

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**EMPLOYMENT SERVICES BILL 1994**

**SUPPLEMENTARY EXPLANATORY MEMORANDUM**

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



## EMPLOYMENT SERVICES BILL 1994

*(Amendments and clauses to be moved on behalf of the Government)*

### OUTLINE

The *Employment Services Bill 1994* was introduced in the House of Representatives on 30 June 1994. The Bill establishes the Commonwealth Employment Service (CES) and Employment Assistance Australia (EAA). The Bill sets up and regulates the case management system and establishes the Employment Services Regulatory Authority (ESRA) as an independent statutory authority responsible for regulating the case management system.

### PURPOSE OF THE AMENDMENTS

The proposed amendments generally relate to the following:

- . the relationship between the operation of the case management system under the *Employment Services Act* and the related provisions of the *Social Security Act 1991*;
- . simplification of the provisions relating to the review of decisions by the Social Security Appeals Tribunal under the *Employment Services Act*;
- . more accurately defining the classes of persons who may be participants in the case management system;
- . management of documentation in the case management system;
- . restricting the powers of search by ESRA inspectors;
- . the acceptance of certain recommendations relating to the Bill made by the House of Representatives Standing Committee on Legal and Constitutional Affairs
- . other technical legal and drafting issues.

### FINANCIAL IMPACT

There is no financial impact arising from the Government Amendments.

## NOTES ON CLAUSES

*Amendment numbers 1 to 3 are proposed to clarify the role and composition of CES Area Committees. They follow respond to Recommendation 6 of the advisory report on the Employment Services Bills by the House of Representatives Standing Committee on Legal and Constitutional Affairs.*

### **Amendment Number 1**

This amendment would substitute a new clause 11 and add a new clause 11A. New clause 11 would enable the Minister to establish a national committee. New clause 11A would provide that the function of the national committee is to advise the CES on the operations of the Commonwealth Employment Service in Australia.

### **Amendment Number 2**

This amendment would provide that the provisions of the existing clause 12 would only apply to appointments to the national committee.

### **Amendment Number 3**

Clauses 12A, 12B and 12C are proposed to be added to provide for the establishment, functions and composition of area committees.

Clause 12A would provide that the National Director of the CES may establish area committees.

Clause 12B would provide that the function of an area committee is to advise the National Director in relation to the following matters:

- the creation of employment opportunities and training opportunities
- increasing the responsiveness of the CES to regional labour markets
- linking DEET programs with regional development

Clause 12C would provide that the National Director of the CES may formulate guidelines on the establishment of area committees including, but not limited to, the appointment of members and the resignation and termination of appointment of members. Subclause 12C(2) would require the National Director to consider certain sectoral interests in formulating guidelines on the establishment of area committees.

### **Amendment Number 4**

#### *Determinations about participants - general*

Under the presently proposed subclause (1) the Minister may issue a determination which specifies that persons registered with the CES as being unemployed will become participants in the case management system. The determination would be a disallowable instrument.

To more properly allow for the range of persons that may be eligible for case management services, a new clause 21(1) would be substituted to provide that persons included in a class of persons being provided with unemployment benefits by the Commonwealth may become participants in the case management system. The provision would more appropriately reflect the Constitutional basis of the Bill and the Government's intended range of persons that may be eligible for case management (eg some people in subsidised employment or on work experience projects).

*Determinations about participants - special*

A new subclause 21(1A) would provide for special circumstances for the Employment Secretary to determine that specified persons, who would otherwise not be eligible for participation in the case management system, to become participants in the case management system.

**Amendment Number 5**

A new subclause 21(4) would provide for the Employment Secretary to delegate all or any of his or her powers to determine that specified persons, who would otherwise not be eligible for participation in the case management system, to become participants in the case management system.

**Amendment Number 6**

*Consequences of failure to attend interview*

Sections 546C and 630C 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.

A new clause 24 would be substituted to provide for recent amendments to the *Social Security Act 1991* which resulted in a renumbering of these provisions.

