken a rehabilitation program, informing the person liable to pay compensation that the Secretary proposes to recover the cost of the rehabilitation program.

Clause 23(6) would provide that the Secretary may specify in the same notice, or in a subsequent notice in writing, served on the person liable to pay compensation, the cost of the rehabilitation program provided or being provided and an amount, payment of which is claimed by the Secretary. The person liable to pay compensation would thereupon be liable to pay the Commonwealth the amount specified or the amount of the compensation, whichever is the lesser amount.

The amount of the compensation referred to in clause 23(6) is to be reduced by any amounts paid to the person entitled to receive compensation in accordance with an approval given under clause 23(7). This marks a departure from the current sub-section 135R(3), and is included as a consequence of a change brought about by the new clause 23(7).

Clause 23(7) would provide that after the service on a person of a notice under clause 23(5), the person shall not, without the approval of the Secretary, pay an amount of compensation to the person entitled to receive compensation until the Secretary has specified under clause 23(6) the amount that the person liable to pay compensation is liable to pay to the Commonwealth.

Clause 23(7) is similar to the current sub-section 135R(4) in Part VIII, but includes a new mechanism to enable the Secretary to approve payment of compensation despite the service of a notice under clause 23(5). Under the current arrangements, once the notice is served, an insurer is prohibited from making further payments until the sum to be recovered by the Commonwealth has been specified. This has the unfortunate consequence of preventing weekly compensation payments being made to the injured party. The new mechanism has been included to enable the Secretary to approve the making (or the continuation) of such payments.

Clause 23(8) would provide that payment of an amount to the Commonwealth under clause 23(6) shall operate as a discharge to the person liable to pay compensation against the person entitled to receive compensation (to prevent the person liable to pay compensation having to pay twice).

Clause 23(10) would provide that the Commonwealth, the States, the Northern Territory and Norfolk Island are bound by clause 23.

Clause 23(11) provides that clause 23 has effect in relation to the Commonwealth or a Commonwealth authority, notwithstanding the provisions of any other Act.

Clause 23(12) would provide that any amount that a person is liable to pay to the Commonwealth may be recovered as a debt due to the Commonwealth, but that the Commonwealth is not entitled to recover the cost of a rehabilitation program from both the person liable to pay compensation and the person who undertook the rehabilitation program.

Clause 23(13) would provide that the references in clauses 23(5) and 23(12) to a person liable to pay compensation, include a reference to an insurer who, under an insurance contract, is liable to indemnify the person liable to pay compensation against such liability.

Clause 24: Training allowance and living-away-from-home allowance

The payment of training allowance and living-away-from-home allowance is currently made under section 135D in Part VIII. This clause has a similar effect to that section, but some provisions have been changed.

The current eligibility criteria for training allowance are found in sub-section 135D(1) and consist of 2 elements - the receipt of training and the receipt of rehabilitation allowance. Under sub-section 135D(6), a training allowance may be paid to a person who is not receiving a rehabilitation allowance.

These provisions are combined and simplified in clause 24(1).

Clause 24(1) would provide that where a person is undertaking a rehabilitation program that includes employment or vocational training, the person is eligible to be paid a training allowance.

Clause 24(2) provides that the rate of a training allowance is such amount per week as is determined by the Minister.

Clause 24(3) would provide that the Minister shall determine different rates of training allowance depending on whether persons are undertaking full-time or part-time employment or vocational training, and may determine different rates in respect of different classes of persons having regard to their age.

Clause 24(4) would provide that where a person who is eligible to receive a training allowance is required to live away from the person's usual place of residence to undertake a rehabilitation program, the Secretary may approve the payment of a living-away-from-home allowance in addition to the training allowance at a rate determined by the Minister.

By clause 31, sections 48, 49, 49A and 50 of the Acts Interpretation Act 1901 would apply in relation to a determination under clause 24(2) or (4). The determination would be required to be notified in the Gazette and laid before each House of the Parliament and would be subject to disallowance in the same manner as regulations.

Clause 24(5) provides that allowances under this section are payable from such dates, in respect of such periods, in such instalments and at such times as the Secretary determines. This clause precludes the need to incorporate the complicated and lengthy payment provisions contained in the Social Security Act 1947.

