

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

SUPPORTED ACCOMMODATION ASSISTANCE BILL 1994

and

SUPPORTED ACCOMMODATION ASSISTANCE AMENDMENT BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Deputy Prime Minister and Minister for
Housing and Regional Development, the Honourable Brian Howe MP)

**THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY
THE HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED**



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SUPPORTED ACCOMMODATION ASSISTANCE BILL 1994

OUTLINE

The purpose of the Bill is to authorise financial assistance by the Commonwealth to the States, the Australian Capital Territory and the Northern Territory in relation to the continuation of the jointly-funded Supported Accommodation Assistance Program (SAAP), and for related purposes.

The Bill is concerned with the provision of services under SAAP to assist people who are homeless to achieve the maximum possible degree of self-reliance. The Preamble to the Bill sets out the Parliament's intentions and values in relation to homeless people, whom it recognises as forming one of the most powerless and marginalised groups in society.

The Bill articulates the principles that underpin the provision of services under SAAP, as respect for the human dignity of homeless people as individuals, respect for their cultural background and beliefs, and the protection of their universal human rights in the way services are provided for them.

The key definition in the Bill is of "homeless". This definition is important because it recognises homelessness as being more complex than the absolute absence of shelter. The definition provides that a person is homeless if, and only if, he or she has inadequate access to safe and secure shelter, and encompasses health and safety issues, the physical environment and the economic and social supports a home would normally offer in defining what is meant by "inadequate access to safe and secure shelter".

The primary aim of SAAP is to help people who are homeless to achieve the maximum possible degree of self-reliance and independence. This will be achieved through:

- helping people who are homeless to resolve crisis, to re-establish family links (where appropriate), and to help them regain a capacity to participate in community life;
 - furthering their integration into the community by increasing their access to a range of programs and services;
- helping them to obtain long-term, secure and affordable housing; and
- complementing other services available to people who are homeless.

The Bill recognises the importance of the co-operative relationship between the Commonwealth and the States in helping SAAP achieve its aims. This is reflected by the inclusion in the Bill of provisions relating to agreed areas of reform critical to SAAP's success, such as measures to improve the provision of services and the management of the program at national and State levels, and by the establishment of a joint national co-ordination and development committee.

The importance of community participation is recognised by the establishment of a Commonwealth Advisory Committee on Homelessness to provide the community with the opportunity to be directly involved in the development of policies relating to, or impacting on, people who are homeless or at risk of homelessness.

FINANCIAL IMPACT STATEMENT

Cabinet agreed in March 1994, to the continuation of the Supported Accommodation Assistance Program (SAAP) until 30 June 1999. The Commonwealth and States/Territories proportion of base funding for the existing SAAP program at 31 December 1994 (Commonwealth \$104.9 million for the 1994-95 financial year; States/Territories \$80 million for 1994-95) will continue, indexed annually, until 30 June 1999.

Additional Commonwealth funds of \$3.9 million in 1994-95 rising to \$4.5 million in 1995-96 through to 1997-98 for initiatives to introduce new strategic directions and reforms in SAAP were the subject of a separate Cabinet decision. These funds are separately appropriated.

Any remuneration for members of the Commonwealth Advisory Committee on Homelessness established under the Bill is to be funded through the Consolidated Revenue Fund if a determination regarding their remuneration is made by the Remuneration Tribunal. In the absence of a determination by the Remuneration Tribunal, costs will be met from the above additional Commonwealth funds. Remuneration costs for committee members and running costs for the operation of the committee are not anticipated to exceed \$60,000 per annum.

SUPPORTED ACCOMMODATION ASSISTANCE AMENDMENT BILL 1994

OUTLINE

Agreements entered into between the Commonwealth and the States under the Supported Accommodation Assistance Act 1989 (the 1989 Act) were due to expire on 30 June 1994. A new principal Act was not, however, in place by that date. In order to ensure a continuation of funding until a new principal Act comes into force, these agreements were varied to continue until 30 June 1995, or until the commencement of legislation which repeals or amends the 1989 Act.

