

ARTHUR ROBINSON & HEDDERWICKS
LIBRARY

1996-1997

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

COMMONWEALTH SERVICES DELIVERY AGENCY BILL 1996

EXPLANATORY MEMORANDUM

(This explanatory memorandum is a replacement explanatory memorandum taking into account a corrigendum to the original explanatory memorandum)

COMMONWEALTH SERVICES DELIVERY AGENCY BILL 1996

OUTLINE AND FINANCIAL IMPACT STATEMENT

This Bill will establish a new statutory authority, to be formally known as the Commonwealth Services Delivery Agency (the Agency). The Agency will be responsible for delivering various Commonwealth services.

Financial impact:	1996-97	\$36.1m (costs)
(net outlays)	1997-98	\$20.1m (savings)
	1998-99	\$53.6m (savings)
	1999-2000	\$66.2m (savings)

COMMONWEALTH SERVICES DELIVERY AGENCY BILL 1996

1. Summary of the measures contained in the Bill

This Bill establishes a new statutory authority, to be formally known as the Commonwealth Services Delivery Agency (the Agency). The Agency will be responsible for delivering various Commonwealth services.

2. Background

In the 1996 Budget, the Government announced its intention to create a new statutory authority, that would be responsible for delivering various Commonwealth Government services that are currently provided by a variety of Commonwealth departments. This Bill gives effect to that commitment, by establishing a body that will be formally known as "the Commonwealth Services Delivery Agency" (the Agency).

Initially, the Agency will deliver all programs and services currently administered by the Department of Social Security (DSS), plus some services currently provided by the Department of Employment, Education, Training and Youth Affairs (DEETYA) and the Department of Health and Family Services. In the longer term, it is intended that the Agency will deliver services that are the policy responsibility of other Commonwealth Government departments. The provision of services by the Agency will be implemented through service arrangements between the responsible Commonwealth Government departments and authorities and the Agency.

3. Clauses involved in the measures

Part 1 - Preliminary clauses

Clause 1 sets out how the Act is to be cited.

Clause 2 sets out when the Act is to commence.

Clause 3 sets out various definitions that are to apply in relation to the Act.

Clause 4 provides that the Act binds the Crown in each of its capacities but that nothing in the Act makes the Crown liable to be prosecuted for an offence.

Clause 5 provides that the Act extends to the Territory of Cocos (Keeling) Island and to the Territory of Christmas Island.

Part 2 - Establishment, functions and powers of the Agency

Clause 6 provides for the establishment of the Agency.

Clause 7 provides for the Chief Executive Officer of the Agency to enter into service agreements with Commonwealth authorities for the provision of Commonwealth services.

Clause 8 sets out the functions of the Agency.

Clause 9 provides for the Minister to give directions about the Agency's functions.

Clause 10 sets out the obligations of the Minister in relation to directions given under clauses 8 or 9.

Part 3 - The Board of Management of the Agency

Clause 11 provides for the establishment of the Board of Management of the Agency (the Board).

Clause 12 sets out the Board's functions and powers.

Clause 13 provides for the Minister to give directions to the Board.

Clause 14 provides for the Minister to notify the Board of the general policies of the Commonwealth Government and also obliges the Board to ensure that the policies are carried out.

Clause 15 provides for the Minister to ask the Board for information about the operation of the Agency and also obliges the Board to give the Minister the information requested.

Clause 16 provides for the membership of the Board.

Clause 17 provides for the appointment of an acting Chairman of the Board, in the absence of the Chairman.

Clause 18 provides for the Board, by resolution, to delegate any or all of its functions or powers to a member of the Board or to an employee of the Agency.

Clause 19 provides for the Chairman to delegate any or all of his or her functions or powers to the Chief Executive Officer of the Agency.

Clause 20 provides for procedures to be followed in relation to meetings of the Board.

Clause 21 requires members of the Board with a direct or indirect pecuniary interest in any matter before the Board to disclose that interest. It also sets out steps to be followed in relation to such a disclosure.

