THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

EMPLOYMENT SERVICES (CONSEQUENTIAL AMENDMENTS) BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment, Education and Training, the Honourable Simon Crean, MP)



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EMPLOYMENT SERVICES (CONSEQUENTIAL AMENDMENTS) BILL 1994

OUTLINE

This Bill makes consequential amendments arising from the Employment Services Act 1994 to the following legislation:

Employment, Education and Training Act 1988

Freedom of Information Act 1982

Ombudsman Act 1976

Privacy Act 1988

Social Security Act 1991

PURPOSE OF THE BILL

The Bill repeals Part VI of the *Employment, Education and Training Act 1988*, under which the Commonwealth Employment Service (CES) is currently established. The CES is being re-established by Clause 8 of the Employment Services Bill 1994.

The Bill amends the *Freedom of Information Act 1982* to provide for members of the public to have rights of access to documents relating to case management services that are held by contracted case managers.

The Bill provides for the Ombudsman to investigate complaints about contracted case managers and for the Ombudsman to be able to refer those complaints to the Employment Services Regulatory Authority (ESRA) where the Ombudsman considers the complaint could be more appropriately dealt with by ESRA.

The Bill amends the *Privacy Act 1988* to apply provisions of it to contracted case managers in connection with the provision of case management services.

The Bill amends a number of provisions in the Social Security Act 1991 to provide for the disclosure of information to contracted case managers by the Secretary to the Department of Social Security and to insert notes cross referencing relevant provisions to the Employment Services Act 1994.

FINANCIAL IMPACT

The measures in this Bill have no financial impact on the Commonwealth.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

The short title of this Act will be the Employment Services (Consequential Amendments) Act 1994.

Clause 2 - Commencement

Part 1 and Part 2 would commence on the day on which the Employment Services Bill 1994 receives Royal Assent.

The other provisions in this Bill would commence on the day on which provisions referred to in clause 2(2) of the Employment Services Bill 1994 commence. These provisions commence by Proclamation, or within 6 months if not earlier proclaimed.

PART 2 - AMENDMENT OF THE EMPLOYMENT, EDUCATION AND TRAINING ACT 1988

Clause 3 - Object of Part

The object of this Part is to repeal Part VI of the Employment, Education and Training Act 1988, under which the Commonwealth Employment Service (CES) is currently established. The CES is proposed to be re-established by Clause 8 of the Employment Services Bill 1994.

Clause 4 - Principal Act

Any references to the Principal Act in this Part are references to the *Employment*, Education and Training Act 1988.

Clause 5 - Repeal of Part VI

This clause would repeal Part VI of the Principal Act.

Clause 6 - Disclosure of interests

This clause is necessary to remove references to committees established under the repealed provisions from section 60 of the Principal Act, which deals with disclosure of interests. Corresponding disclosure requirements are proposed in clause 13 of the Employment Services Bill 1994.

Clause 7 - Transitional provision - Commonwealth Employment Service

This clause is a transitional provision under which the Commonwealth Employment Service, proposed to be established by clause 8 of the Employment Services Bill 1994, would be regarded as a continuation of the service established under section 48 of the Principal Act.

Clause 8 - Transitional provision - continuation of national committee

This clause is a transitional provision which provides for the national committee, appointed under section 50 of the Principal Act, to continue as the national committee under clause 11(1) of the Employment Services Bill 1994.

Clause 9 - Transitional provision - continuation of other committees

This clause would provide for regional and local committees established under section 50 of the Principal Act which are proposed to be re-established as area committees under clause 11(2) of the Employment Services Bill 1994.

PART 3 - AMENDMENT OF THE FREEDOM OF INFORMATION ACT 1982

Clause 10 - Object of Part

The object of this Part is to give members of the public rights of access to certain documents held by contracted case managers.

Clause 11 - Principal Act

Any references to the Principal Act in this Part are references to the Freedom of Information Act 1982.

Clause 12 - Interpretation

This clause would give effect to the object of this Part by making minor amendments to section 4 of the Principal Act to make case managers subject to the provisions of the Principal Act.

