

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**EMPLOYMENT SERVICES BILL 1994**

**EXPLANATORY MEMORANDUM**

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



## **EMPLOYMENT SERVICES BILL 1994**

### **OUTLINE**

This Bill establishes the Commonwealth Employment Service and Employment Assistance Australia and sets up and regulates the case management system.

The aim of the Bill is to promote full employment by providing employment services that are free of charge to job seekers. This reflects Australia's obligation to maintain a free public employment service under Article 1.1 of the International Labour Organisation Convention (No. 88) Concerning the Organisation of the Employment Service.

The Bill also establishes the Employment Services Regulatory Authority (ESRA) as an independent statutory authority responsible for regulating the case management system.

The Bill makes provision for the case management system. People registered with the CES may become participants in the case management system and the CES will refer the participants to case managers. Where a person is referred to a case manager, the case manager will have the function of assisting the participant to find employment.

The person will be required to enter into a case management activity agreement with the case manager which replaces, and performs similar functions to, any Job Search or Newstart Activity Agreement that the person had under the *Social Security Act 1991*. If the person fails to enter into the agreement, the person could lose his or her qualification for job search or newstart allowance. Such persons will have rights to seek review of decisions by the Social Security Appeals Tribunal and the Administrative Appeals Tribunal.

Employment Assistance Australia is the principal government-owned case manager. The function of Employment Assistance Australia (EAA) is to provide case management services to participants in the case management system. ESRA will monitor the operations of EAA.

Other case managers, called contracted case managers, will be engaged by ESRA to provide case management services. However, before a contracted case manager can be engaged by ESRA it must be accredited by ESRA.

ESRA will have the functions of regulating the case management system, promoting competition in the provision of case management services, monitoring and evaluating the operation of the case management system and reporting to the Minister on that operation. Other functions will include monitoring the operation of codes of practice that will apply to the provision of case management services by case managers and monitoring any information technology or other assistance that the CES or the Department must provide to case managers.

The Bill gives ESRA the power to investigate matters relating to the operation of the case management system. The Commonwealth Ombudsman will also be empowered to investigate complaints about contracted case managers through amendments to the Ombudsman Act 1976 contained in the Employment Services (Consequential Amendments) Bill 1994. Each agency will have a power to refer to the other complaints that could be dealt with more effectively by the other agency.

It is expected that, in practice, ESRA would deal with complaints concerning regulatory or policy issues and unfair practices of case managers. The Commonwealth Ombudsman would have jurisdiction to investigate any complaints relating to a matter of administration including individual and systemic issues. The two agencies would be expected to enter into a memorandum of understanding which would set out the detailed arrangements for cross referral of complaints.

### **PURPOSE OF THE BILL - FURTHER DETAIL**

This legislation will contribute to Australia's becoming a more internationally competitive nation. The legislation is a very important step toward our achieving and maintaining full employment. It will help raise the standards of living for all Australians by promoting full use of the skills and energies of our workforce.

These are the undertakings of the Government's White Paper on Employment and Growth and through this legislation the Government will deliver one of the major *Working Nation* initiatives. This legislation will also provide stronger linkages with other *Working Nation* initiatives such as NETTFORCE. New Work Opportunities and the Training Wage will both be enhanced by the effective delivery mechanisms provided by this legislation.

#### Aim of the legislation

The aim of this legislation is to promote full employment by providing a free public employment service and to draw on a diversity of public sector, community and private sector resources, to achieve this goal as cost effectively as possible.

This legislation will improve the quality and effectiveness of employment services through enhanced case management services for the long-term unemployed and those at risk of becoming long-term unemployed.

The legislation provides the framework for development over time of an open competitive environment for the supply of case management services. A new regulatory body, the Employment Services Regulatory Authority (ESRA) will be established within the Employment, Education and Training portfolio and independently of the Department of Employment, Education and Training (DEET). One of its central responsibilities will be to encourage and facilitate contracted case managers (CCMs) to provide case management services in competition with Employment Assistance Australia (EAA) which will be DEET's case management organisation, formed from part of the CES.

ESRA will promote competition and fair and efficient market conduct. These arrangements are intended to meet the needs of jobseekers, employers and the local community while maintaining high standards of accountability and probity in the use of the public resources provided. The longer term aim of the legislation is for jobseekers to have a choice of case manager. The legislation also ensures that there are reciprocal obligations on jobseekers through Case Management Activity Agreements which will outline an agreed course of action for case manager and jobseeker. Agreements will focus the efforts of case managers and jobseekers firmly on attaining employment for jobseekers.

### The Commonwealth Employment Service and Employment Assistance Australia

The legislation establishes the Commonwealth Employment Service within the Department of Employment, Education and Training. This provision confirms that Australia will continue to meet its obligations under ILO Convention No 88 to provide a free public employment service.

There is provision for the establishment of a national committee to advise the National Director on the operations of the CES. A CES Advisory Committee already operates and will continue to operate under the provisions of this legislation.

There is also provision for the establishment of Area Committees. *Working Nation* allows for the establishment of up to sixty area consultative committees to consist of representatives from local businesses, community organisations, local and state governments, regional development bodies, training providers and unions. These committees will provide an avenue for local input to program and service delivery decisions to ensure that CES services will complement local development and employment initiatives.

The legislation establishes Employment Assistance Australia as a separate organisation, within the Department, to provide case management services.

As part of its regulatory functions, ESRA will monitor the operations of EAA and make recommendations to the Minister about those operations, including arrangements to pay EAA for its case management services.

### The case management system

In *Working Nation* the Government made an undertaking to tackle long term unemployment by providing individually tailored case management services. Case management involves a one-to-one service provided by a case manager to a jobseeker. It requires sustained effort to assist job seekers eligible for case management back into employment of a lasting nature. Case managers will provide continuing support to the jobseeker before, during and after the program of assistance.

Case managers will work with the jobseeker to negotiate a Case Management Activity Agreement. This will set out a course of action tailored to the particular needs of the jobseeker and agreed between the case manager and the jobseeker. The overriding objective is to assist the jobseeker to get and retain lasting employment. Case

managers will provide counselling and job search assistance. This will be supported by access to programs, vocational training, relevant remedial courses in literacy, numeracy or English language skills and community-based work experience or subsidised employment. The case management strategy will ensure that the appropriate assistance is offered, that the jobseeker is committed and, indeed, obligated to pursue agreed plans.

### Participants in the case management system

*Working Nation* provides that case management will be available to:

- short-term unemployed people assessed by the CES as being at high risk of becoming long term unemployed;
- those who have been registered as unemployed with the CES for 12 months and are eligible for the newstart allowance;
- those eligible for Job Compact assistance; and
- those covered by the Youth Training Initiative.

The legislation provides for the Minister for Employment, Education and Training to make a written determination of the groups of persons, such as those listed above, who are to become participants in the case management system. This arrangement will be used to tailor assistance, in the first instance, to those in most need and those who are reaching certain points in being unemployed, such as those who are reaching the 12 months point of unemployment. With this provision the Government and ESRA will be able to manage the case management system so that the most effective use is made of available case management resources.

As time goes by, case management can be extended to other groups of unemployed persons or otherwise be modified to reflect changing needs and priorities.

### Referral to case managers

The CES will be required to notify and interview persons as they qualify to become participants in the case management system in order to assess their needs prior to referring them to case managers.

Reciprocal obligations of jobseekers are also built into the case management system. If the jobseeker refuses to attend an interview the person would lose his or her qualification for to job search allowance or newstart allowance for a period. This provision underlines the importance of active involvement of participants in the system if it is to successfully place people in employment of a lasting nature.

In making a referral, the CES must have primary regard to the client's preference for a case manager and several other considerations which are to be set out in a disallowable instrument, including the local availability of case managers and their ability to meet the particular needs of the client. The first determination is likely to cover:

- the needs of the client as preliminarily assessed by the CES;
- the requirement for case managers to have a case load involving a mix of clients with varying needs;
- the known expertise of the case manager; and

- the operational capacity of the case manager to case manage the jobseeker.

The longer term objective is that clients are able to make an informed choice of case manager and that the CES's decisions would reflect few changes to jobseekers' nominations.

### Case management services

One of the responsibilities of ESRA will be to fully determine what are and are not considered to be case management services. This will also be a disallowable instrument. The case management market will be subject to considerable innovation over time and the use of a disallowable instrument will enable ESRA to respond to such changes while ensuring the clients' interests are being met. ESRA will also be able to provide the critical linkages with other *Working Nation* initiatives when they come on line, particularly New Work Opportunities and the Training Wage provisions.

### Case Management Activity Agreements

As already indicated, one essential element of the delivery of case management services will be for the case manager and the jobseeker to develop and agree to a Case Management Activity Agreement (CMAA). The requirements of the CMAA will give force to the *Working Nation* emphasis on the reciprocal obligations of jobseekers, especially those who have become eligible for the Job Compact. For example, by legislative provision the CMAA will require a Job Compact client to accept any offer of suitable paid work or any offer of a placement under New Work Opportunities or the New Enterprise Incentive Scheme. CCMs will have a responsibility to monitor a jobseeker's activity against his or her Agreement and to provide relevant information to the CES.

The legislation will also require the jobseeker's compliance with the CMAA. The legislation provides that a CMAA will take the place of a Newstart Activity Agreement or a Job Search Activity Agreement for the purposes of the *Social Security Act 1991*. Failure to enter into a CMAA or to abide by the conditions of a CMAA will have the same effect for the jobseeker as failure to enter into a Newstart Activity Agreement or a Job Search Agreement or failure to comply with the terms and conditions of those Agreements, ie it will lead to a loss of allowances for some period of time.

### Accreditation of case managers

ESRA will have the power to accredit case managers. ESRA's regulatory functions will be exercised primarily through the use of the accreditation powers provided for in the legislation.

The details of the accreditation scheme are to be set out in a disallowable instrument. ESRA will make decisions to accredit case managers and to vary or cancel their accreditation. ESRA will also be able to set and vary conditions of accreditation. ESRA may also issue a formal warning if a case manager contravenes a condition of accreditation.

The accreditation scheme will therefore be in two parts:

Part 1 will stipulate conditions which must be met before an applicant can be accredited as a case manager; and

Part 2 will stipulate conditions which must be met in the ongoing delivery of, and reporting on, case management services to ensure that accreditation is maintained.

The use of a disallowable instrument to set out the detail of the accreditation scheme will allow ESRA to vary conditions of accreditation (either Part 1 or Part 2 conditions) as the needs of the client group or the industry itself changes.

The legislation, however, does stipulate several major conditions of accreditation:

- a case manager may not demand or receive any fees from a jobseeker for the provision of case management services. All case management fees are to be paid by ESRA;
- a case manager must lodge CMAAs with the CES; and
- a case manager must provide information to the Secretary of DEET concerning a jobseeker's compliance with a CMAA.

One of the more significant accreditation decisions ESRA will be empowered to make is to specify classes of case management services. ESRA will accredit case managers to provide either general case management services and/or one or more classes of specialist case management services.