Clause 22 provides for the Board to regulate proceedings at meetings as it thinks fit (but subject to the formal requirements set out in clauses 20 and 21).

Clause 23 provides for the period of appointment of certain members of the Board.

Clause 24 provides for the remuneration of certain appointed members of the Board.

Clause 25 prohibits appointed members of the Board from engaging in paid employment that, in the Minister's opinion, conflicts with the proper performance of the member's duties.

Clause 26 provides for appointed members to resign from the Board.

Clause 27 provides for the terms and conditions of appointed members of the Board that are not set out in the Bill.

Clause 28 provides for the termination of the appointment of an appointed member on various specified grounds.

Part 4 - The Chief Executive Officer and employees

Clause 29 provides for the appointment of a Chief Executive Officer (CEO) of the Agency.

Clause 30 provides for the terms and conditions of the CEO.

Clause 31 provides for the Board to appoint an acting CEO.

Clause 32 provides that the CEO is to be responsible for the day-to-day administration and the operations of the Agency.

Clause 33 provides for the CEO to delegate any or all of his or her functions or powers to an employee of the Agency.

Clause 34 provides for the resignation of the CEO.

Clause 35 provides for the staff of the Agency.

Clause 36 provides for the CEO to make arrangements with the principal officer of a Commonwealth authority for the services of officers or employees of that authority to be made available to the Agency.

Clause 37 provides for the CEO to engage consultants.

Part 5 - Miscellaneous

Clause 38 provides for the protection of the names and symbols of the Agency.

Clause 39 provides for the application of the *Audit Act 1901* to the Agency.

Clause 40 provides for the preparation and tabling in the Parliament of the Agency's annual report.

Clause 41 provides for the Governor-General to make regulations for the purposes of the Act.

4. Explanation of the measures

Clause 1 provides that the Act may be cited as the *Commonwealth Services Delivery Agency Act 1996*.

Clause 2 provides that Act is to commence on 1 July 1997.

Clause 3 sets out various definitions that are to apply in relation to the Act. The provisions are self-explanatory.

Clause 4(1) provides that the Act binds the Crown in each of its capacities. This makes it clear that the Act is to bind the Crown in the right of the States and the Northern Territory. **Clause 4(2)** provides that nothing in the Act makes the Crown liable to be prosecuted for an offence.

Clause 5 provides that the Act extends to the Territory of Cocos (Keeling) Islands and to the Territory of Christmas Island. This is in line with the fact that section 1362 of the *Social Security Act 1991* and section 5A of the *Student Assistance Act 1973* extend the application of those Acts to those territories.

Part 2 of the Bill provides for the establishment, functions and powers of the Agency. **Clause 6(1)** provides for the establishment of a body known as "the Commonwealth Services Delivery Agency" (the Agency). **Clause 6(2)** provides that the Agency comprises the Board of Management of the Agency, the Chief Executive Officer of the Agency and the employees of the Agency.

Clause 7(1) provides that the Chief Executive Officer of the Agency may enter into service arrangements with the principal officers of Commonwealth authorities for the provision of Commonwealth services. "Principal officer" is defined in **clause 3** as being the Secretary of a Department of State or, in the case of a Commonwealth authority, the person identified in regulations (made under this legislation) as being the principal officer.

"Commonwealth authority" is defined in **clause 3** as a Department of State or a body (other than the Agency) established for a public purpose, by or under a law of the Commonwealth. "Commonwealth service" is also defined in **clause 3**, as meaning a service, benefit program or facility for some or all members of the public that is provided by the Commonwealth, whether under an enactment or otherwise. These definitions therefore limit the Chief Executive Officer's power to enter into service arrangements.