Clause 13 - Schedule 2

This clause would exclude the application of the Principal Act to documents held by case managers that are not case management documents as defined by the Employment Services Bill 1994, or that are not documents relating to the performance of functions under that Bill. The would mean that only documents relating to the provision of case management services would be accessible under the *Freedom of Information Act 1982*.

PART 4 - AMENDMENT OF THE OMBUDSMAN ACT 1976

Clause 14 - Objects of Part

The objects of this Part are to provide for the Ombudsman to investigate complaints about contracted case managers and for the Ombudsman to be able to refer complaints to the Employment Services Regulatory Authority (ESRA).

Clause 15 - Principal Act

Any references to the Principal Act in this Part are references to the *Ombudsman Act* 1976.

Clause 16 - Interpretation

This clause would give effect to the objects of this Part by making minor amendments to section 3 of the Principal Act to make case managers subject to the provisions of the Principal Act.

Clause 17 - Functions of Ombudsman

This clause would amend section 5 of the Principal Act to prevent the Ombudsman from investigating complaints about case managers that are not connected with the provision of case management services.

Clause 18 - Discretion not to investigate certain complaints

This clause would provide the Ombudsman with the discretion to refer a complaint to the ESRA where the Ombudsman considers the complaint could be more appropriately dealt with by ESRA.

PART 5 - AMENDMENT OF THE PRIVACY ACT 1988

Clause 19 - Object of Part

The object of this Part is to require contracted case managers to comply with the provisions of the *Privacy Act 1988* in providing case management services.

Clause 20 - Principal Act

Any references to the Principal Act in this Part are references to the Privacy Act 1988.

Clause 21 - Interpretation

This clause would give effect to the object of this Part by making minor amendments to section 6 of the Principal Act to make case managers subject to the provisions of the Principal Act.

Clause 22 - Acts and practices of agencies etc.

This clause would amend section 7 of the Principal Act to apply the provisions of the Principal Act to acts or practices done by case managers in connection with the provision of case management services.

Clause 23 - Principal executive of agency

This clause would include in the table in section 37 of the Principal Act, those persons to be regarded as principal executives of an agency for the purposes of that term as defined. Principal executives of agencies have certain responsibilities under the Principal Act. For a case manager who is an individual, the principal executive would be that individual. For a case manager that is not an individual, the principal executive would be the person primarily responsible for the management of the case manager.

Clause 24 - Registration of determination

This clause would amend section 54 of the Principal Act with the effect that Division 3 of Part 5 of the Act, relating to review and enforcement of determinations by the Privacy Commissioner, will apply to case managers who are not Commonwealth agencies.

Clause 25 - Application of Division

This clause would amend section 57 of the Principal Act with the effect that Division 4 of Part 5 of the Act, relating to review and enforcement of determinations by the Privacy Commissioner, will apply to case managers who are Commonwealth agencies.

PART 6 - AMENDMENT OF THE SOCIAL SECURITY ACT 1991

Division 1 - Principal Act

Clause 26 - Principal Act

Any references to the Principal Act in this Part are references to the Social Security Act 1991.

Division 2 - Secrecy

Clause 27 - Object of Division

This object of this Division is to provide for the disclosure of certain information to contracted case managers by the Secretary to the Department of Social Security.

Clause 28 - Secretary's certificate

This clause would provide for the objects of this Part to be effected by amending section 1314 of the Principal Act to provide that the Secretary to the Department of Social Security may disclose information to a contracted case manager which is relevant to the provision of case management services by the case manager.

Division 3 - Insertion of notes referring readers of the Principal Act to relevant provisions of the Employment Services Act 1994

Clause 29 - Object of Division

The object of this Division is to insert notes into the Principal Act referring readers to relevant provisions of the Employment Services Act 1994.

Clause 30 - Insertion of notes

This clause gives effect to the objects of this Division by amending various sections of the Principal Act to include notes which cross reference the relevant section of the *Employment Services Act 1994*.