The classes of specialist services will be determined by disallowable instrument. ESRA will be able to change specialist classes as expertise develops and increasing numbers of case managers make specialisation in case management services more viable. The initial classes of specialist case management services are likely to include, but not be limited to, services to Aboriginal and Torres Strait Islander peoples, people with disabilities, youth and people seeking employment in particular industries.

Once a case manager has been accredited, ESRA may enter into contractual arrangements with that case manager for the provision of case management services. Contracted case managers will be paid by ESRA.

### Codes of practice

The Part 2 arrangements for the accreditation scheme may stipulate codes of practice, declared by ESRA, which must be adhered to. These codes will be advisory unless they are written into the accreditation arrangements, at which point they will become an accreditation requirement.

All codes of practice are intended to be disallowable instruments, thereby allowing the scrutiny of Parliament over the regulation of the industry. Codes of practice will also be published by ESRA and their operation will be monitored, evaluated and reported upon.

### DEET assistance to case managers

Under the terms of the legislation DEET will provide two types of assistance to CCMs:

- in addition to what is required in the referral process, DEET may be required to assist case managers, for example, by ensuring that information about the case management system and local case managers, perhaps in pamphlet or poster form, is available through CES offices. Any assistance which the CES is required to give to case managers will be set out in a disallowable instrument; and
- the Departmental Information Technology Assistance Scheme, also to be detailed in a disallowable instrument, will cover those aspects of information technology assistance the Department is required to give case managers from time to time. It is envisaged that DEET would charge case managers for Information Technology assistance on a cost-recovery basis and that the details of the charges would be among the matters covered in the disallowable instrument.

### Establishment of Employment Services Regulatory Authority (ESRA)

The introduction of competition to case management will ensure better value for money and improved outcomes for clients. As with the introduction of competition into other areas of Government monopoly, there is a need for a regulatory authority. The legislation establishes ESRA and sets out its functions, powers and arrangements to allow the appointment of a Board and Chief Executive Officer.

The legislation allows ESRA to regulate the case management system primarily through its powers to accredit and select CCMs. It is also given a specific power to promote competition and to monitor, evaluate and report to the Minister on the operations of the case management system.

The more important duties of ESRA arising from the functions outlined in the legislation will be:

- the accreditation of CCMs, the facilitation of the entry of case managers into the case management system, and handling the exit of case managers from the system;
- monitoring compliance with obligations by EAA and CCMs;
- monitoring CES procedures for referral to EAA and CCMs;
- monitoring compliance of EAA and CCMs with reporting requirements, including for the purposes of the activity test under the *Social Security Act 1991*;
- in consultation with stakeholders, developing Codes of Practice covering standards of service appropriate to the individual client, probity, accuracy of data entry, privacy, non-discrimination etc;
- monitoring and reporting on performance by EAA and CCMs in abiding by the Code of Practice;
- receiving and investigating complaints;
- referring matters which are the responsibility of the Trade Practices Commission, the Privacy Commission or the Ombudsman to those agencies; and

- advising the Minister on ways of promoting competition within the case management system.

The legislation allows for an ESRA Board to be established with a Chairperson and between two to five members. The Board will have the responsibility to determine policies and will direct the Chief Executive Officer. The Governor-General will appoint Board members and the CEO by written instrument. Remuneration will be determined by the Remuneration Tribunal. The appointments of both the Chairperson and the CEO are expected to be on a full-time basis.

In order to ensure probity and effective performance of Board members, the Legislation requires declarations by Board members of direct and indirect pecuniary interests in any matters being considered by the ESRA Board. The Governor-General will have the power to terminate the appointment of a Board member on grounds of conflict of interest, unauthorised absence, bankruptcy or otherwise unsatisfactory performance.

#### Investigations by ESRA

The legislation provides investigative powers for ESRA to ensure the highest quality case management for unemployed persons and stringent measures against fraud and malpractice. ESRA will be able to investigate the action of the CES in referring people and providing assistance to case managers. It may also investigate the adherence of CCMs to conditions of accreditation, contractual conditions and codes of practice. ESRA will also be able to investigate any contraventions of the Departmental Information Technology Assistance Scheme, rules relating to the use and return of case management documents and the duty of non-disclosure of information about clients.

Some matters which come to ESRA's notice may be more appropriately dealt with by the Ombudsman, a Departmental Secretary, the Trades Practices Commission or the Privacy Commissioner. The legislation allows ESRA to refer such matters to these Agencies. Obligations in relation to client rights and protection, such as those covered by the *Privacy Act*, *Freedom of Information Act* and the *Ombudsman Act*, equivalent to those that apply to the Australian Public Service, will be imposed on CCMs. CCMs adherence to anti-discrimination legislation will exist by virtue of separate legislation in those areas.

#### Monitoring of Compliance

To further ensure that there are effective anti-fraud measures and safeguards against malpractice, the legislation enables ESRA to appoint inspectors with formal powers to undertake searches, gather information and seize documents.

These powers may be exercised for the purpose of monitoring compliance by case managers with the conditions of their accreditation and the agreements under which they are engaged.

### Review of Decisions relating to referral to Case Managers and Decisions Relating to Case Management Activity Agreements

Clients will be referred to case managers by the CES taking into account client preferences, needs, and the circumstances of local case managers. The legislation provides for access to a review of this decision by an Authorised Review Officer. Appeal to the Social Security Appeals Tribunal and to the Administrative Appeals Tribunal is also provided for. There will also be access to these review mechanisms with respect to decisions about CMAAs.

### Review of ESRA Decisions

A case manager, or a prospective case manager, may request a review by ESRA of a decision ESRA has made about its accreditation or disqualification. The legislation also allows for review by the Administrative Appeals Tribunal of a decision that has been confirmed or varied by ESRA.

### Annual Report

As with standard requirements for regulatory authorities, the ESRA Board is to furnish an annual report, for tabling in Parliament. It is intended that the report will specifically cover any concerns which the CES has reported to ESRA regarding the activity testing efforts of EAA or CCMs. It is also intended that it will also include an evaluation of how codes of practice are operating and of the extent to which CCMs meet the standards required by their accreditation conditions. The Annual Report will also include a copy of ESRA's audited financial statements and note any directions given to it by the Minister.

### Conclusion

This legislation reflects a bold and imaginative venture by the Government to bring about a quantum leap in our efficiency and effectiveness in tackling long term unemployment. It will encourage into this field many community and business organisations which will bring with them special expertise, local knowledge and links with employers. In doing so they will provide a much wider range of choice of service for jobseekers, and improve jobseekers' chances of returning to employment.

This represents a radically new approach. There is currently no well developed non-government case management market and many providers will be learning as they go. Equally for the Government and for ESRA it will be very much a matter of learning by doing. While the legislation seeks to be as specific as possible, it also reflects the certainty that many new problems will emerge over time and there will be a need to set down detailed aspects of the new arrangements quickly to address unanticipated needs and problems.

The legislation includes a number of safeguards against inappropriate use of powers. It provides for disallowability of instruments defining a number of key aspects of the arrangements. This will allow Parliamentary scrutiny of those arrangements. At the same time, in including the instrument making power, the legislation gives ESRA and the Minister the power to act quickly and effectively to ensure proper protection of one of the most vulnerable sections of our community - long term unemployed people - from exploitation by the unscrupulous.

### **FINANCIAL IMPACT**

It is expected that administrative expenditure on ESRA will amount to \$8 million in the 1994/95 financial year and \$5.1 million in the following financial year.

In the 1994/95 financial year, expenditure on case management services will come from moneys previously appropriated to the Department for those purposes. Moneys to be appropriated for case management services in future financial years will be considered in successive Budgets.

## **NOTES ON CLAUSES**

### **CHAPTER 1 - PRELIMINARY**

#### **Clause 1 - Short title**

Clause 1 sets out the short title of the proposed Act.

#### **Clause 2 - Commencement**

Clause 2 provides for the commencement of the proposed Act.

Subclause 2(1) provides for Chapter 1, Chapter 2, Chapter 3, Part 4.6 and Chapter 5 to commence on the day of Royal Assent. These provisions relate to the establishment of the CES and Employment Assistance Australia, the establishment, constitution, functions and powers of the Employment Services Regulatory Agency and the making of regulations.

Subclause 2(2) provides for the remaining provisions of the Act to commence by Proclamation.

The commencement provisions will enable the Employment Services Regulatory Agency (ESRA) to commence meeting and planning implementation of case management arrangements following Royal Assent. The remaining provisions will be proclaimed to commence once ESRA has prepared its implementation arrangements.

Subclause 2(3) provides that where a provision referred to in subsection (2) has not commenced within 6 months after the Act receives Royal Assent, the provision commences on the day after the end of the six month period. This is a standard provision for commencement six months after Royal Assent if not earlier proclaimed.

#### **Clause 3 - Aim and objects**

This clause sets out the aim and objects of this Act.

Article 1.1 of 'International Labour Organisation Convention (No. 88) Concerning the Organisation of the Employment Service' places an obligation on Australia to maintain a free public employment service. This Act gives effect to that obligation.

The aim of the Act is to promote full employment by providing employment services that are free of charge to job seekers.

The objects are to establish the CES and Employment Assistance Australia and to set up and regulate the case management system.

#### **Clause 4 - Definitions**

This clause sets out the definitions of terms used in the Act. Some of the more important definitions are discussed below.

'Case manager' is defined to mean Employment Assistance Australia or a contracted case manager.

'Employment Assistance Australia' is the organisation within the Department which provides case management services.

'Contracted case managers' are entities which have been both accredited by ESRA under Division 1 of Part 4.5 of the Act and engaged by ESRA to provide case management services.

The definition of 'entity' sets out a wide range of bodies which will be able to be accredited as case managers under the Act. The entities concerned include individuals, corporations, partnerships, unincorporated associations, government authorities and government Departments. This wide definition has been included to give ESRA the scope to involve a wide range of bodies in the provision of case management services.

#### **Clause 5 - Documents**

This clause provides a definition of the term 'document' for the purposes of the Act.

#### **Clause 6 - Continuity of partnerships**

This clause provides that a change in the composition of a partnership does not affect the continuity of the partnership for the purposes of the Act. This will ensure that a case manager which is a partnership will not necessarily lose accreditation automatically as a consequence of a change in the partnership.

#### **Clause 7 - Crown to be bound**

Subclause (1) binds the Crown in the right of the Commonwealth and each of the States and Territories.

Subclause (2) ensures that the Act does not make the Crown liable to be prosecuted for an offence.

## **CHAPTER 2 - COMMONWEALTH EMPLOYMENT SERVICE**

### **PART 2.1 - THE COMMONWEALTH EMPLOYMENT SERVICE**

#### **Clause 8 - Commonwealth Employment Service**

Clause 8 re-establishes the Commonwealth Employment Service (CES) within the Department of Employment, Education and Training. The CES has previously operated under Part VI of the *Employment, Education and Training Act 1988*. That Part will be repealed by the Employment Services (Consequential Amendments) Bill 1994.