Clause 7(2) provides that arrangements for the provision of Commonwealth services may include arrangements for doing anything incidental, conducive or related to the provision of the services, including (for example):

- the Chief Executive Officer or the employees of the Agency being able to exercise powers or functions delegated to them under specified enactments; and
- the determination (by the Chief Executive Officer or the employees of the Agency) of a person's eligibility for, or entitlement to receive or have access to, Commonwealth services.

What the Bill envisages is that powers under the *Social Security Act 1991* and the *Student and Youth Assistance Act 1973* (for example), that currently reside in the Secretaries of the Department of Social Security and the Department of Employment, Education, Training and Youth Affairs, respectively, will, as part of the service arrangements, be delegated by those Secretaries to the Chief Executive Officer or the employees of the Agency. This would then enable persons acting on behalf of the Agency to determine eligibility, etc for the benefits and payments payable under the relevant enactments. Such persons would, however, exercise these powers as delegates of the relevant Secretary.

Clause 8 provides that the functions of the Agency are:

- to provide Commonwealth services (as defined in **clause 3**) in accordance with service arrangements (as defined in **clause 7**);
- to do anything else included in the service arrangements that is incidental, conducive or related to the provision of the services;
- to carry out any functions conferred on the Agency under any other Act;
- to carry out any function that the Minister, by written notice to the Chairman of the Board of Management of the Agency, directs the Agency to perform; and
- to do anything that is incidental, conducive or related to the performance of any of its functions.

This clause makes it clear that the Agency's specific functions emanate from service arrangements entered into under **clause 7**, other Acts and from written directions given by the Minister. In the case of the latter, **clause 8(2)** provides that such written directions are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901* (meaning that the directions must be tabled in both Houses of the Parliament and are subject to disallowance by either House).

Clause 9(1) provides that the Minister can give the Board of Management of the Agency (through the Chairman) written directions about the performance of the Agency's functions. **Clause 9(2)** provides that details of any such directions must be included in the annual report of the Agency for the relevant year. **Clause 9(3)** provides that the Board of Management must ensure that any such directions are complied with.

Clause 10(1) provides that the Minister, before giving a direction under **paragraph 8(1)(c)** - ie a direction that the Agency carry out certain functions - or under **clause 9** - ie about the performance of the Agency's functions - must seek the advice or comments of the Board of Management of the Agency about the impact of the proposed direction on the Agency's operations. The Minister is required to seek the advice or comments by notice in writing.

Clause 10(2) provides that the Minister must, in giving a relevant direction, have regard to any advice or comments given by the Board of Management of the Agency. **Clause 10(3)** further provides that if the Minister subsequently gives a direction, particulars of any advice or comments given under this provision must be included in the annual report of the Agency for the financial year in which the direction was given.

Part 3 of the Bill provides for the Board of Management of the Agency. **Clause 11** provides for the establishment of the Board of Management of the Agency (the Board).

Clause 12 sets out the Board's functions and powers. **Clause 12(1)** provides for the functions of the Board, which are as follows:

- to decide the Agency's goals, priorities, policies and strategies; and
- to ensure that the Agency's functions are properly, efficiently and effectively performed.

These functions are expressed to be "subject to this Act and any other enactment". This means that they are to be read subject to the specific provisions contained in this Bill and subject to the requirements of other legislation (such as, for example, the *Audit Act 1901* or the *Public Service Act 1922*).

Clause 12(2) provides that the Board has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Clause 13(1) provides for the Minister to give directions to the Board about the performance of its functions, the exercise of its powers or the conduct of its meetings, or in relation to the terms and conditions of appointment of the Chief Executive Officer of the Agency. Such directions are to be given by written notice to the Chairman of the Board.

Clause 13(2) provides that details of any such directions must be included in the annual report of the Agency for the relevant year. **Clause 13(3)** provides that the Board must comply with any such directions.

Clause 14(1) provides for the Minister, by written notice to the Chairman, to notify the Board of the general policies of the Commonwealth Government. **Clause 14(2)** provides that the Board must ensure that the policies are carried out.