Clause 24(6) incorporates, by reference, a number of provisions of the Social Security Act 1947 which are relevant to the payment of allowances. In particular, the following provisions are included - manner of payment (section 135TC); direct credits section (135TD); overpayments (sub-section 140(1)); inalienability (section 144) and waiver (section 146).

Clause 25 - Arrangements for provision of
rehabilitation programs

This clause corresponds to the current section 135S in Part VIII, which enables the Secretary to make arrangements for the treatment and training of persons.

Clause 25(1) would provide that the Secretary may make an arrangement with a person under which the Secretary may provide, or arrange for the provision of, a rehabilitation program for that person or such person or persons included in a class of persons specified in the arrangement.

Clause 25(2) would provide that an arrangement under clause 25(1) shall contain provision for the payment of the cost of and incidental to the rehabilitation program or programs provided under the arrangement, or such part of that cost as the Secretary directs.

Clause 25(3) would clarify that the Secretary could make arrangements for persons who are not Australian citizens or permanent residents.

Clause 25(4) would prevent the rules concerning cost of rehabilitation programs in clause 22 from applying in relation to persons for whom rehabilitation programs are provided under an arrangement under clause 25(1).

Clause 25(5) would prevent the rules relating to recovery of costs from persons entitled to recover compensation under clause 23, and the payment of the allowances under clause 24 from applying to a person for whom a rehabilitation program is provided under an arrangement entered into under clause 25(1).

Clause 26: Review of decisions under Part

This clause would provide a mechanism for the review by the Administrative Appeals Tribunal of decisions of the Secretary or a delegate of the Secretary under Part III of the Bill.

Clause 26(1) would contain a definition of "reviewable decision" for the purposes of clause 26.

Clauses 26(2) and (3) would provide that a person affected by a decision of the Secretary may request reconsideration of that decision, and in making the request, the person shall set out the reasons for the request.

Clause 26(4) would provide that where a request has been received, the Secretary shall reconsider the decision and may affirm, revoke or vary the decision.

Clause 26(5) would require the Secretary to inform the person affected by the decision, in writing, of the result of the reconsideration of the decision and to give the reasons for affirming, revoking or varying the decision.

Clause 26(6) would provide a right of appeal to the Administrative Appeals Tribunal where a decision has been affirmed or varied by the Secretary under clause 26(4).

Clause 27: Power to obtain information, &c.

This clause is an equivalent provision to section 135TF of the Social Security Act 1947 which enables the Secretary to obtain information.

This power is restricted to 2 situations under the Bill -

- . the grant or payment of an allowance under clause 24;
and
- . the liability of a person to pay an amount to the Commonwealth under clause 23.

The power is in similar terms to the current power under section 135TF.

Clause 27(1) would enable the Secretary to require by notice served on a person, the furnishing of information or production of documents or to require the person to give evidence, where the information, documents or evidence are in relation to a matter that may affect the 2 situations described above.

Clause 27(2) would enable an officer of the Department to require evidence to be given on oath or affirmation and would enable the officer to administer an oath or affirmation.

Clause 27(3) would provide a penalty of \$1000 or imprisonment for 6 months where a person refuses or fails to comply with a notice under clause 27(1), or knowingly furnishes information or gives evidence that is false or misleading.

Clause 27(4) would provide that a person is not excused from furnishing information, producing a document or giving evidence as required by a notice under clause 27(1) on the basis that this would tend to incriminate the person. The information, document or evidence and anything obtained as a result of the information, document or evidence is not admissible in evidence against that person, except in relation to proceedings arising from clause 27(3).

Clause 27(5) would provide that the Commonwealth, the States, the Northern Territory and Norfolk Island are bound by this clause.

Clause 27(6) would provide that clause 27 does not require a person to furnish information, produce a document or give evidence to the extent that in doing so a Commonwealth law would be contravened (for example, a secrecy provision in another Commonwealth Act).

Clause 27(7) would provide that no State or Territory law shall operate to prevent a person from producing information or documents or giving evidence required by a notice under clause 27(1).

Clause 28: Secrecy

While administering Part III of the Bill, the Secretary is likely to obtain information concerning individuals. This clause would protect the privacy of those individuals by preventing the disclosure of that information, except in certain specified circumstances. The provision is based on section 17 of the Social Security Act 1947.