#### **Clause 9 - National Director**

This clause provides for the 'Employment Secretary' to be the National Director of the Commonwealth Employment Service. The 'Employment Secretary' is the Secretary of the Department responsible for the administration of this Act (see the definition in clause 4 and subsection 19A(3) of the *Acts Interpretation Act 1901*).

#### **Clause 10 - Attribution of acts of Departmental officers**

This clause provides that anything done by an officer of the Department in the name of, or on behalf of the CES, is taken to be done by the CES.

### **PART 2.2 - ADVISORY COMMITTEES**

#### **Clause 11 - Establishment of advisory committees**

Subclause (1) enables the Minister to establish a national committee to advise the National Director of the Commonwealth Employment Service on the operations of the CES in Australia.

Subclause (2) enables the Minister to establish area committees to advise the National Director of the Commonwealth Employment Service on the operations of the service in a specified area.

#### **Clause 12 - Provisions relating to committees**

This clause sets out various administrative matters in relation to the Advisory Committees established under Part 2.2.

Subclause (1) specifies that the section applies to committees established under Part 2.2.

Subclause (2) provides for committee members to be appointed by the Minister.

Subclause (3) provides for a member to hold office for a period specified in the instrument of appointment for that member.

Subclause (4) enables a member to resign from a committee by notifying the Minister in writing.

Subclause (5) enables the Minister to terminate the appointment of a member of a committee.

### **Clause 13 - Disclosure of interests**

Clause 13 deals with members disclosing pecuniary interests in matters being considered by a committee.

Subclause (1) applies the provision to committees established under Part 2.2.

Subclause (2) requires members to declare any direct or indirect pecuniary interests in matters being considered by the committee of which they are a member. The member must disclose the nature of his or her interest at a meeting of the committee as soon as possible after the member becomes aware that the matter has a connection with his or her pecuniary affairs.

Subclause (3) will prevent a member of a committee who makes a disclosure under subclause (2) from being present at, or participating in the deliberations of the committee on the matter. However, the committee may allow the member to be present, or participate in such a meeting.

Under subclause (4), a member may not be present at, or participate in, any deliberations by the committee in relation to allowing the member to be present.

## **CHAPTER 3 - EMPLOYMENT ASSISTANCE AUSTRALIA**

### **Clause 14 - Employment Assistance Australia**

This clause establishes Employment Assistance Australia as an organisation within the Department of Employment, Education and Training.

### **Clause 15 - Function of Employment Assistance Australia**

This clause gives Employment Assistance Australia the functions of:

- providing case management services to participants in the case management service referred to it under Part 4.3; and
- performing the functions conferred on case managers under the Act.

### **Clause 16 - National Director**

This clause provides for the Employment Secretary to be the National Director of Employment Assistance Australia.

### **Clause 17 - Attribution of acts of Departmental officers**

This clause provides that anything done by an officer of the Department in the name of, or on behalf of Employment Assistance Australia, is taken to be done by Employment Assistance Australia.

### **Clause 18 - ESRA to monitor Employment Assistance Australia etc.**

This clause gives ESRA the functions of monitoring the operations of EAA and making recommendations to the Minister about those operations.

## **CHAPTER 4 - THE CASE MANAGEMENT SYSTEM**

### **PART 4.1 - OBJECT AND OUTLINE**

#### **Clause 19 - Object**

This clause outlines the object of this Chapter, being, to set up and regulate the case management system.

The 'case management system' is defined in clause 4 as the system under which case managers provide case management services to people referred to them by the CES and perform other functions under the Act.

#### **Clause 20 - Outline**

This clause provides a simplified outline of Chapter 3.

### **PART 4.2 - PARTICIPANTS IN THE CASE MANAGEMENT SYSTEM**

#### **Clause 21 - When a person becomes a participant in the case management system**

This provision establishes the framework under which individuals become participants in the case management system.

Persons will become participants in the case management system if they are registered with the CES as being unemployed and they come within a class of persons specified in a Ministerial determination.

A determination made by the Minister will be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. Accordingly, it must be published in the *Gazette*, tabled in the Parliament and will be subject to Parliamentary disallowance.

It is intended that such a Ministerial determination would at least include the following classes of persons:

- . long term unemployed persons;
- . persons at risk of becoming long-term unemployed;
- . persons eligible to receive the youth training allowance.

The use of a Ministerial determination is proposed because the relevant classes of persons will change over time. For example, there is currently no legislation providing for the payment of a youth training allowance. The use of the Ministerial determination will allow the initial categories to be expanded to include persons eligible to receive that allowance once the measure becomes law.

The mechanism will also enable transitional arrangements to be included so that the categories of persons who become participants can be progressively expanded as the capacity of case management services increases and as ESRA engages new case managers.

#### **Clause 22 - When a person ceases to be a participant in the case management system**

This clause enables the Minister to determine a specified event or circumstance by which a person's participation in the case management system is concluded. Where a person is a participant in the case management system, he or she remains a participant until the occurrence of the specified event or circumstance.

A determination made by the Minister will be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. Accordingly, it must be published in the *Gazette*, tabled in the Parliament and will be subject to Parliamentary disallowance.

An example of an event which would be specified is where the person spends 3 months in unsubsidised employment. There may also be a time limit set, so that if a person has spent, for example, 18 months being case managed, the case management would terminate after that time.

As the Act is setting up a new system of case management, it is impossible at this stage to identify the full range of situations where case management should come to an end. The use of a Ministerial determination will give the flexibility to deal with new situations that become apparent in the operation of the case management system over time.

Subclause 22(3) deems a particular event or circumstance to be a terminating event if a failure to specify it would result in the Act being invalid. This provision is included to ensure that the Act does not exceed the available Constitutional powers.

Any referral to a case manager is terminated when a person ceases to be a participant.

### **PART 4.3 - REFERRAL OF PARTICIPANTS IN THE CASE MANAGEMENT SYSTEM TO CASE MANAGERS**

This Part sets out the arrangements for referral of participants in the case management system to case managers.

#### **Clause 23 - CES to notify and interview participants in the case management system**

Clause 23(1) enables the CES to notify a person up to 28 days prior to the person becoming a participant in the case management system. The CES can ask the person to take part in an interview with the CES.

It can be difficult to arrange such interviews in remote areas. The provision enables the interview to be face to face with a CES officer or by telephone, video-link or similar means.

Clause 23(2) places an obligation on the CES to give notice to a person who has become a participant in the case management system of the person's participation.

The notice under clause 23(2) must be in writing. The rules in sections 28A and 29 of the *Acts Interpretation Act 1901* apply to notifications under clauses 23(1) or (2) that are given in writing.

Clause 23(3) requires the CES to ask a participant to attend an interview if there is not a significant waiting list of persons to be referred to case managers (ie if the person could reasonably be referred within 24 days).

If there is a significant waiting list at the time the person is notified that he or she is a participant, clause 23(4) requires the notice to contain a statement to that effect. If at a later time the person can be referred within 24 days, the CES must ask the person to take part in an interview.

Clause 23(5) enables the CES to make a further request if the person does not take part in an interview previously requested.

#### **Clause 24 - Consequences of failure to attend interview**

Sections 543 and 627 of the *Social Security Act 1991* provide a mechanism to require a person to attend, contact or give information to the CES or the Department of Social Security. Non-compliance with such a requirement can result in a deferment period applying to the person's job search or newstart allowance.

This clause provides that these mechanisms under the *Social Security Act 1991* apply in relation to a similar failure to comply with a request under clause 23(3), (4) or (5) of this Bill. Note that subsections 543(3) and 627(3) of the *Social Security Act 1991* which make the allowance payable if the Secretary is satisfied that the person had a reasonable excuse for not complying will also apply to a requirement under clause 23(3), (4) or (5) of this Bill.

**Clause 25 - CES to refer participants in the case management system to case managers**

This clause applies to a person who has been asked by the CES to attend or take part in an interview in accordance with clause 23, and requires the CES to refer participants to case managers.

The CES must provide a participant with information about the case management system either before, or at, the interview. If the CES considers that the person could reasonably be referred to one of a number of case managers, the CES must also advise the participant that he or she may nominate a preferred case manager.

In the initial stages of the development of the case management system, EAA will be the only available case manager and, accordingly, participants will not be able to be offered a choice. However, as ESRA commences to engage contracted case managers, choice will be able to be offered in those regions where contracted case managers are providing services and have available capacity to take on further participants.

Where a participant is offered a choice, a nomination must be given to the CES in writing, and within 14 days of the interview. It is expected that the CES would help any illiterate or non-English speaking clients who need assistance with the making of the nomination.

The CES must decide to refer the participant to a specified case manager within 24 days of the interview.

In determining which case manager a participant will be referred to, the CES must take into account any nomination of a case manager, any matters that are specified in a determination by the Minister, and any other matters that the CES considers appropriate. The CES must give the greatest weight to the preferred nomination.

A determination made by the Minister will be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. Accordingly, it must be published in the *Gazette*, tabled in the Parliament and will be subject to Parliamentary disallowance.

It is proposed to use a Ministerial determination for this purpose because it is impossible at this stage to envisage all the relevant criteria that will be important for this purpose. An example of one of the criteria could be if, since the time of asking the participant's preference, the preferred case manager now has a full case load. Other

matters may include: the need for case managers to have a case load involving a reasonable mix of clients of different classification levels; any special needs of the client as assessed by the CES; and any known expertise of the case manager.

The use of a Ministerial determination will allow further criteria to be specified as the case management system develops and experience is gained with its operation.

#### **Clause 26 - Second and subsequent referrals**

This section provides a mechanism for a participant to be referred to a new case manager during his or her participation in the case management system. The CES will be able to refer a participant to a new case manager, thereby terminating the referral to the previous case manager. It is envisaged that this power would be exercised in the event of serious problems arising in the relationship between the case manager and the participant.

The procedures for referring a participant to another case manager are the same as those applying to the initial referral.

#### **Clause 27 - Referral by CES to be consistent with accreditation.**

This clause provides that any CES decision to refer a person to a case manager must be consistent with a condition of accreditation that applies to the case manager.

Examples of situations where this clause might apply include:

- to prevent referral of a participant which would result in the contracted case manager breaching a condition of accreditation setting a maximum client load for the case manager;
- to prevent referral of a participant who is not within a special class which a condition of accreditation requires the case manager to exclusively manage.

#### **Clause 28 - CES to notify participant and case manager of decision to refer**

This clause requires the CES to notify the case manager and the participant of a decision to refer a participant to the case manager. Where the CES decides to refer a participant to another case manager under section 26, then it must notify the original case manager as well.

It is intended that the notice be in writing and that the rules in sections 28A and 29 of the *Acts Interpretation Act 1901* apply to such notifications.

## **PART 4.4 - WHAT HAPPENS WHEN PEOPLE ARE REFERRED TO CASE MANAGERS**

### *Division 1 - Outline*

#### **Clause 29 - Outline**

This clause provides an outline of the operation of the Part.