Clause 15(1) provides that the Minister may ask the Board for information about the operation of the Agency. **Clause 15(2)** provides that the Board must, within a reasonable time, give the Minister the information requested. **Clause 15(3)** provides that the Board must ensure that the information given is accurate.

Clause 16(1) provides that the Board consists of:

- a Chairman; and
- the Chief Executive Officer of the Agency; and
- at least 4 other members.

Clause 16(2) provides that at least 2 of the "other members" must be persons who are not principal officers of Commonwealth authorities (as defined in **clause 3**).

Clause 16(3) provides that the members of the Board, other than the Chief Executive Officer, are to be appointed by the Minister. **Clause 16(4)** provides that members are to be appointed on a part-time basis.

Clause 17(1) provides that the Minister may appoint a member of the Board, other than the Chief Executive Officer, to act as Chairman during any period that the office is vacant or during any period when the Chairman is absent from duty or is otherwise unable to perform the functions of his or her office.

Clause 17(2) provides that anything done by a person purporting to act under an appointment made under this clause is not invalid merely because:

- the occasion for the appointment had not arisen; or
- there was any defect or irregularity in or in connection with the appointment; or

the appointment had stopped having effect; or

the occasion for the person to act had not arisen or had stopped.

This ensures that action taken by an acting Chairman will not be invalid merely because of a technical defect in relation to the appointment.

Clause 18(1) provides that the Board may, by resolution, delegate any or all of its functions or powers to a member of the Board or to an employee of the Agency.

Clause 18(2) provides that, in exercising such a power, a delegate must comply with any directions of the Board. **Clause 18(3)** provides that a delegation under this clause (a) may be revoked (by resolution of the Board) and (b) continues in force in spite of any changes to the membership of the Board.

Clause 19 provides that the Chairman may delegate any or all of his or her functions or powers to the Chief Executive Officer of the Agency.

Clause 20 provides for procedures to be followed in relation to meetings of the Board.

Clause 20(1) provides that the Board must hold such meetings as are necessary for the efficient performance of its functions. **Clause 20(2)** provides that the Chairman of the Board may convene a meeting at any time and that he or she must convene a meeting on receipt of a written request from at least 2 other members of the Board.

Clause 20(3) provides that the Minister may also convene a meeting of the Board at any time.

Clause 20(4) provides that the Chairman must, if present at a meeting of the Board, preside at that meeting. **Clause 20(5)** provides that, if the Chairman is not present at a meeting, the members present at the meeting must elect one of their number to preside.

Clause 20(6) provides that a member of the Board is not entitled to vote at a meeting if the member is the principal officer of a Commonwealth authority **and** has entered into a service arrangement with the Agency that is currently in force. This is intended to ensure that, for example, the Secretaries of Commonwealth Government departments with whom the Agency has entered into service arrangements are not in positions of conflict of interest.

It should be noted that "principal officer" and "Commonwealth authority" are defined in **clause 3** of the Bill and that the definition of "Commonwealth authority" expressly excludes the Agency. This ensures that the Chief Executive Officer of the Agency is entitled to vote at meetings of the Board.

Clause 20(7) provides that, at a meeting, a quorum consists of a majority of the members of the Board who are entitled to vote. **Clause 20(8)** provides that questions arising at a meeting are to be determined by a majority of the members of the Board that are present and voting.

Clause 21(1) provides that a member of the Board who has a direct or indirect pecuniary interest in any matter that is being considered, or is about to be considered, by the Board must disclose that interest at a meeting of the Board. **Clause 21(2)** provides that such disclosure must be made as soon as the relevant facts have come to the member's knowledge. It further provides that the disclosure must be recorded in the minutes of the meeting.

Clause 21(3) provides that, unless either the Board or Minister determines otherwise, a member who discloses an interest under this clause must not be present during any deliberation of the matter by the Board and must not take any part in any decision of the Board on the matter. **Clause 21(4)** further provides that a member affected by this clause must not be present during any deliberation or "determination otherwise" (ie to overrule the disqualification from taking part in the decision) under **clause 21(3)**.