**Amendment Number 7**

This minor technical amendment would provide for clause 25(5) to apply to decisions made under that clause.

*Amendment numbers 8 & 9 are proposed to clarify provisions relating to the termination of referral to a case manager and would provide for the rules relating to second and subsequent referrals to be similar to those relating to an initial referral under clauses 23, 24 and 25*

### **Amendment Number 8**

#### *Termination of referrals*

Clause 26 would be omitted and the following clauses substituted to provide for improved arrangements for dealing with second and subsequent referrals to case managers and to allow for circumstances when a person may not be able to be readily referred to a new case manager.

Clause 26(1) & (2) would provide for the CES to terminate the referral of a participant to a case manager. It is proposed for this to generally occur when the provision of case management services by a case manager to a participant has effectively ceased, e.g. that case manager goes out of business or the relationship between the case manager and the participant breaks down.

Clause 26 (3) would require the CES to give the participant notice in writing of a decision to terminate the referral.

Clause 26(4) would require, if the CES is of the opinion that the participant could be referred to another case manager within 24 days, the notice of termination of referral to state either, that the CES proposes to refer the participant to another case manager, that the participant may nominate a preferred case manager from a number of case managers, or that the person must attend an interview with the CES.

Clause 26(5) proposes that, if there is a significant waiting list of participants requiring referral at the time of termination of the original referral, and the CES is of the view that the participant could not be referred to another case manager within 24 days, the notice of termination of referral must contain a statement to that effect. If at a later time the participant can be referred within 24 days, the CES must issue a notice to the effect either, that the CES proposes to refer the participant to another case manager, that the participant may nominate a preferred case manager from a number of case managers, or that the person must attend an interview with the CES.

Clause 26(6) would allow the CES to make a further request if a person does not take part in an interview as previously requested.

#### *Clause 26A - Consequences of failure to attend interview*

Sections 546C and 630C 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 may result in a deferment period applying to the person's job search or newstart allowance.

This clause would provide for these mechanisms under the *Social Security Act 1991* to apply in relation to a similar failure to comply with a request under clause 26 of this Bill. Note that subsections 546C(3) and 630C(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 26(4)(b), 26(5)(b)(ii) and 26(6) of this Bill.

The proposed provision is similar in effect to clause 24.

*Clause 26B - Referral to new case manager - no interview*

This clause would set out requirements for the referral to a new case manager when the CES does not propose to interview the participant but has given the participant a notice under either paragraphs 26(4)(a) or (5)(b) (i.e. notice of proposed referral to a new case manager or for the participant to nominate a new case manager from a list provided).

Where the person is given a choice of case managers, clause 26B(2) would require the person to nominate, in writing, a preferred case manager within 14 days.

Clause 26B(3) would require the CES to decide to refer a person to a new case manager within 24 days after the notice under either paragraphs 26(4)(a) or (5)(b) has been given.

Clause 26B(4) would prescribe the matters that the CES is to take into account in deciding to refer a person to a new case manager, including matters which may be included in a determination issued by the Minister. The CES would be required to give the greatest weight to the preferred choice of case manager. The provision is in similar terms to clause 25(5) and the disallowable instrument referred to in clause 26B(5) is likely to be the same instrument referred to in clause 25(6).

*Clause 26C - Referral to new case manager - interview*

This clause would apply to the situation where the CES wishes to interview a person before deciding to refer them to a new case manager. Its effect would be similar in operation to clause 25 (which deals with referral to the original case manager following an interview) in so far as that clause relates to a person who is, at the time of interview, a participant in the case management system. The disallowable instrument referred to in clause 26C(6) would be likely to be the same instrument referred to in clause 25(6).

**Amendment Number 9**

Clause 28(1) would require amendment to take account of new clauses 26B and 26C.

**Amendment Number 10**

This amendment would clarify that the basic meaning of case management services is assisting a participant in the case management system to obtain sustainable

employment and not simply to assist placement in any vacant position. It follows from a consideration of Recommendation 2 of the advisory report on the Employment Services Bills by the House of Representatives Standing Committee on Legal and Constitutional Affairs.