The amendments to the 1989 Act contained in this Bill are a necessary part of replacing that Act with a new Supported Accommodation Assistance Act and will bring to an end the agreements under the 1989 Act.

This Bill amends the 1989 Act to prevent the Commonwealth entering into an agreement, or authorising payments, under that Act after the date on which the first State enters into an agreement under the new Supported Accommodation Assistance Act 1994.

This Bill should be read in conjunction with the Supported Accommodation Assistance Bill 1994.

FINANCIAL IMPACT STATEMENT

There are no financial implications from the amendments.

Supported Accommodation Assistance Bill 1994

Notes on Clauses

SUMMARY

- Preamble** The Preamble sets out the Parliament of Australia's intentions in enacting this legislation.
- Part 1** *Preliminary*: This Part deals with the commencement of the Act, definitions of terms, including a definition of "homeless", and the object of the Act.
- Part 2** *SAAP agreements*: This Part enables the Minister to specify a common form of agreement dealing with SAAP, sets out the matters which must be dealt with in that form of agreement and enables the Commonwealth to enter into agreements substantially in accordance with the form of agreement specified by the Minister.
- Part 3** *Grants under SAAP agreements*: This part deals with the payment of grants by the Commonwealth to the States for the purposes of the Act.
- Part 4** *Commonwealth Advisory Committee on Homelessness*: This part enables the Minister to establish an advisory committee on homelessness, drawn from members of the community with relevant expertise or experience.
- Part 5** *Regulations*: This Part enables the Governor-General to make any necessary regulations for carrying out or giving effect to the Act.

PREAMBLE

The Preamble is principally a statement of the Parliament's intentions and values in enacting this legislation. It also includes statements of fact in relation to action taken by Australia in pursuing social justice principles, through ratifying Human Rights Treaties and Parliament's recognition of the need to redress social inequalities, reduce poverty and ameliorate the consequences of poverty for individuals.

Recognition is given to the especially vulnerable position of homeless people who form one of the most powerless and marginalised groups in society. The Preamble specifically articulates Parliament's intentions in relation to the provision of services for people who are homeless or at risk of becoming homeless. It also sets out Parliament's intentions in relation to the nature of the relationship between the Commonwealth and the States with regard to providing opportunities for homeless people to redress their circumstances and to ensuring that their universal human rights are not prejudiced by the way in which services are provided.

The Preamble acknowledges the importance of community participation and states the Parliament's intention that the Minister establish a Commonwealth Advisory Committee on Homelessness to provide the community with the opportunity to be directly involved in the development of policies relating to, or impacting on, people who are homeless or at risk of homelessness.

PART 1 - PRELIMINARY

Clause 1 - Short Title

This is a formal provision that specifies the short title of the Act as the *Supported Accommodation Assistance Act 1994*.

Clause 2 - Commencement

This clause provides that the Act will commence on the day on which it receives Royal Assent.

Clause 3 - Definitions

The scope and intent of the range of definitions in this clause are self-explanatory, with the exception of "people who are homeless".

The definition of that term includes people who are "in crisis and at imminent risk of becoming homeless" or who are "experiencing domestic violence and are at imminent risk of homelessness". The words "in crisis" are included to bring particular groups of people within the definition of "people who are homeless", including for example: older, single men or women, living in boarding houses which are dilapidated and offer few amenities, who are being subjected to abuse by landlords or other tenants; or young people for whom the degree and frequency of physical and emotional abuse experienced in the family home has become intolerable.

The words "experiencing domestic violence" are included to reflect the importance of domestic violence as an issue for the Supported Accommodation Assistance Program (SAAP) and to recognise that domestic violence is a major factor in people becoming homeless. This is particularly the case for women, and women with their children, who face intolerable situations in their own homes.

Clause 4 - Definition of "homeless"

This definition is important because it recognises homelessness as being more complex than the absolute absence of shelter. The definition provides that a person is homeless if, and only if, he or she has inadequate access to safe and secure shelter, and encompasses health and safety issues, the physical environment and the economic and social supports a home would normally offer in defining what is meant by "inadequate access to safe and secure shelter".