Clause 22 provides for the Board to regulate proceedings at meetings as it thinks fit (but subject to the formal requirements set out in clauses 20 and 21). This allows the Board to provide for such other detailed procedures for meetings as may be necessary.

Clause 23(1) provides that the period of appointment of an appointed member (as defined in **clause 3**) shall be for such period, not exceeding 3 years, as is specified in the instrument of appointment. It further provides that appointed members are eligible for re-appointment.

Clause 23(2) provides that a member of the Board who is a principal officer of a Commonwealth authority holds office during the Minister's pleasure.

Clause 24(1) provides that an appointed member is to be paid the remuneration determined by the Remuneration Tribunal. It further provides that, if no such determination is in force, an appointed member is to be paid such remuneration as is prescribed by regulations made under this Act. **Clause 24(2)** provides that an appointed member is to be paid the allowances prescribed by regulations made under this Act. **Clause 24(3)** makes it clear, however, that the provisions set out in this clause are to be read subject to the *Remuneration Tribunal Act 1973*.

Clause 25 prohibits appointed members of the Board from engaging in paid employment that, in the Minister's opinion, conflicts with the proper performance of the member's duties.

Clause 26 provides that an appointed member of the Board can resign by giving the Minister a written resignation.

Clause 27 provides that an appointed member of the Board holds office on such terms and conditions (if any) in relation to matters not specifically provided for as are determined by the Minister.

Clause 28(1) provides that the Minister may terminate the appointment of an appointed member for misbehaviour or physical or mental incapacity. **Clause 28(2)** provides that the Minister must terminate the appointment of an appointed member if he or she:

- becomes bankrupt, etc; or
- without reasonable excuse, contravenes the requirements of **clause 21** (ie fails to disclose an interest in a matter before the Board); or
- is absent, without reasonable excuse, from 3 consecutive meetings of the Board; or
- has, in the Minister's opinion, performed his or her functions as a member unsatisfactorily for a significant period of time.

Clause 28(3) provides that if a member of the Board who is a principal officer of a Commonwealth authority ceases to be the principal officer of that authority then he or she also ceases to be a member of the Board.

Part 4 of the Bill deals with the Chief Executive Officer and employees of the Agency. **Clause 29(1)** provides for the appointment of a Chief Executive Officer (CEO) of the Agency. **Clause 29(2)** provides that the CEO is to be appointed by the Board (in writing), after consultation between the Chairman of the Board and the Minister. **Clause 29(3)** provides that the CEO is to be appointed on a full-time basis.

Clause 30(1) provides that the CEO holds office on such terms and conditions (including remuneration and allowances) as are determined by the Board (in writing). **Clause 30(2)** provides that the CEO must not be present during any deliberation by the Board on the remuneration and allowances payable to the CEO and, further, must not take part in any decision by the Board on such a matter. **Clause 30(3)** provides that the Board may, at any time, terminate the appointment of the CEO.

Clause 31(1) provides that the Board may appoint a person to act as CEO during any period that the office is vacant or during any period when the CEO is absent from duty or is otherwise unable to perform the functions of his or her office.

Clause 31(2) provides that anything done by a person purporting to act under an appointment made under this clause is not invalid merely because:

- the occasion for the appointment had not arisen; or
 - there was any defect or irregularity in or in connection with the appointment; or
 - the appointment had stopped having effect; or
- the occasion for the person to act had not arisen or had stopped.

This ensures that action taken by an acting CEO will not be invalid merely because of a technical defect in relation to the appointment.

Clause 32 provides that the CEO is, under the Board, to be responsible for the day-to-day administration of the Agency and the control of its operations. This clause is, however, expressed to be "subject to this Act and any other enactment", which means that it is to be read subject to the specific provisions contained in this Bill and subject to the requirements of other legislation (such as, for example, the *Audit Act 1901* or the *Public Service Act 1922*).