Clause 28(1) would enable the Secretary to direct an officer to make a declaration in accordance with an approved form before performing any duties or exercising any powers under Part III of the Bill.

Clause 28(2) would provide that a person shall not, except in the performance of duties or exercise of powers under Part III or for the purposes of the administration of the Social Security Act 1947, record or divulge any information about the affairs of another person acquired by the first mentioned person in the performance of duties or the exercise of powers under Part III.

The reference to the Social Security Act is included to enable information to be passed to the Department of Social Security where, for example, a person undertakes a rehabilitation program. That Department will need to be advised so that a rehabilitation allowance can be paid under that Act.

Clause 28(3) would make contravention of clause 28(2) an offence.

Clause 28(4) would provide that a person shall not, except for the purposes of Part III of the Bill or of the Social Security Act 1947, be required to produce any document in court or divulge any matter that has come into the person's possession or come to his or her notice in the performance of duties or the exercise of powers under Part III of the Bill.

Clause 28(5) would provide 3 circumstances in which the divulging of such information shall be lawful -

- . where the Secretary certifies that it is necessary in the public interest;
- . divulging to a person or authority prescribed in regulations; and
- . divulging to a person who is expressly or impliedly authorised by the person to whom the information relates.

Clause 28(6) would extend the effect of the secrecy provision to an authority or person to whom information is divulged under clause 28(5).

Clause 28(7) would provide that a person may be required to divulge information to a court in 2 situations -

- . where the Secretary certifies that it is necessary in the public interest; or
- . where the person to whom the information relates has expressly authorised the release.

Clause 28(8) would provide a definition of "court" for the purpose of clause 28.

Clause 29: Offences against secrecy provision
indictable offences

Clause 29(1) would provide that an offence against clause 28(2) is an indictable offence, punishable on conviction by a maximum fine of \$5000 or 2 years imprisonment.

Clauses 29(2) and (3) would provide for the hearing of the offence under clause 28(2) by a court of summary jurisdiction and the imposition of a lesser penalty on conviction in such a case.

Clause 30: Time limit for institution of prosecutions

This clause would prevent proceedings for an offence against clause 28(2) from being commenced more than 3 years after the commission of the offence.

PART IV - MISCELLANEOUS

Clause 31: Principles, &c., to be tabled in the Parliament
and disallowable

Clause 31(1) would list the disallowable instruments which would be treated in a similar manner to regulations.

Clause 31(2) would apply sections 48, 49, 49A and 50 of the Acts Interpretation Act 1901 to the disallowable instruments listed in clause 31(1). The effect of this provision is, amongst other things, to require an instrument to be notified in the Gazette and to be laid before each House of Parliament within 15 sitting days of that House after the making of the instrument. Furthermore, such an instrument would be subject to disallowance in the same manner as regulations are subject to disallowance.

Clause 31(3) would provide that certain provisions contained in the Statutory Rules Publication Act 1903 would apply in relation to the instruments specified in clause 31(1).

Clause 31(4) would modify the effect of one of the provisions contained in the Statutory Rules Publication Act 1903 in relation to its application in accordance with clause 31(3).

Clause 31(5) would provide that certain provisions contained in section 5 of the Evidence Act 1905 which apply to an order made by or under the authority of Minister, would also apply in relation to the instruments defined in clause 31(1).

Clause 32: Principles, &c., to be in writing

This clause would require any principle, objective, guideline, approval, direction, determination, arrangement or certification made or given under this Act to be in writing.

Clause 33: Delegation by Minister

This clause would permit the Minister to delegate all or any of the powers of the Minister, except for the powers specified in clause 33(1). These powers concern the formulating or making of the disallowable instruments specified in clause 31(1) and the Minister's power of delegation. It would be inappropriate to enable the Minister to delegate these powers.

Clause 34: Delegation by Secretary

This clause would permit the Secretary to delegate to an officer all or any of the powers of the Secretary other than the power of delegation.

Clause 35: Payments to be made out of appropriated money

This clause would provide that payments under this Act shall be made out of money appropriated by the Parliament.

Clause 36: Regulations

This clause would provide for the making of regulations that may be necessary for giving effect to the legislation. The clause would also provide for regulations to prescribe fines not exceeding \$1,000 for offences against the regulations.