### *Division 2 - Case management services*

#### **Clause 30 - Case management services**

This clause provides a definition of the term 'case management services' for the purposes of the Act.

The provision of case management services has the basic meaning of assisting a participant in the case management system to find employment.

The clause also gives the ESRA Board the power to determine that provision of specified services is, or is not, part of the provision of case management services. This will give the ESRA Board the power to more precisely specify what is involved in the provision of case management services in the light of experience gained in developing contracted case management services.

A determination made by the ESRA Board for this purpose will be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. Accordingly, it must be published in the *Gazette*, tabled in the Parliament and will be subject to Parliamentary disallowance.

### *Division 3 - Case Management Activity Agreements*

#### **Clause 31 - Case Management Activity Agreements**

This clause requires a person who has been referred to a case manager to enter into a Case Management Activity Agreement with his or her case manager. These Agreements are similar in form to, and are required in place of, the Job Search and Newstart Activity Agreements required for allowees under Parts 2.11 and 2.12 of the *Social Security Act 1991* who have not been referred to case managers. The Agreements perform the same function as the agreements in the *Social Security Act 1991* in respect of the continued qualification for job search allowance or newstart allowance, as the case may be.

Subclause (2) requires a written agreement between the person and his or her case manager, which must be in a form approved by the Employment Secretary. The agreement is to be known as a 'Case Management Activity Agreement'. This provision introduces similar requirements to those in subsection 604(1) of the *Social Security Act 1991* for newstart allowees.

Subclause (3) places an obligation on the Employment Secretary to require a person without a Case Management Activity Agreement to enter into an agreement. This provision introduces a similar requirement to that in subsection 605(1) of the *Social Security Act 1991* for newstart allowees.

Subclause (4) makes provision for the Employment Secretary to require a replacement agreement to be entered into. Subsection 605(2) of the *Social Security Act 1991* is a similar provision for newstart allowees.

Subclause (5) requires the Employment Secretary to give written notice to the person concerning the requirement to enter into an agreement, and the place and times at which the agreement is to be negotiated and is similar to subsection 605(3) of the *Social Security Act 1991*.

It is intended that the notice be in writing and that the rules in sections 28A and 29 of the *Acts Interpretation Act 1901* apply to such notifications.

Subclause (6) makes provision for the Employment Secretary to delegate his or her powers under subclauses (3), (4) and (5) to case managers or their directors, officers or employees. In the case of Employment Assistance Australia the powers would be delegated to officers under paragraph (6)(d).

### **Clause 32 - Terms of Case Management Activity Agreements**

This clause outlines the activities to be included in a Case Management Activity Agreement. It also makes it clear that the agreement is to be directed to securing employment for the person. The Employment Secretary must approve the activities to be included in a person's agreement. The activities are:

- a job search;
- a vocational training course;
- training that would help in searching for work;
- paid work experience;
- measures designed to eliminate or reduce any disadvantage the person has in the labour market (other than measures compelling the person to work in return for payment of job search allowance, or newstart allowance, under the *Social Security Act 1991*);
- participation in a labour market program;
- participation in a rehabilitation program within the meaning of the *Social Security Act 1991*;
- an activity proposed by the person (such as unpaid voluntary work proposed by the person).

These activities are in substance the same as those set out in subsection 606(1) of the *Social Security Act 1991* in relation to a Newstart Activity Agreement.

Subclause (2) is a provision designed to implement aspects of the Job Compact described in the Government's White Paper 'Working Nation' presented on 4 May 1994 (see page 115 onwards of 'Working Nation').

This clause deems each Case Management Activity Agreement to include a term to the effect that, at any time when the person is eligible for the Job Compact, the person is required to:

- . accept any offer of paid work that, in the opinion of the Employment Secretary, is suitable to be undertaken by the person; or
- . accept any offer of a placement under the New Work Opportunities Program; or
- . accept any offer of a placement under the New Enterprise Incentive Scheme; or
- . accept any offer of a placement under the Landcare and Environment Action Program; or
- . accept any offer of a placement under Jobskills.

Eligibility for the Job Compact is defined in subclauses (9) to (11).

Subclause (3) enables a Case Management Activity Agreement to contain requirements for the person (on request or otherwise) to: attend an office of the CES or the case manager; contact the CES or the case manager; or provide information to the CES or the case manager. Such requirements could, for example, be specified to be at particular intervals, where particular circumstances occur, or at the request of the case manager. Such requirements must be specified in the Agreement. An agreement could contain one or more requirements under one or more of the paragraphs of the provision.

Subclause (4) requires the Case Management Activity Agreement to include terms requiring the person, on request or otherwise, to substantiate compliance with the terms of the Agreement. An example might be a term which requires the person to show the case manager a copy of 2 job applications the person has sent each week.

The Employment Secretary must approve the terms of an agreement under subclause (5) and in so doing, have regard to the person's capacity to comply with the proposed agreement and the person's needs (subclause (6)). Subclause (7) sets out the criteria which the Employment Secretary is to take into account when considering a person's capacity to comply with an agreement and the person's needs. These provisions are similar to subsections 606(2), (3) and (4) of the *Social Security Act 1991*.

Subclause (8) makes provision for the Employment Secretary to delegate his or her powers under this section to case managers or their directors, officers or employees. In the case of Employment Assistance Australia the powers would be delegated to officers under paragraph (8)(d).

Subclauses (9) to (11) provide for eligibility requirements for the Job Compact. The basic criteria will be that the person is a job search or newstart allowee who has been in continuous receipt of job search allowance or newstart allowance for 18 months (subclause (9)). This rule is intended to include a person who has been in receipt of job search allowance and transfers to newstart allowance during the period of 18 months but there has been no break in receipt of allowance.

The Minister will be able to make a written determination as to specified classes of persons who will be eligible for the Job Compact and a written determination about the events which terminate Job Compact eligibility (subclauses (11) and (12)). The use of a Ministerial determination is proposed because the relevant classes of persons beyond the basic criteria will change over time and it will allow for the categories of persons eligible for Job Compact assistance to be expanded as resources allow.

A determination made by the Minister will be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. Accordingly, it must be published in the *Gazette*, tabled in the Parliament and will be subject to Parliamentary disallowance.

### **Clause 33 - Cancellation or review etc. of Case Management Activity Agreements**

Subclause 33(1) provides for the variation, suspension, cancellation or review of case management activity agreements. It is similar to subsection 606(5) of the *Social Security Act 1991*.

Subclause 33(2) deems a Case Management Activity Agreement to be cancelled when a person is referred to a new case manager under clause 26. The person will be required to enter into an agreement with the new case manager under clauses 31(2) and (3).

### **Clause 34 - Failure to negotiate a Case Management Activity Agreement**

This clause enables the Employment Secretary to deem a person to have failed to enter into a Case Management Activity Agreement. The provision is substantially the same in effect as section 607 of the *Social Security Act 1991*.

The Employment Secretary may only exercise the powers if:

- (1) the person has been given notice under subclause 31(5) of a requirement to enter into a Case Management Activity Agreement; and
- (2) the Employment Secretary is satisfied that the person is unreasonably delaying entering into the agreement because of his or her failure:
  - to attend the negotiation of the agreement;
  - to respond to correspondence about the agreement;
  - to agree to the terms of the request proposed by the case manager; or
  - for any other reason.

The Employment Secretary must give the person a written notice stating that the person is being taken to have failed to enter into an agreement. The notice must provide the reasons for the decision to provide the notice and describe the person's right to apply for a review of the decision.

Under clause 35(4)(a), the person is not qualified for job search allowance or newstart allowance as a consequence of the person being taken to have failed to enter into the agreement. A deferment period would apply to the person's allowance under section 542A or 625 of the *Social Security Act 1991* by virtue of clause 35(7).

**Clause 35 - Case Management Activity Agreements to supersede Job Search Activity Agreements and Newstart Activity Agreements**

Subclause (1) provides for the application of this provision to persons who have been referred to case managers under Part 4.3.

Subclause (2) cancels the effect of any Job Search Activity Agreement or Newstart Activity Agreement that a person was party to prior to the referral to the case manager.

Subclause (3) exempts a person from being required to enter into a Job Search Activity Agreement or Newstart Activity Agreement under the *Social Security Act 1991* while that person is referred to a case manager.

Subclause (4) deems a person not to be qualified for job search allowance or a newstart allowance under the *Social Security Act 1991* unless:

- when the person is required under clause 31 to enter into a Case Management Activity Agreement in relation to the period, the person enters into that agreement; and
- while the agreement is in force, the person satisfies the Employment Secretary that the person is taking reasonable steps to comply with the terms of the agreement; and
- at all times during the period when the person is a party to the agreement, the person is prepared to enter into another such agreement instead of the existing agreement if required to do so under clause 31.

To enable a person who is a participant in the case management system to be treated as unemployed for the purposes of the *Social Security Act 1991*, subclause (5) provides for a reference to a Job Search Activity Agreement or a Newstart Activity Agreement in sections 516 and 595 of the *Social Security Act 1991* to be a reference to a Case Management Activity Agreement for the purposes of those sections.

Subsections 522(4) and 601(4) of the *Social Security Act 1991* provide that a person satisfies the activity test if the person is taking reasonable steps to comply with the terms of a Job Search or Newstart Activity Agreement.

Subsections 522(5) and 601(5) of that Act provide that a person cannot be taken to satisfy the activity test if the person fails to take reasonable steps to comply with the terms of such an agreement.

Subclause (6) applies these sections of the *Social Security Act 1991* to persons who have Case Management Activity Agreements under this Act in the same way that the sections apply to persons who have Job Search or Newstart Activity Agreements.

Sections 542A, 542B, 625 and 626 of the *Social Security Act 1991* set out deferment periods that apply where a job search or newstart allowee fails to enter into an activity agreement or does not comply with an activity agreement.

Subclause (7) applies these sections of the *Social Security Act 1991* (and the related section 608) in a similar way to allowees who have Case Management Activity Agreements under this Act.

Subsection 613(2) of the *Social Security Act 1991* provides exemptions to a general rule that newstart allowance is not payable to full time students. One of those exemptions applies to courses undertaken under a Newstart Activity Agreement. Subclause (8) extends the exemption to courses undertaken under a Case Management Activity Agreement.

Subclause (9) makes this section have effect despite anything contained in the *Social Security Act 1991*.

Subclause (10) provides definitions of terms used in the section.

### **Clause 36 - Information about compliance with Case Management Activity Agreement**

This clause provides 2 mechanisms for requiring a person with a Case Management Activity Agreement to give information to the Employment Secretary about compliance with a Case Management Activity Agreement.

First, clause 36(2) imposes an obligation on a Social Security allowee to notify the Employment Secretary of any circumstances preventing or affecting the person's compliance with the agreement.

Second, under clause 36(3), the Employment Secretary may seek information about a person's compliance with an agreement from the person or the case manager. The Employment Secretary must provide a written notice specifying the information which is required.