Clause 33 provides that the CEO may delegate any or all of his or her functions or powers to an employee of the Agency. The clause expressly provides that this includes functions delegated to the CEO in accordance with any service arrangements under **clause 7**.

Clause 34 provides that the CEO may resign by giving the Chairman of the Board a written resignation.

Clause 35(1) provides that, subject to **clauses 35, 36 and 37**, the staff of the Agency are to be persons employed under the *Public Service Act 1922*. **Clause 35(2)** provides that the CEO has all the powers of, or exercisable by, a Secretary under the *Public Service Act 1922*, so far as those powers relate to a branch of the Australian Public Service comprising the officers referred to in **clause 35(1)**, as if that branch were a separate Department of the Australian Public Service. This means that, in general terms, the CEO of the Agency has the same powers as a Secretary under the *Public Service Act 1922*.

Clause 35(3) provides that, in addition to the staff referred to in **clause 35(1)** (ie those employed under the *Public Service Act 1922*), the CEO may employ persons on terms and conditions determined by the Board (in writing). This gives the CEO the flexibility of being able to employ persons from outside the Australian Public Service, in addition to those staff appointed under the *Public Service Act 1922*.

Clause 36 provides that the CEO may make arrangements with the principal officer of a Commonwealth authority for the services of officers or employees of that authority to be made available to the Agency. This gives the CEO the flexibility of being able to have access, as required, to the skills and services of persons from other Commonwealth authorities. It is envisaged that this will be particularly useful as the Agency takes on the responsibility of delivering further Commonwealth services.

Clause 37(1) provides that the CEO may engage as consultants persons with suitable qualifications and expertise. **Clause 37(2)** provides that the terms and conditions of engagement of such persons are to be determined by the Board.

Part 5 of the Bill contains various "miscellaneous" provisions. **Clause 38** provides for the protection of the names and symbols of the Agency against unauthorised use. It protects the use of the Agency's "protected name" and "protected symbol". "Protected name" is defined in **clause 38(4)** as the term "Commonwealth Services Delivery Agency" or such other names as are prescribed (ie by regulation). "Protected symbol" is defined as the Agency's official symbol, whose design is set out in the regulations. It is intended that regulations prescribing such other names as a required and also setting out the Agency's official logo will be promulgated at around the same time as the Bill's coming into force (ie 1 July 1997).

Clause 39(1) provides that, if the *Audit Act 1901* has not been repealed on or before the "commencing day" of this Bill, then that Act will apply in relation to the Agency (and until it is repealed) as if:

- references to the Secretary were references to the Chairman of the Board of Management; and
- references to the Department were references to the Agency; and
- subsection 2AB(2) of the *Audit Act 1901* were repealed.

This means that, until such time as the *Audit Act 1901* is repealed, the Chairman of the Board of the Agency will have the same responsibilities under that Act as do the Secretaries of Departments of State.

Clause 39(2) provides that "commencing day" means the day that this Act commences (ie 1 July 1997).

It should be noted that **clause 39** (and, to a lesser extent, **clause 40**) anticipates the passage of the proposed Financial Management and Accountability Bill. The application of the *Audit Act 1901* provided for in the Bill (and the annual reporting requirements contained in the Bill) is consistent with the understanding that, at such time as the Financial Management and Accountability Bill is enacted, the Agency will be a body to which that legislation will apply.

Clause 40(1) provides that the Chairman of the Board must, as soon as is practicable after 30 June of each year, prepare and give to the Minister a report of the operations of the Agency during the year that ended on that 30 June. **Clause 40(2)** provides that the Minister must cause a copy of such a report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which he or she received the report.

Clause 41 provides that the Governor-General may make regulations prescribing matters that are required or permitted to be prescribed for the purposes of the Bill or are necessary or convenient to be prescribed for carrying out or giving effect to the Bill.

5. Commencement

The Act commences on 1 July 1997 (clause 2).



9 780644 498265