An example of a situation which this definition intends to cover is the case of a woman and/or her children being subjected to continued domestic and/or family violence. That home is rendered unsafe and damages, or is likely to damage, the woman's and/or her children's health through the ongoing domestic situation. The woman and/or her children, therefore, would be considered to have "inadequate access to safe and secure shelter" and to be at imminent risk of homelessness, even while the woman's partner is temporarily absent from the home.

A further example of a situation which would fall within the scope of this definition is the case of a person whose only access to accommodation is to insecure accommodation, such as boarding house accommodation which offers few amenities (such as cooking, cleaning and washing facilities), little privacy and none of the economic or social supports of a home, or is of a standard which damages, or is likely to damage, the person's health.

Clause 5 - Object

This clause may be broken down into four distinct components:

- a. *subclause (1)* provides that the object of the Act is to grant financial assistance to the States to administer the Supported Accommodation Assistance Program (SAAP);
- b. *subclauses (2) and (3)* establish the overall aim of SAAP as assisting people who are homeless to achieve the maximum possible degree of self-reliance and independence through the resolution of crisis, re-establishment of family links (where appropriate) and re-establishment of a capacity to participate in community life. This aim is to be achieved by providing, or arranging for the provision of, services and by promoting access to services, including services not provided under SAAP;
- c. *paragraph (4)(a)* identifies that SAAP is to be implemented principally through common form agreements between the Commonwealth and the States. *Paragraphs 4(b) and (c)* deal with the co-operative nature of the working relationship between the Commonwealth and the States (the "parties to the agreement"), and between both parties and local government bodies and service providers in relation to the provision of services under SAAP; and
- d. *paragraphs (4)(d), (e) and (f)* deal with SAAP's responsibilities in relation to people who are homeless: in particular, promoting their dignity and their right to participate in community life; encouraging innovative responses to their needs by SAAP services; and safeguarding their rights and dealing with their responsibilities while using SAAP services.

PART 2 - SAAP AGREEMENTS

Division 1 - Form of SAAP agreement

Clause 6 - Form of SAAP agreement

Subclause (1) of this clause enables the Minister, by written instrument, to specify a common form of agreement dealing with SAAP. Subclause (2) provides that any variation or revocation of the form of agreement does not affect the validity of SAAP agreements previously entered into. Subclause (3) provides that an instrument under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. It will, therefore, be available for separate scrutiny by the Parliament.

The Supported Accommodation Assistance Act 1989 included the form of agreement as a schedule. It was originally intended that the replacement legislation would be drafted in the same way.

In April 1994, the States advised the Commonwealth that their parliamentary processes, necessary to finalise negotiations on a new common form of agreement, would not allow sufficient time for the Act, together with the form of agreement as a schedule, to be introduced in the 1994 Spring sittings of the Commonwealth Parliament. It was, therefore, decided that a separate and more comprehensive Act be developed, with the form of agreement as a disallowable instrument.

Division 2 - Matters dealt with by form of SAAP agreement

The following matters specified in this division have been the subject of negotiation between the Commonwealth and the States. They reflect a common understanding of, and agreement to, the matters to be dealt with in agreements between the Commonwealth and the States.

Clause 7 - Responsibilities of service providers

This clause sets out the responsibilities of service providers in relation to people who are homeless and provides that the form of agreement must include provisions directed towards assisting service providers to fulfil their responsibilities. Those responsibilities are:

- . to help people who are homeless to resolve crisis and achieve greater independence;
- . to facilitate their integration into society by providing access to a range of services;
- . to help them gain access to long-term, secure and affordable housing/accommodation;
- and
- . to complement other services available to people who are homeless.

