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THE PARLIAMENT OF THE COMMONWEALTH OF
AUSTRALIA

HOUSE OF REPRESENTATIVES

DISABILITY SERVICES AMENDMENT BILL 1991
EXPLANATORY MEMORANDUM

(Circulated by authority of Mr R A Braithwaite, MP)



DISABILITY SERVICES AMENDMENT BILL 1991

The main purpose of the Bill is to amend the Disability Services Act 1986 (the Principal Act) so as to provide for increased flexibility in delivering financial and allied assistance to persons with disabilities. The objects as specified in section 3 of the Principal Act remain unaltered. However, the Bill recognises that experience has shown that the Act, and administration of the Act, are not providing sufficient flexibility and certainty to persons with disabilities nor to those who deliver services to persons with disabilities, and it seeks to remedy this deficiency. Further, the Bill recognises a clear need for distinction to be made as to the needs, aspirations and potentials of persons with differing types and degrees of disabilities.

2. The Principal Act as currently enacted provides the relevant Minister with a very wide scope of authority to formulate principles, objectives and guidelines to be complied with. The Bill seeks to curtail the Minister's authority in this regard, so as to ensure that both Houses of the Parliament approve by resolution any instrument made as to such principles, objectives and guidelines before they are to have any effect. This will provide greater assurance of adequate opportunity for proper debate and, if necessary, amendment by the Houses of Parliament, on such vital matters, which could alter the thrust of the Act and/or its implementation. It will also provide opportunity for public participation, input, criticism and awareness, and will curtail any proliferation by the relevant Department of supposed "guidelines" which have up until now created uncertainty, rigidity and confusion (clause 3). Consequent on Parliament's role of approval in this process, the Bill includes consequential provisions to exclude instruments made in this way from the parliamentary disallowance provisions of other legislation.

3. The Bill proposes to add two services to the types of services which specifically the Minister may approve under section 9 of the Principal Act, viz. staff training services and vocational training services (clauses 4 and 5), and indicates the type of supported

employment services that the Minister may approve.

4. The Bill also contains measures to provide some degree of predictability in financial assistance, and some degree of restriction as to terms and conditions which may be imposed by the Minister in approving the making of a grant of financial assistance. These measures have a direct link as to the terms and conditions which may be included in Agreements required to be signed by recipients under section 15 of the Principal Act, since section 15 requires contracts to contain the same terms and conditions as those on which financial assistance was granted. The Bill proposes to amend sections 10, 12, 13 and 14 of the Principal Act to make it clear that only terms and conditions of kinds set out in the appropriate subsections can be specified by the Minister when approving the grant of financial assistance. Consequently, it will no longer be possible for the Department (with or without the sanction of the Minister) to press upon recipients of grants unilateral, harsh or unwarranted terms and conditions such as are clearly and wrongly included in current agreements without recipients knowing they have the right to reject such terms and conditions as are outside the scope set out in the Act. The period in which financial assistance for prescribed services and for upgrading prescribed services are payable is proposed to be extended from 30 June 1992 to 30 June 1995 (clauses 9 and 10).

5. Insertion of a new section 16A is proposed to ensure that reviews may be made, on application to it, by the Administrative Appeals Tribunal, of decisions of the Minister, or a delegate of the Minister, under section 10, 12, 13 or 14 of the Principal Act, or of decisions by an officer of the Department made in, or in connection with, the administration of Part II of the Act, in relation to a member, or members, of the target group or the making of a grant of financial assistance, including, but without limiting the generality of provisions relating to the making of grants (clause 11).

6. Clause 13 of the Bill makes a change consequential upon the amending Bill to section 32 of the Principal Act.

7. Financial impact: In view of the greater flexibility and choice which the Bill would offer for disabled persons and to providers of services to them, it is estimated that expenditures under the Act as amended by the Bill would not exceed current intended expenditure,

and may well be less. Proposed expenditure of any kind under the Act in the future would of course be subject to separate appropriation by the Parliament.