#### **Amendment Number 11**

A note which refers to section 34AA of the *Acts Interpretation Act 1901* would be added after clause 31(6) to make it clear that the delegation of the Employment Secretary's powers under clause 31 is to any person from time to time holding, occupying or performing the duties of a specified office or position.

#### **Amendment Number 12**

New clause 31(7) would be added to make it clear that a function conferred on a case manager by this Act includes any power delegated to the case manager under clause 31(6).

#### **Amendment Number 13**

An amendment is proposed to clause 32 to provide that case management activity agreements may include terms relating to:

- the development of self-employment; and
- the development of, and/or participation in, group enterprises or co-operative enterprises.

The proposed amendment is part of the implementation of announcements in the Working Nation White Paper that unemployed persons will be encouraged to undertake a broader range of activities while remaining eligible for Social Security payments. This provision, and clauses 32A and 32B reflect proposed amendments to the *Social Security Act 1991*, recently introduced into Parliament and are required because of the nexus between Case Management Activity Agreements and continued eligibility for other job search or newstart allowances.

#### **Amendment Numbers 14, 15 and 16**

These proposed amendments result from the recent decision of the Government, in the context of the Working Nation White Paper, to more precisely specify the nature of work that is to be regarded as suitable for a person to undertake. These provisions and clause 32C reflect proposed amendments to the *Social Security Act 1991*, recently introduced into Parliament and are required because of the nexus between Case Management Activity Agreements and continuing eligibility for either job search or newstart allowances under the *Social Security Act 1991*.

The effect of the amendment to clause 32(2) is that a person who is eligible for the Job Compact is required to accept any offer of paid work other than work that is unsuitable (clause 32C describes what may be regarded as unsuitable work).

### **Amendment Number 17**

A note which refers to section 34AA of the *Acts Interpretation Act 1901* is proposed to be added after clause 32(8) to make it clear that the delegation of the Employment Secretary's powers under clause 31 is to any person from time to time holding, occupying or performing the duties of a specified office or position.

### **Amendment Number 18**

Clause 32(8A) would be added to make it clear that a function conferred on a case manager by this Act includes any power delegated to the case manager under clause 32(8).

*Amendment numbers 19 to 29 are proposed to ensure the proper working of the provisions of the Employment Services Act with those of the Social Security Act 1991 and that there are no gaps in entitlement or obligations requirements under the Social Security Act 1991 resulting from participation in the case management system.*

### **Amendment Number 19**

Clause 32(9A) would be added to provide that breaks of less than 6 weeks in the receipt of job search allowance or less than 13 weeks in the receipt of newstart allowance are not to be regarded as breaks in the continuity of receipt of those allowances for the purpose of determining eligibility under the Job Compact. The provision is comparable to provisions of the *Social Security Act 1991* relating to continuity of qualification for the purposes of job search allowance and newstart allowance.

### **Amendment Number 20**

This amendment would add new clauses 32A, 32B and 32C and results from Working Nation White Paper announcements and proposed amendments to the *Social Security Act 1991* shortly to be introduced into the Parliament. The amendment is required because of the nexus between Case Management Activity Agreements and continuing eligibility for job search or newstart allowances under the *Social Security Act 1991*.

#### *Case Management Activity Agreements - self-employment*

Clause 32A - The effect of clause 32A would be that the terms of a Case Management Activity Agreement (see clause 32(1)) must not require a person to undertake a self-employment development activity unless a person has been receiving job search or newstart allowance for at least six months and the Employment Secretary is satisfied the activity will be commercially viable after 12 months assistance and it is likely to provide the person with sustainable full-time employment that will generate a level of income of at least the basic allowance rate.



Clause 32A(2) would provide that a person must not be required to undertake a self-employment development activity for more than 12 months that is:

- the same or similar to an activity under a previous activity agreement; or
- required to be undertaken within six months of an activity under a previous activity agreement.