Clause 8 - Key matters to be dealt with in form of agreement

This clause provides that the following critical matters must be included in the form of agreement. These matters relate to agreed measures to improve the program's performance in specific key areas:

- . case management (including assessment and referral)
- . early intervention and outreach
- . skills of SAAP workers
- . linkages
- . program management (national, State/Territory)
- . protection of clients' rights
- . outcomes taken into account in funding
- . reporting and accountability
- . networking amongst SAAP services

Clause 9 - Services dealt with by form of agreement

This clause provides that the form of agreement may include provisions that services provided under SAAP are to be sufficiently flexible ("of varying duration, type and level") to meet the needs of individuals and gives examples of service activities which may be dealt with in the form of agreement. The listed examples of service activities are: case management; assessment and referral; supported accommodation; brokerage; early intervention; outreach; mediation; counselling; and advocacy.

Clause 10 - Services not to be dealt with under SAAP

This clause provides that the form of agreement must deal with the exclusion of services which would duplicate or replace a service that is already provided by, or is the responsibility of, any other government, program or organisation, except with the written consent of the Minister and responsible State Minister. Such consent must be gazetted.

This clause is intended to prevent cost shifting of programs or services which are already, or should be, provided by the States. An example of such a service which would be subject to this clause is the provision of substitute care for young people under school-leaving age in a particular State.

Clause 11 - National SAAP Co-ordination and Development Committee

This clause requires that the form of agreement provide for the establishment of a national SAAP co-ordination and development committee, composed of Commonwealth and State representatives. It gives effect to the intentions of the Preamble and of paragraph 5(4)(b) concerning the co-operative nature of the working relationship between the parties to SAAP agreements.

Clause 12 - National data collection system and national research program

This clause specifies that the form of agreement must make provisions for a national data collection system and research program to underpin:

- . development of policies for people who are homeless;
- . improvement in program management for SAAP; and
- . measurement of outcomes in SAAP.

The clause also provides that the form of agreement must contain provisions which protect the privacy of clients' personal information. (As used in this clause, "privacy" is to be determined having regard to the principles set out in the *Privacy Act 1988* and "personal information" has the same meaning as in that Act.)

Clause 13 - Services may be general or specific

This clause provides that the form of agreement may deal with services provided generally for people who are homeless or to meet the special needs of particular groups of homeless people. These groups are: women; women and children; independent young people over school-leaving age; Aboriginal or Torres Strait Islander peoples; people from a non-English speaking background; single men; and single women.

Subparagraph (1)(b)(ix) provides that the Minister and the State Minister of each State which has entered into a SAAP agreement may specify any other group for inclusion in the groups for whom services may be specifically provided. Subclause (2) provides that the specification of a group under subparagraph (1)(b)(ix) must be gazetted.

The intention behind such a listing of specific groups of homeless people is to retain a focus on the needs of individuals belonging to these groups for whom the program was designed and to respect the rights of these individuals. It also recognises that the clients of SAAP are not homogenous and will often have complex needs that will require assistance from specialist services.

For example, it is sometimes appropriate and necessary to provide services to respond specifically to the needs of women, and women with their children, escaping domestic violence separately from those of single women who may be, for example, experiencing difficulties with substance abuse; or to respond specifically to the needs of independent young people, who may have higher support needs, separately from those of older, single homeless men, whose needs are again different.

Provision of services specifically for Aboriginal or Torres Strait Islander peoples and people from a non-English speaking background is intended to respond to the needs of individuals belonging to these groups in an environment which is sensitive to the person's culture and beliefs.

Clause 14 - Evaluation

This clause requires that the form of agreement provide for program performance to be evaluated at regular intervals of not more than five years.

Clause 15 - Outcomes

Subclause (1) of this clause provides that the form of agreement may deal with outcomes. Subclause (2) enables the Minister to determine outcomes for the purposes of SAAP agreements. Subclause (3) provides that the Minister must seek the written agreement of State Ministers before making a determination under subclause (2).

Subclause (4) provides that a determination made under subclause (2) of this clause is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Clause 16 - Division not to limit generality of section 6

This clause provides that Division 2, which sets out the matters that are required to be dealt with by the form of agreement, does not, by implication, limit the scope of the matters which may be dealt with in such an agreement.