It is intended that the notice be in writing and that the rules in sections 28A and 29 of the *Acts Interpretation Act 1901* apply to such notifications.

Clause 36(4) requires a person or case manager to comply with the notice within a time and in a manner specified in the notice.

Sections 543 and 627 of the *Social Security Act 1991* provide a mechanism to require a person to attend, contact or give information to the CES or the Department of Social Security. Non-compliance with such a requirement can result in a deferment period applying to the person's job search or newstart allowance.

This clause provides that these mechanisms under the *Social Security Act 1991* apply in relation to a similar failure to comply with a request under clause 36(2) or (3) of this Bill. Note that subsections 543(3) and 627(3) of the *Social Security Act 1991* which make the allowance payable if the Secretary is satisfied that the person had a reasonable excuse for not complying will also apply to a requirement under clause 36(2) or (3) of this Bill.

### **Clause 37 - Delegation**

Clause 37(1) enables the Employment Secretary to delegate the powers under sections 34, 35 and 36 to an officer of the Department. These powers, which enable action to be taken against allowees which can affect their entitlement for allowance, cannot be delegated to contracted case managers.

Clause 37(2) enables the Employment Secretary to delegate the powers under sections 35 and 36 to an officer of the Department of Social Security. It is expected that, in particular, the Employment Secretary's power to be satisfied that the person is taking reasonable steps to comply with the terms of a Case Management Activity Agreement under clause 35(4)(b) would be delegated to officers of the Department of Social Security to whom the equivalent powers under the *Social Security Act 1991* in relation to job search and newstart activity agreements are delegated.

### **Clause 38 - Failure to comply with this Division may result in expulsion from the case management system**

A determination under subsection 22(2) may specify that a person's failure to comply with any of the requirements under this Division is a terminating event for the purposes of that subsection. This enables a determination to provide for a person to be removed from the case management system where the person fails to comply with Case Management Activity Agreement requirements.

## **PART 4.5 - CASE MANAGERS**

### *Division 1 - Accreditation*

#### **Clause 39 - Accreditation of case managers**

This clause requires the ESRA Board to formulate a scheme for the accreditation of entities as case managers, to be known as the accreditation scheme.

The accreditation scheme must contain provisions which:

- empower ESRA to accredit entities and vary or cancel accreditation;
- require ESRA to keep a register of accredited case managers.

The accreditation scheme can provide for application fees and surrender of accreditation. ESRA must give a free copy of the scheme to anyone who requests it.

The accreditation scheme formulated by the ESRA Board will be a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901. Accordingly, it must be published in the *Gazette*, tabled in the Parliament and will be subject to Parliamentary disallowance.

The accreditation scheme will be the responsibility of the ESRA Board as it is the body that will be involved in the day to day administration of the scheme and will be best placed to develop, and make variations to, the detail of the scheme.

#### **Clause 40 - Conditions of accreditation**

This clause requires the accreditation scheme to empower ESRA to accredit an entity subject to conditions and enables the scheme to empower ESRA to impose further conditions and revoke or vary conditions.

Some examples of such conditions include conditions about keeping proper records, independent auditing of records and regular reporting to ESRA.

Certain conditions will only need to apply if the entity is engaged as a contracted case manager and conditions can be expressed to so apply.

Clause 50 enables the Board to declare advisory codes of practice relating to the provision of case management services. This clause enables a condition of accreditation to adopt the provisions of such a code of practice as in force from time to time. This will enable service standards to be set out for the case managers.

Special provision is included to enable a condition of accreditation to confer a power on ESRA. For example, it may be necessary to impose a condition that case management services be provided at premises approved by ESRA. With this provision ESRA could ensure, for example, that in such premises there is room for separate interviewing of participants without conversations being able to be overheard by other participants.

Special provision is also included to make it clear that the accreditation scheme may empower ESRA to cancel the accreditation of an entity for the contravention of a condition of accreditation and empower ESRA to issue formal warnings.

#### **Clause 41 - Fees not to be charged to participants for provision of case management services**

This clause prevents contracted case managers demanding or receiving a fee from participants who have been referred by the CES. This provision is to be a condition of accreditation.

Other conditions of accreditation may prevent contracted case managers entering into, or carrying out, arrangements for the purpose of avoiding the application of this rule.

### **Clause 42 - Information about compliance with Case Management Activity Agreements**

Subclause 42(2) provides that it is a condition of accreditation of an entity that copies of completed Case Management Activity Agreements will be provided to the CES.

Subclause 42(3) provides that a condition of accreditation of an entity is that the entity will provide information about compliance with Case Management Activity Agreements when requested to do so under clause 36.

### **Clause 43 - Guarantees and security deposits relating to compliance with financial obligations of accredited case managers**

This clause enables a condition of accreditation to require the giving of guarantees or security deposits to ensure compliance with an entity's obligations under the Act.

The clause sets out examples of situations where such guarantees or security deposits may be required.

### **Clause 44 - Classes of case management specialisation**

This clause enables the ESRA Board to specify special classes of case management services and enables the accreditation scheme to accredit case managers as specialists, generalists or both.

It is intended that specialisation would be allowed in relation to case management services for Aboriginal and Torres Strait Islanders and persons with disabilities. However, over time it may become apparent that there should be other groups in relation to whom contracted case managers should be able to specialise. The ESRA Board, responsible for the day to day administration of the case management system will be best placed to make such judgements.

An instrument specifying a special class of case management services will be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. Accordingly, it must be published in the *Gazette*, tabled in the Parliament and will be subject to Parliamentary disallowance.

### **Clause 45 - Disqualification for fraud, dishonesty etc.**

This clause prohibits ESRA from accrediting:

- individuals and corporations which have been convicted of offences for fraud or dishonesty, and
- other entities with whom such individuals or corporations are closely associated.

It also requires ESRA to cancel an accreditation where such a conviction occurs after accreditation.

***Division 2 - Contracted case managers***

**Clause 46 - Contracted case managers**

This clause provides for the engagement of accredited case managers to provide case management services to participants and to perform case management functions. These entities are to be known as contracted case managers.

Written agreements between contracted case managers and ESRA will set out the terms and conditions of the engagement of the contracted case manager. The terms and conditions must be consistent with the accreditation scheme.

Cancellation or surrender of accreditation will terminate the case manager's engagement without giving the case manager any entitlement to compensation or damages.

**Clause 47 - Payments to contracted case managers**

This clause allows the agreement between ESRA and a contracted case manager to provide for amounts to be paid by ESRA to the case manager. It also requires a claim for payment to be made before such amounts are paid and for other matters relating to processing such a claim.

**Clause 48 - Claims for payments - false or misleading statements**

This clause creates an offence, punishable by a maximum of 12 months imprisonment, for the making of false or misleading statements relating to claims for payments.

**Clause 49 - Repayments by contracted case managers**

Some of the fees payable to contracted case managers in relation to the case management services that they provide may be paid in advance of the performance of the relevant services.

This clause makes an entity liable to repay to ESRA amounts paid to the entity subject to a condition, where the entity does not fulfil the condition.

This clause makes it clear that the entity is liable to repay such an amount where it makes a false or misleading statement in connection with a claim for payment.

***Division 3- Codes of practice***

**Clause 50 - Codes of practice**

This clause enables the ESRA Board to declare codes of practice relating to the provision of case management services.

Such a code of practice could, for example, set out standards of service or conduct that case managers must meet in providing case management services to participants.

A code of practice will be advisory in nature, except to the extent that a provision of the code is applied as a condition of accreditation of the entity or under another law.

An instrument declaring a code of practice will be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. Accordingly, it must be published in the *Gazette*, tabled in the Parliament and will be subject to Parliamentary disallowance. The ESRA Board is given the responsibility for making these instruments as it will be responsible for the day to day regulation of the provision of case management services and will accordingly be best placed to determine the standards that should apply.

This clause specifically makes it a function of ESRA to monitor and evaluate the codes of practice and compliance with them, tell case managers when they contravene them and keep the Minister informed about the general operation of this provision.

#### ***Division 4 - Assistance to case managers***

#### **Clause 51 - CES to assist case managers**

This clause enables the Minister to give directions to the National Director of the CES about assistance to be provided by the CES to case managers.

Such assistance could include, for example, making information on job vacancies available to case managers and space available in CES offices for publicity material from contracted case managers.

There is an obligation on the National Director to take all reasonable steps to comply with any such directions.

A Ministerial direction will be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. Accordingly, it must be published in the *Gazette*, tabled in the Parliament and will be subject to Parliamentary disallowance. The Minister is given the responsibility for making these instruments as the Minister is ultimately responsible for the operations of the CES.

However, this clause specifically makes it a function of ESRA to monitor and evaluate directions and compliance with them and make recommendations to the Minister in relation to the issuing of directions. Accordingly, the Minister will have an independent source of advice in relation to how well the CES is performing its function of assisting case managers.

**Clause 52 - Department to provide information technology assistance to case managers**

This clause enables the Minister to formulate a scheme for the Department to provide information technology assistance to case managers. The scheme is to be known as the Departmental information technology assistance scheme.

The reason for this provision is that contracted case managers will need access to Departmental systems containing details of available job vacancies if they are to be able to provide effective case management services under the Act. They will need to use systems that are compatible with the Departmental systems. It is intended that 'information technology assistance' should be read broadly, so that the scheme can potentially cover all aspects of information technology including hardware, software and firmware.

The scheme will be able to: include a power for the Minister to give directions to the Secretary; provide for amounts to be payable by case managers to the Commonwealth in respect of the assistance (but not so as to amount to taxation); and set out guidelines about relevant terms and conditions to be included in contracts of engagement.

Such guidelines could, for example, relate to matters such as conditions relating to care for equipment provided and return of the equipment when the provision of case management services ceases.

There is an obligation on the Employment Secretary to take all reasonable steps to ensure that the Department complies with the scheme.

The scheme will be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. Accordingly, it must be published in the *Gazette*, tabled in the Parliament and will be subject to Parliamentary disallowance. The Minister is given the responsibility for making the scheme as the Minister is ultimately responsible for the operations of the Department.

However, this clause specifically makes it a function of ESRA to monitor and evaluate the operation of this section and the scheme and make recommendations to the Minister in relation to action to be taken. Accordingly, the Minister will have an independent source of advice in relation to how well the Department is performing its functions under the scheme.

***Division 5 - Control of case management documents***

**Clause 53 - Control of case management documents**

This clause enables the ESRA Board to formulate case management document rules that relate to the destruction of case management documents and the provision or return of case management documents by case managers to the CES.

The documents concerned are those that are connected with the provision of case management services and relate to the affairs of a person referred to the case manager.

The reason for including this power is that the CES will need to be able to obtain the case manager's file on a person if the person is referred to a new case manager or a contracted case manager ceases to provide case management services. In such circumstances, the CES will need to be able to obtain the return of the information provided by the CES to the case manager about the person and any other relevant information recorded by the case manager in the course of the performance of case management functions.