Clause 32A(3) would provide that the Employment Secretary may determine in writing that there are special circumstances that justify inclusion of the same or a similar self-employment development activity as was previously required in a Case Management Activity Agreement.

Clause 32A would not apply to the terms of a Case Management Activity Agreement other than those relating to:

- development of self-employment; or
- development of, and/or participation in, group enterprises or co-operative enterprises.

*Case Management Activity Agreements - group enterprises and co-operative enterprises*

Clause 32B - The effect of clause 32B would be that the terms of a Case Management Activity Agreement (see clause 32(1)) must not require a person to undertake an activity of development of a group enterprise or co-operative enterprise unless he or she has received job search or newstart allowance continuously for 6 months prior to the activity.

In addition, clause 32B(1) would require that the Employment Secretary must be satisfied that the activity will be viable after 12 months, and likely to provide the person with skills, training or work experience that will assist the person to obtain paid employment that will provide the person with an income equal to the person's maximum basic rate of job search or newstart allowance.

Subclause 32B(2) would require that a person can only undertake as an activity participation in a group enterprise or co-operative enterprise if he or she has received job search or newstart allowance continuously for 6 months prior to the activity. In addition, the Employment Secretary must be satisfied that the activity is likely to provide the person with skills, training or work experience that will assist the person to obtain paid employment that will provide the person with an income equal to the person's maximum basic rate of job search or newstart allowance.

Clause 32B(3) provides the method for calculating the person's maximum basic rate.

Clause 32B(4)(a) and (b) would prohibit the person from undertaking an activity any development of, or participation in, a group enterprise or co-operative enterprise if he or she would undertake the activity for more than 12 months, or has previously been subject to undertake the same or a similar activity under the current, or any other previous agreement.

Subclause 32B(4)(c) would prohibit the person from undertaking as an activity any development of, or participation in, a group enterprise or co-operative enterprise if, in the preceding 6 months, he or she has, under the current or any other previous agreement, required to undertake any other activity of development or participation in, a group enterprise or co-operative enterprise.

Clause 32B would not apply to the terms of a Case Management Activity Agreement other than those relating to:

- development of self-employment; or
- development of, and/or participation in, group enterprises or co-operative enterprises.

*When particular paid work is unsuitable*

Clause 32C - This provision would list the types of paid work that the Employment Secretary may regard as unsuitable for the purposes of clause 32(2)(a) (which deals with the terms of a Case Management Activity Agreement requiring a person eligible for the Job Compact to accept an offer of paid work other than work which is unsuitable). The types of paid work which may be regarded as unsuitable are:

- (a) the person lacks the particular skills, experience or qualifications that are needed to perform the work; or
- (b) the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or
- (c) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety and would contravene a law of the Commonwealth, a State or Territory relating to occupational health and safety; or
- (d) the work would involve the person being self-employed; or
- (e) the work would be covered by an industrial award but the employer would only employ the person if the person agreed to become a party to an agreement reducing or abolishing rights that the award confers on employees; or
- (f) the work would not be covered by an industrial award and the remuneration for the work would be lower than the minimum applicable rate of remuneration for comparable work that is covered by an industrial award; or
- (g) commuting between the person's home and the place of work would be unreasonably difficult; or
- (h) for any other reason, the work is unsuitable for the person.

The effect of clause 32C(2) would be that, for the purposes of paragraph (1)(g), commuting is not to be taken as unreasonably difficult if:

- the sole or principal reason for the difficulty is that the journey to work does not normally exceed 90 minutes in duration; or
- in the opinion of the Employment Secretary, a substantial number of people living in the same area as the person regularly commute to work in similar circumstances.

### **Amendment Number 21**

A new clause 33(2) is proposed to take account of the altered provisions relating to termination of referral to a case manager under clause 26. Termination of referral under clause 26 will have the effect of cancelling any Case Management Activity Agreement that is in force. A note is also proposed to be added to draw attention to the continuing requirement to satisfy the activity test under the *Social Security Act 1991*.