Division 3 - SAAP agreements

Clause 17 - SAAP agreements

This clause applies if a disallowable instrument (form of agreement) is in force under section 6. Subclause (2) of this clause enables the Commonwealth to enter into agreements with the States substantially in accordance with the form set out in the disallowable instrument. Subclause (3) enables the Commonwealth to later vary those agreements and requires that any variation must be substantially in accordance with the form set out in the disallowable instrument.

PART 3 - GRANTS UNDER SAAP AGREEMENTS

Clause 18 - Grants of financial assistance

This clause applies if a SAAP agreement is in force between the Commonwealth and a State. It enables the Minister to authorise payments to the State in accordance with the SAAP agreement. Payments under this clause are to be made out of money appropriated by Parliament for the purposes of this Act.

Clause 19 - Repayment of grants

This clause provides that an amount repayable by a State to the Commonwealth under a SAAP agreement is a debt due by the State to the Commonwealth.

PART 4 - COMMONWEALTH ADVISORY COMMITTEE ON HOMELESSNESS

Clause 20 - Commonwealth Advisory Committee on Homelessness

This clause gives effect to the intentions of the Preamble in relation to community participation. Subclause (1) enables the Minister to establish a Commonwealth Advisory Committee on Homelessness (CACH).

Subclause (2) requires the Minister to have regard to specific qualifications for prospective committee members. These qualifications are expertise in, or experience of, homelessness; or an understanding of the issues affecting people who are homeless; or such other expertise or experience as the Minister considers relevant.

Clause 21 - Function of CACH

Subclause (1) provides that the function of CACH is to advise the Minister on matters referred to it by the Minister. Subclause (2) limits the matters which may be referred to CACH to those which relate to:

- . the operation of the Act or a SAAP agreement; or
- . people who are homeless provided the matter is relevant to the powers of the Parliament or the Commonwealth Government.

Clause 22 - Remuneration and allowances

Subclause (1) provides that CACH members are to be paid such remuneration (if any) as determined by the Remuneration Tribunal. Subclause (2) provides that if no such determination is made, the Minister is to determine, in writing, members' remuneration and subclause (3) provides for Ministerial determination of members' allowances.

Subclause (4) provides that determinations under subclauses (2) and (3) are disallowable instruments under section 46A of the *Acts Interpretation Act 1901*.

Clause 23 - Disclosure of interests at meetings

This clause provides that members must disclose any direct or indirect pecuniary interest in a matter to be considered by CACH as soon as practical once the relevant facts are known to the member.

Clause 24 - Member's appointment to be terminated for non-disclosure of interests

This clause makes provision for sanctions should a member not disclose his or her interests as required by section 23.

Clause 25 - Resignation

This clause is intended to allow a member to resign. Written notice is to be given to the Minister.

PART 5 - REGULATIONS

Clause 26 - Regulations

This clause provides for the Governor-General to make regulations prescribing matters necessary or convenient for carrying out or giving effect to this Act.

Supported Accommodation Assistance Amendment Bill 1994

Notes on Clauses

Clause 1 - Short title etc.

Subclause (1) is a formal provision that specifies the short title of the Act as the *Supported Accommodation Assistance Amendment Act 1994*.

Subclause (2) defines "Principal Act" as the *Supported Accommodation Assistance Act 1989*.

Clause 2 - Commencement

This clause provides that the Act will commence on the day on which it receives the Royal Assent.

Clause 3 - Definitions

This clause amends section 3 of the Principal Act by adding a definition of "termination day".

"Termination day" is defined as the first day on which an agreement is entered into by the Commonwealth with a State under subsection 17(2) of the *Supported Accommodation Assistance Act 1994*.

Clause 4 - Approval of agreement etc.

Clause 4 amends section 4 of the Principal Act to prevent the Commonwealth entering into an agreement with a State or Territory under that Act after "the termination day".

Clause 5 - Grants for supported accommodation services etc.

Clause 5 amends section 5 of the Principal Act to prevent the Minister authorising a payment under that section after "the termination day".

Clause 6 - Payments for purpose of national research and development

Clause 6 amends section 7 of the Principal Act to prevent the Minister approving a payment under that section after "the termination day".