The ESRA Board will have the power to determine that specified documents are case management documents for the purposes of the provision. It is expected that ESRA, in formulating the case management document rules, will consult with the Australian Archives and the Attorney-General's Department.

The case management document rules must not be inconsistent with the *Archives Act 1983* and such documents are Commonwealth Records for the purposes of that Act.

The rules will be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. Accordingly, they must be published in the *Gazette*, tabled in the Parliament and will be subject to Parliamentary disallowance. The ESRA Board is given the responsibility for making the rules as it will have the responsibility for the day to day administration of the case management system and will be best placed to judge what requirements should be built into the rules.

It will be an offence punishable by 12 months imprisonment to contravene the case management document rules.

### *Division 6 - Secrecy*

#### *Clause 54 - Secrecy*

Section 70 of the *Crimes Act 1914* creates an offence for disclosure of information by Commonwealth officers in breach of their duties. The special definition of Commonwealth officer that applies to that section extends to contracted case managers providing case management services.

This clause enables the ESRA Board to make a written determination creating duties of non-disclosure for the purposes of the application of Section 70 of the *Crimes Act 1914*. Such a duty must relate to facts or documents connected with the provision of case management services and relate to the affairs of a person referred to the case manager.

The determination will be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. Accordingly, it must be published in the *Gazette*, tabled in the Parliament and will be subject to Parliamentary disallowance. The ESRA Board is given the responsibility for making the determination as it will have the responsibility for the day to day administration of the case management system and will be best placed to judge what specific requirements of non-disclosure should apply.

**PART 4.6 - THE EMPLOYMENT SERVICES REGULATORY AUTHORITY  
(ESRA)**

*Division 1 - Establishment of ESRA*

**Clause 55 - Establishment of ESRA**

This clause establishes the Employment Services Regulatory Authority as a body corporate which has a seal and can sue and be sued in its own name.

*Division 2 - Functions and powers of ESRA*

**Clause 56 - Functions**

This clause sets out the functions of ESRA. The main functions are to:

- regulate the case management system;
- promote competition in the provision of case management services; and
- monitor, evaluate and report to the Minister on the operations of the case management system;

**Clause 57 - Powers**

This clause gives ESRA the necessary powers to allow it to carry out its functions.

It will have the standard powers given to statutory authorities to enter into contracts, appoint agents and act itself as agent, accept gifts, act as a trustee and charge for the provision of services. Where ESRA does act as a trustee, it must deal with any money or property held by it on trust in accordance with its duties as trustee.

**Clause 58 - Ministerial directions**

The Act gives certain more important functions and powers specifically to the ESRA Board. These functions and powers cannot be delegated under the Act. Less important functions and powers are given to ESRA and can be performed on behalf of ESRA by the Chief Executive Officer (clause 79(3)). The Chief Executive Officer has the power to delegate these functions and powers to a member of the ESRA staff (clause 100).

This clause enables the Minister to give directions to the ESRA Board concerning the performance of functions and the exercise of powers by either ESRA or the ESRA Board.

Such directions must be published in the Gazette and the ESRA Board and ESRA must comply with any such directions.

Particulars of such directions must also be published in the ESRA annual report (clause 94).

**Clause 59 - Minister may notify ESRA of general policies of Commonwealth Government**

This clause enables the Minister to notify the ESRA Board of general policies of the Commonwealth Government that are to apply in relation to the ESRA Board and ESRA.

The ESRA Board and ESRA must ensure that those policies are carried out.

Particulars of such policies must also be published in the ESRA annual report (clause 94).

**Clause 60 - Minister may ask for information**

This provision requires the ESRA Board to provide information to the Minister, at the request of the Minister, on the operation of the case management system or the operation of ESRA.

*Division 3 - ESRA Board*

**Clause 61 - ESRA Board**

This clause establishes the Board of ESRA and provides that it has a Chairperson and between 2 and 5 other members.

**Clause 62 - Functions of ESRA Board**

This clause sets out the functions of the ESRA Board, ie to determine ESRA policy, to give directions to the Chief Executive Officer and the other functions conferred on the Board by the Act.

This clause also makes it the responsibility of the Board to ensure the proper and efficient performance of ESRA functions.

*Division 4 - Administrative provisions*

**Clause 63 - Appointment of ESRA Board members**

This clause provides for the appointment of Board members by the Governor-General by written instrument.

**Clause 64 - Period of Appointment**

This clause provides that Board members hold office for a specified period of not more than 3 years.

**Clause 65 - Basis on which ESRA Board members hold office**

Members of the Board may be appointed as full-time or part-time members. The basis of the appointment must be specified in the instrument of appointment.

**Clause 66 - Remuneration and allowances - ESRA Board members**

This clause provides for remuneration for members of the Board. Remuneration is to be set by the Remuneration Tribunal or be prescribed if there is no determination in operation.

The clause also makes provision for payment of allowances to Board members.

**Clause 67 - Outside employment - part-time ESRA Board members**

This clause prevents part-time members from engaging in outside employment that, in the Minister's opinion, conflicts with the proper performance of their duties as a member of the Board.

**Clause 68 - Outside employment - full-time ESRA Board members**

The clause prevents full-time members of the Board from engaging in paid outside employment without the written approval of the Minister.

**Clause 69 - Leave of absence - part-time ESRA Board members**

This clause sets out the basis on which part-time members of the Board may be granted leave of absence from a Board meeting.

Subclause (2) enables the Minister to grant leave of absence to the Chairperson.

Subclause (3) enables the Chairperson of the Board to grant leave of absence for another Board member.

**Clause 70 - Leave of absence - full-time ESRA Board members**

This clause sets out the basis on which full-time members of the Board may be granted leave.

Subclause (2) provides for full-time Board members to be entitled to recreation leave as determined by the Remuneration Tribunal.

Subclause (3) provides for other leave of absence for the Chairperson to be granted by the Minister, on terms and conditions that the Minister determines in writing.

Subclause (4) provides for other leave of absence for members to be granted by the Chairperson, on terms and conditions that the Chairperson determines in writing.

### **Clause 71 - Acting appointments**

Subclause (1) enables the Minister to appoint a member to act as Chairperson during a vacancy or a period or periods of absence, but a person appointed to act during a vacancy cannot continue to act for more than 12 months.

Subclause (2) provides for the Minister to appoint a person to act as a Board member during a vacancy in an office of member, or a specified period of absence, but a person appointed to act during a vacancy cannot continue to act for more than 12 months.

### **Clause 72 - Disclosure of interests**

This clause provides for the declaration by members of any direct or indirect pecuniary interest in matters being considered by the Board. The member must disclose the nature of his or her interest at a meeting of the Board as soon as the member is aware that the matter has a connection with his or her pecuniary affairs. Such a disclosure is to be recorded in the minutes of the meeting.

Subclause (2) prevents a member of a committee who makes a disclosure of pecuniary interest from being present at, or participating in the deliberations of the Board on the matter.

A full-time member must provide the Minister with written notice of all direct or indirect pecuniary interests a member has in any business activities.

### **Clause 73 - Resignation**

Members may resign from the Board by notifying the Governor-General in writing.

### **Clause 74 - Termination of appointment**

This clause provides for the termination of the appointment of a Board member.

The clause sets out the grounds which will invoke automatic termination of the appointment of a member. The clause also provides for termination of the appointment of a member at the discretion of the Governor-General where the member misbehaves, is incapacitated or performs unsatisfactorily.

Subclause (6) enables the Governor-General to terminate the appointment of all or some Board members if the Minister is of the opinion that the performance of the Board has been unsatisfactory for a significant period.

### **Clause 75 - Other terms and conditions**

This clause provides for any other terms and conditions of office which have not been provided for by the Act to be determined by the Minister.

***Division 5- Meetings of the ESRA Board***

**Clause 76 - Meetings of the ESRA Board**

This clause establishes the framework for the conduct of meetings of the Board.

The Chairperson must convene such meetings as are necessary to efficiently carry out the Board's responsibilities.

Subclauses (2) and (3) set out the quorum for meetings.

Subclauses (4) and (5) require meetings to be presided over by the Chairperson, or a member elected by the members in the Chairperson's absence.

This clause also addresses administrative procedures at meetings, including the keeping of minutes.

**Clause 77 - Resolutions without meetings**

This clause provides for resolutions being passed without a meeting if a sufficient number of members agree with the resolution.

The agreement must be in accordance with a method determined by the Board.

***Division 6 - ESRA Chief Executive Officer***

**Clause 78 - ESRA Chief Executive Officer**

This clause provides that there is to be a Chief Executive Officer of ESRA.

**Clause 79 - Duties of ESRA Chief Executive Officer**

The Chief Executive Officer is to conduct the affairs of ESRA.

The Chief Executive Officer must act in accordance with policies determined by the Board and any directions given by the Board in writing.

The Chief Executive Officer will have the power to determine a policy with respect to a matter where the Board has not made a determination of policy in respect of the matter. This power is necessary to enable the Chief Executive Officer to deal with situations that arise and may require resolution between Board meetings. It would be expected that in such a situation the Chief Executive Officer would draw any such policy to the attention of the Board at the earliest opportunity.

Subclause (3) specifies that anything done in the name of, or on behalf of, ESRA by the Chief Executive Officer is taken to have been done by ESRA.

### **Clause 80 - Appointment of ESRA Chief Executive Officer**

This clause provides for the Chief Executive Officer to be appointed by the Minister by written instrument.

### **Clause 81 - Full-time basis**

This clause provides for the Chief Executive Officer to hold office on a full-time basis.

### **Clause 82 - Term of appointment**

This clause provides for the period for which the Chief Executive Officer holds office to be specified in the instrument of appointment, and to not be for more than five years.

### **Clause 83 - Remuneration and allowances**

This clause provides for the Remuneration Tribunal to determine the remuneration for the Chief Executive Officer and for the allowances to be prescribed.

### **Clause 84 - Outside employment**

This clause prevents the Chief Executive Officer from engaging in outside employment without the written approval of the Minister.

### **Clause 85 - Leave of absence**

This clause provides for the Remuneration Tribunal to determine recreation leave entitlements for the Chief Executive Officer. The Minister can grant other leave on such terms and conditions as he or she determines in writing.

### **Clause 86 - Acting ESRA Chief Executive Officer**

This clause enables the Minister to appoint a person to act as Chief Executive Officer while the office is vacant, or the holder of the office is absent from duty or from Australia or is otherwise unable to perform the duties of office. A person appointed to act in the vacancy must not act for more than 12 months.

### **Clause 87 - Disclosure of interests**

This clause requires the Chief Executive Officer to give notice to the Minister of all direct or indirect pecuniary interests that he or she has in any businesses.

### **Clause 88 - Resignation**

This clause enables the Chief Executive Officer to resign by notifying the Minister in writing of his or her resignation.

### **Clause 89 - Termination of appointment**

This clause provides for the termination of the appointment of the Chief Executive Officer.

The clause sets out the grounds which will invoke automatic termination of the appointment of the Chief Executive Officer. The clause also provides for termination of the appointment of the Chief Executive Officer at the discretion of the Minister where the Chief Executive Officer misbehaves, is incapacitated or performs unsatisfactorily for a significant period of time.

#### **Clause 90 - Other terms and conditions**

This clause provides for any other terms and conditions of the Chief Executive Officer's office which have not been provided for in the Act to be determined by the Minister.

### *Division 7 - Finances*

#### **Clause 91 - Money payable to ESRA**

This clause makes money appropriated by the Parliament for the purposes of ESRA payable to ESRA. It also enables the Minister for Finance to give directions as to the amounts and times for payment.

#### **Clause 92 - Estimates**

This clause requires the ESRA Board to oversee the preparation of estimates of expenditure for each financial year and to submit them to the Minister. It also requires money paid to ESRA to be spent only in accordance with the estimates approved by the Minister.

The period from commencement of this provision to 30 June 1995 is to be taken to be a financial year for the purposes of this provision.

#### **Clause 93 - Application of money held by ESRA**

This clause limits the purposes for which ESRA monies can be used.

#### **Clause 94 - Application of the *Audit Act 1901* to ESRA**

This clause makes ESRA a public authority to which Division 3 of Part XI of the *Audit Act 1901* applies. That Division sets out various obligations in relation to financial accountability that apply to statutory authorities.

This clause also specifies certain other matters that must be included in ESRA's annual reports.

#### **Clause 95 - Investment of money**

This clause enables the investment of money which is not immediately required for expenditure by ESRA.

### **Clause 96 - Exemption from taxation**

This clause exempts ESRA from taxation under a Commonwealth, State or Territory law. It also exempts goods for the use of ESRA from sales tax and excise duty.

### ***Division 8 - Staff of ESRA***

#### **Clause 97 - Staff of ESRA**

This clause provides that ESRA staff members are to be appointed or employed under the *Public Service Act 1922* with the Chief Executive Officer having all the powers of a Secretary under that Act in relation to those staff.

### **Clause 98 - Arrangements with authorities of the Commonwealth**

This clause enables ESRA to make arrangements with a Commonwealth Department or authority for secondment of staff to work for ESRA or secondment of ESRA staff to work for the other agency.

#### **Clause 99 - Consultants**

This clause enables ESRA to engage consultants on terms and conditions determined by the Board in writing.

### ***Division 9 - Delegation***

#### **Clause 100 - Delegation**

This clause enables the ESRA Chief Executive Officer to delegate:

- any or all of ESRA's functions and powers to a member of the ESRA staff, and
- any or all of the CEO's functions and powers to a member of the ESRA staff.

The more important ESRA functions and powers under the Act have been given to the ESRA Board itself. There is no mechanism in the Act for these powers to be delegated.

### ***Division 10 - Committees***

#### **Clause 101 - Committees**

This clause allows the ESRA Board to establish committees to assist in the performance of ESRA functions. Members of such committees will be appointed by the Board.

Subclause (3) enables the Board to give written directions to a committee concerning the carrying out of the committee's functions and procedures to be followed for meetings.

### ***Division 11 - Corporate Plans***

#### **Clause 102 - Corporate Plan**

This clause provides that the ESRA Board must prepare, and periodically update, a corporate plan for ESRA relating to a period of 3 to 5 years.

The corporate plan must include a financial plan, a statement of the objectives of ESRA and a statement of the strategies and policies proposed to achieve those objectives.

The corporate plan must be provided to the Minister, the first plan being required before 1 July 1995.

### **PART 4.7 - INVESTIGATIONS BY ESRA**

#### **Clause 103 - Object of Part**

Part 4.7 provides for investigation by ESRA of certain matters relating to the operation of the case management system.

#### **Clause 104 - Matters to which this Part applies**

This clause sets out the matters which may be investigated by ESRA.

Those matters are:

- . CES actions in referring people to case managers;
- . the provision of case management services by case managers;
- . contracted case managers contravening their conditions of accreditation;
- . contracted case managers breaching the conditions of their engagement;
- . contraventions of codes of practice by case managers;
- . the CES contravening the requirements of Ministerial directions about assistance to case managers;
- . a contravention of, or of a direction under, the Departmental information technology scheme;
- . a contravention of the case management document rules; and
- . a contravention of a duty of non-disclosure.

#### **Clause 105 - Complaints to ESRA**

This clause makes provision for written complaints against entities to be lodged with ESRA.

### **Clause 106 - Investigations by ESRA**

This clause provides ESRA with discretionary power to investigate a matter, either where a written complaint is lodged, or of its own accord.

Subclause (2) compels ESRA to investigate a matter at the request of the Minister.

### **Clause 107 - Preliminary enquiries**

This clause allows ESRA to make preliminary enquiries of the respondent against whom a complaint has been made, to determine whether it has power to investigate the matter or to determine whether it should investigate the matter.

### **Clause 108 - Reference of certain matters to Departmental Secretaries**

This clause allows ESRA to transfer a complaint to the Employment Secretary or the Social Security Secretary if ESRA decides that it does not have power to investigate the complaint or decides that it should not investigate the complaint and considers that the matter could be more conveniently dealt with by that Secretary.

### **Clause 109 - Conduct of investigations**

This clause sets out the manner in which investigations should be conducted by ESRA.

It includes provisions in relation to informing respondents of investigations (unless the investigation would be prejudiced), the obtaining of information, and providing a party to the complaint with the opportunity to make submissions prior to ESRA making an adverse finding to the party.

### **Clause 110 - Complainant and certain other persons to be told about decisions not to investigate**

This clause provides that where ESRA decides not to investigate a complaint, or not to investigate a complaint further, ESRA must inform the respondent and the complainant as soon as practicable after the decision is made.

### **Clause 111 - Reference of matters to the Ombudsman**

This clause enables complaints to be referred to the Commonwealth Ombudsman.

If ESRA transfers a complaint to the Commonwealth Ombudsman, it must give written notice to the complainant of the transfer. Upon transfer, ESRA must provide any information or documents that relate to the complaint.

### **Clause 112 - Reference of matters to the Trade Practices Commission**

This clause enables complaints to be referred to the Trade Practices Commission.

If ESRA transfers a complaint to the Trade Practices Commission, it must give written notice to the complainant of the transfer. Upon transfer, ESRA must provide any information or documents that relate to the complaint.

Where the Trade Practices Commission decides to conduct an investigation into the matter, it must report to ESRA on the conduct of the investigation and any findings it makes.

### **Clause 113 - Reference of matters to Privacy Commissioner**

This clause enables complaints to be referred to the Privacy Commissioner.

If ESRA transfers a complaint to the Privacy Commissioner, it must give written notice to the complainant of the transfer. Upon transfer, ESRA must provide any information or documents that relate to the complaint.

Where the Privacy Commissioner decides to conduct an investigation into the matter, it must report to ESRA on the conduct of the investigation and any findings it makes.

### **Clause 114 - Effect of investigation by Auditor-General**

The provision prevents ESRA from continuing an investigation where it becomes apparent that the matter is under investigation by the Auditor-General, until that investigation has been completed or the Auditor-General consents.

### **Clause 115 - Reports on investigations**

This clause enables ESRA to report to the Minister after concluding an investigation and requires it to so report where the investigation is at the instigation of the Minister.

### **Clause 116 - Protection from civil actions**

This clause protects persons making a complaint or providing statements or documents in connection with an investigation from civil proceedings for loss, damage or injury, where they acted in good faith.

### **Clause 117 - Public register of information about investigations**

This clause provides for a public register of investigations to be maintained and sets out the nature of the information to be included in the register. The reason for the public register is to give participants the opportunity to check the register before they indicate a preference for a case manager.

## **PART 4.8 - MONITORING OF COMPLIANCE**

### **Clause 118 - Appointment of inspectors**

This clause enables the Chief Executive Officer to appoint ESRA staff as inspectors .

### **Clause 119 - Identity cards for inspectors**

This clause requires the issue of identity cards to inspectors.

### **Clause 120 - Return of identity cards issued to inspectors**

This clause creates an offence for an inspector failing to return his or her identity card, without reasonable excuse, upon ceasing to be an inspector. The maximum penalty is a fine of 1 penalty unit, currently \$100.

### **Clause 121 - Searches to monitor compliance**

This clause enables inspectors to search premises for the purposes of monitoring compliance by case managers with the conditions of their accreditation and the agreements under which they are engaged.

The premises concerned must either be the premises at which case management services are provided or premises at which records relating to those services are kept. Residential premises cannot be searched without the consent of the occupier.

### **Clause 122 - Offence-related searches and seizures**

This clause enables an inspector to conduct a search of premises for the purposes of obtaining evidence of the commission of certain offences.

The offences concerned relate to false or misleading statements made in connection with claims for payments, the case management document rules and certain offences under the *Crimes Act 1901*.

The inspector may only conduct a search with the consent of the occupier of the premises or under a search warrant issued by a Magistrate.

Subclauses (3), (4) and (5) provide the framework for the issuing of warrants for conducting searches.

Subclauses (6), (7) and (8) deal with the seizure and retention of items found during the course of a search.

### **Clause 123 - Information-gathering powers - searches of premises**

This clause allows an inspector, on searching premises, to require a person to answer questions put by the inspector and produce any documents requested by the inspector.

These powers can only be exercised for limited purposes relating to ascertaining compliance with conditions of accreditation, the agreement relating to the engagement of the case manager and certain offences under the Act.

The inspector must first show the person his or her identity card.

Subclause (4) makes it an offence for a person to refuse or fail to provide information or documentation as requested by the inspector. The maximum penalty is 30 penalty units, currently \$3000.

However, subclause (5) excuses a person from providing the information or documentation where he or she might incriminate himself or herself by so doing.

#### **Clause 124 - Retention of documents**

This clause provides that where an inspector removes a document from premises, seizes a document or has a document produced, the inspector may retain the document for such period as is necessary and reasonable to ascertain whether certain matters, set out in this clause, have been complied with.

### **PART 4.9 - ESRA'S GENERAL INFORMATION GATHERING POWERS**

#### **Clause 125 - Power to obtain information and documents**

This clause gives ESRA the power to obtain information and documents relating to certain designated matters listed in subclause (4). The power is exercised by serving a written notice on a person.

Subclauses (2) and (3) set out certain matters that must be included in the notice.

#### **Clause 126 - Copying documents - reasonable compensation**

This clause gives a person a right to be paid reasonable compensation for the cost of providing copies of documents to ESRA as required by paragraph 125(2)(c).

#### **Clause 127 - Failure to comply with section 125 notice**

This clause creates an offence where a person without reasonable excuse, intentionally or recklessly fails to provide information or documentation after being given a written notice. The maximum penalty is 6 months imprisonment.

Subclause (2) excuses a person from providing the information or documentation where he or she might incriminate himself or herself by so doing.

### **Clause 128 - Giving false or misleading information or evidence**

This clause creates an offence for a person to intentionally or recklessly provide false or misleading information or evidence when complying with a written notice under clause 125.

The maximum penalty is 12 months imprisonment.

### **Clause 129 - Provision of false or misleading documents**

This clause creates an offence for a person to knowingly produce documents which are false or misleading in material particular, when complying with a written notice under clause 125.

The maximum penalty is 12 months imprisonment.

The offence does not apply where the person producing the false or misleading document attaches a statement stating that the document is false or misleading in a material particular and referring to the material particular in which it is wrong.

### **Clause 130 - Copies of documents**

This clause enables ESRA to inspect and make and retain copies of documents produced under this Part and retain possession of copies of documents produced in accordance with paragraph 125(2)(c).

### **Clause 131 - ESRA may retain documents**

This clause enables ESRA to retain a document produced under this Part for as long as is necessary for the purposes of the Act. The person who would otherwise be entitled to the document is to be supplied with a certified copy of the document.

A person is entitled to access to inspect and make copies of documents retained by ESRA.

## **PART 4.10 - REVIEW OF DECISIONS RELATING TO REFERRALS TO CASE MANAGERS AND DECISIONS RELATING TO CASE MANAGEMENT ACTIVITY AGREEMENTS**

This Part includes a mechanism in the Act for review by the Social Security Appeals Tribunal, and then the Administrative Appeals Tribunal, of CES decisions to refer persons to case managers under Part 4.3 and Case Management Activity Agreement decisions of the Employment Secretary under Part 4.4.

### *Division 1 - Preliminary*

#### **Clause 132 - Definition**

This clause provides a definition of the term 'reviewable decision' for the purposes of this Part. It is defined to mean a decision of the CES or the Employment Secretary under Part 4.3 or Part 4.4.

#### **Clause 133 - Authorised review officers**

This clause enables the Employment Secretary to authorise an officer of the Department to perform duties to review decisions relating to referrals to case managers and decisions relating to case management activity agreements under this Part. Such authorisations must be in writing.

Persons authorised under this clause will be known as 'authorised review officers'.

### *Division 2 - Internal review*

#### **Clause 134 - Employment Secretary may review decisions**

This clause enables review of reviewable decisions where the Employment Secretary is satisfied there is sufficient reason to review the decision.

Applications made to the Social Security Appeals Tribunal or the Administrative Appeals Tribunal for a review of a decision do not prevent the Employment Secretary reviewing that decision.

In reviewing a decision the Employment Secretary may affirm or vary the decision, or set aside the decision and substitute a new decision.

Subclauses (4) and (5) require the Employment Secretary to notify the National Convenor of the Social Security Appeals Tribunal and the Registrar of the Administrative Appeals Tribunal, as the case may be, of the review decision, if at that time an application had been made to the relevant tribunal for a review of the original decision.

Subclause (6) enables the Employment Secretary to deem particular events to have occurred for the purpose of this Act.

#### **Clause 135 - Application for review**

This clause provides for internal review of decisions made under this Act. This review clause does not apply to decisions made by the Employment Secretary personally.

The Employment Secretary or an authorised review officer may conduct reviews under this provision.

Subclause (4) provides for an internal review to be conducted prior to the Social Security Appeals Tribunal conducting a review of a decision by deeming an application made to the Tribunal, where a person could have applied to the Employment Secretary but did not do so, to have been made to the Employment Secretary.

**Clause 136 - Employment Secretary's powers where application for review is made**

Where an application for review or a decision is made to the Employment Secretary, the Employment Secretary or an authorised review officer must review the decision and either:

- (a) affirm the decision;
- (b) vary the decision; or
- (c) set the decision aside and substitute a new decision.

The applicant must be notified in writing of the decision by the person conducting the review.

Subclause (3) enables the Employment Secretary to deem particular events to have occurred for the purpose of this Act.

**Clause 137 - Notification of further rights of review**

A notification of a decision under section 136 must include a statement of the reasons for the decision, the applicant's right to apply for review to the Social Security Appeals Tribunal, and the applicant's rights to apply for a review of the Social Security Appeals Tribunal decision to the Administrative Appeals Tribunal.

***Division 3 - Review by the Social Security Appeals Tribunal and the Administrative Appeals Tribunal***

**Clause 138 - Object of Division**

This clause sets out the object of this Division, which is to enable a person affected by a reviewable decision to have the decision reviewed by the Social Security Appeals Tribunal and, if necessary, the Administrative Appeals Tribunal.

**Clause 139 - Application of Parts 6.2, 6.3 and 6.4 of the *Social Security Act 1991***

Parts 6.2, 6.3 and 6.4 of the *Social Security Act 1991* provide for review by the Social Security Appeals Tribunal and the Administrative Appeals Tribunal of decisions under the *Social Security Act 1991*. This clause provides that those Parts apply in relation to reviewable decisions and decisions on internal review in a corresponding way to the way in which they apply to decisions of officers under the *Social Security Act 1991* and decisions on internal review under that Act.

This provision also provides that the relevant provisions of the *Social Security Act 1991* apply subject to such modifications as are specified in the regulations.

Although this provision is strictly a Henry VIII clause, it is justifiable because of the strictly circumscribed purposes for which it can be used. Those purposes are set out in the objects in clause 138, and are effectively limited to ensuring that appropriate review rights apply.

The regulations would be used to make minor technical modifications to the application of the *Social Security Act 1991* provisions, for example by:

- deeming certain references to the Social Security Secretary to be references to the Employment Secretary;
- deeming certain references to an authorised review officer within the meaning of the *Social Security Act 1991* to be references to an authorised review officer within the meaning of the Employment Services Act; and
- deeming certain references to a Job Search Activity Agreement or a Newstart Activity Agreement to be references to a Case Management Agreement.

#### **PART 4.11 - REVIEW OF ESRA DECISIONS**

This Part provides for administrative review of certain ESRA decisions.

##### **Clause 140 - Reviewable decisions**

This clause defines the term "reviewable decision" for the purposes of this Part. Decisions made by ESRA under the accreditation scheme, under a condition of accreditation or relating to the disqualification of entities from being accredited are reviewable under this part.

##### **Clause 141 - Reconsideration of reviewable decisions**

This clause gives an entity affected by a reviewable decision a right to request ESRA to reconsider the decision. The clause also sets out various procedural matters in relation to such a request and the reconsideration.

##### **Clause 142 - Review of decisions by the Administrative Appeals Tribunal**

This clause provides for applications to be made to the Administrative Appeals Tribunal for review of decisions that have been confirmed or varied upon reconsideration by ESRA.

##### **Clause 143 - Modification of the *Administrative Appeals Tribunal Act 1975***

This clause clarifies the application of section 29 and section 41 of the *Administrative Appeals Tribunal Act 1975* to reviewable decisions under this Act.

The modification to section 29 ensures that a person has 28 days to apply for review where there has been a deemed confirmation of the decision because of delay.

The modification to section 41 ensures that a person can apply to the AAT to stay a decision after making a request for reconsideration.

**Clause 144 - Statements to accompany notification of reviewable decisions**

This clause requires a person, when being notified of a decision which is a reviewable decision, to be notified of his or her rights of review.

**PART 4.12 - RECOVERY OF OVERPAYMENTS ETC.**

This Part enables the recovery of case management debts from contracted case managers.

**Clause 145 - Case management debts**

This clause defines case management debts for the purposes of this Part. They are:

- overpayments to contracted case managers and former contracted case managers; and
- amounts liable to be repaid to ESRA because of a contravention of a condition of payment.

**Clause 146 - Case management debts are debts due to ESRA**

This clause provides for case management debts to be debts due to ESRA.

**Clause 147 - Recovery by legal proceedings**

This clause enables ESRA to recover a case management debt by court proceedings.

**Clause 148 - Recovery by set-off**

This clause enables ESRA to recover a case management debt by deducting the debt from other amounts payable to the contracted case manager from time to time (eg. other case management fees).

**Clause 149 - ESRA may collect money from a person who owes money to an entity**

Where an entity has a case management debt, this section provides for recovery of the debt by ESRA collecting money from a person who owes money to that entity.

The clause sets out various procedures that must be followed to recover the debt in this way.

## **PART 4.13 - INJUNCTIONS**

### **Clause 150 - Injunctions granted on the application of ESRA**

Subclause (1) provides for the granting of restraining injunctions by the Federal Court of Australia where an entity has, is, or proposes to contravene any provisions of this Act.

Subclause (2) provides for the Federal Court of Australia to grant an injunction requiring a person to do an act or thing, where an entity will contravene this Act by refusing or failing to do an act or thing.

### **Clause 151 - Interim injunctions**

This clause provides for interim injunctions to be granted, but without requiring any undertakings as to damages by the applicant for the injunction.

### **Clause 152 - Discharge etc. of injunctions**

This clause provides for the court to discharge or vary an injunction granted under this Part.

### **Clause 153 - Certain limits on granting injunctions not to apply**

This clause prevents certain limits which normally apply to the granting of restraining or performance injunctions from applying to injunctions under this Part.

### **Clause 154 - Other powers of the court unaffected**

This clause provides that the powers conferred on the court in this Part do not affect any other powers of the Court.

## **PART 4.14 - PROSECUTIONS**

### **Clause 155 - Prosecutions of corporations**

This clause is a standard provision relating to the prosecution of corporations. It sets out specific rules to assist in establishing the state of mind of the corporation and to presume conduct of directors, employees and agents of the corporation to be the corporation's conduct in certain circumstances.

### **Clause 156 - Prosecutions of persons other than corporations**

This clause relates to the prosecution of persons other than corporations. It sets out specific rules to presume the conduct and state of mind of employees and agents of a person to be the conduct and state of the mind of that person in certain circumstances. This provision is necessary because of the range of unincorporated entities which will be able to become contracted case managers under the Act.

## **PART 4.15 - SERVICE OF DOCUMENTS**

Sections 28A and 29 of the *Acts Interpretation Act 1901* set out standard rules for giving notices and serving documents under Commonwealth legislation. It is intended that these standard rules apply to all notifications to be made, or notices or documents that are sent under this Act (however the provisions of this Act describe such notifications or notices). However, two specific rules are included to deal with the situation that partnerships and unincorporated associations may become contracted case managers. These rules provide a simple mechanism for giving documents to those bodies.

### **Clause 157 - Giving of documents to partnerships**

This clause provides that for the purpose of this Chapter, a document given to a partner of a partnership in accordance with section 28A of the *Acts Interpretation Act 1901* is to be taken as having been given to the partnership.

### **Clause 158 - Giving of documents to unincorporated associations**

This clause provides that for the purposes of this Chapter, a document given to a member of the executive committee of an unincorporated association in accordance with section 28A of the *Acts Interpretation Act 1901* is to be taken as having been given to the unincorporated association.

## **CHAPTER 5 - REGULATIONS**

### **Clause 159 - Regulations**

This clause provides for the making of regulations by the Governor-General for the purpose of this Act.

Specific provision is included to enable the regulations to provide for write off and waiver of debts, and for creating offences against the regulations with a maximum penalty of 10 penalty units, currently \$1000.