### **Amendment Number 22**

New subclauses 35(1), (2), (3), (3A) are proposed to provide for continuous eligibility for benefits under the *Social Security Act 1991* as a person enters into a period of case management.

### **Amendment Number 23**

A new subclause 35(4A) would be added to provide for what may be regarded as "reasonable steps" to comply with the terms of a Case Management Activity Agreement. A person would be regarded not to have taken reasonable steps to comply if the reason for the failure to comply was a matter within the person's control or was reasonably foreseeable by the person.

The proposed amendment reflects Government decisions, in the context of the Working Nation White Paper, to more clearly specify obligations of benefit recipients. The provision is similar to proposed amendments to the *Social Security Act 1991* to be introduced into Parliament shortly.

### **Amendment Numbers 24, 25, 26 and 27**

These technical amendments are proposed to take account of the term "case management period". The effect of the amended provisions would be the same as the current provisions in that the named sections of the *Social Security Act 1991* are taken to apply from the time of referral of a person to a case manager.

### **Amendment Number 28**

A reference to the definition of "case management period" would be included in clause 35(10).

### **Amendment Number 29**

A reference to "participation period" would be included in clause 35(10).

### **Amendment Number 30**

Sections 546C and 630C 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.

A new clause 36(5) is proposed to be substituted to provide for recent amendments to the *Social Security Act 1991* which resulted in a renumbering of these provisions.

#### **Amendment Number 31**

Subclause 37(1) is proposed to be amended to provide for the delegation of the Employment Secretary's powers under sections 32A, 32B and 32C.

*Amendment numbers 32, 33, 37 and 38 respond to Recommendations 12 and 13 of the advisory report on the Employment Services Bills by the House of Representatives Standing Committee on Legal and Constitutional Affairs. It is proposed that ESRA be able to formulate rules of conduct which would become conditions of accreditation for case managers in all cases. It is also proposed that the numbers of client referrals to a case manager may also be included as a condition of accreditation. Codes of practice to be declared by ESRA would be of an advisory character.*

#### **Amendment Number 32**

Subclause 40(3), which provides for a discretion to include codes of practice as conditions of accreditation, would be omitted.

#### **Amendment Number 33**

New clause 41A would be added to provide that rules of conduct formulated under clause 49A are to be conditions of accreditation of a case manager (see amendment number 37).

#### **Amendment Number 34**

New clause 43A provides that a condition of accreditation may relate to the acceptance of client referrals and, in particular, the maximum number of referrals that a case manager is required or permitted to accept.

Subclause 43A(2) would provide for conditions of accreditation to deal with the maximum case management workload to be undertaken by individuals.

*Amendment numbers 35 & 36 are proposed to provide that the ESRA Board may accredit persons as either general or specialist case managers without the need for special classes to be specified in a disallowable instrument. This is not appropriate given the accreditation scheme itself is to be set out in a disallowable instrument under clause 39.*

#### **Amendment Number 35**

The reference in clause 44(1) to "The ESRA Board may, by written instrument..", would be replaced by "The accreditation scheme may..."

#### **Amendment Number 36**

Clause 44(3) (which requires classes of specialisation to be set out in a separate disallowable instrument) would be omitted.

#### **Amendment Number 37**

This amendment would substitute a new Division 2A of Part 4.5 dealing with rules of conduct. New clause 49A would provide that ESRA may formulate rules of conduct relating to the provision of case management services. Such rules of conduct have effect only for the purposes of clause 41A, which would make them conditions of accreditation in all cases (see amendment number 33). An instrument containing rules of conduct formulated by ESRA would be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

#### **Amendment Number 38**

This amendment would omit subclauses 50(2) and (3) and substitute a new subclause 50(2) to the effect that codes of practice to be issued by ESRA are to be advisory in character. The amendment would follow from the proposed inclusion of provisions under which rules of conduct are to be conditions of accreditation in all cases.

#### **Amendment Number 39**

This amendment is proposed to make it clear that case management documents may be provided to a contracted case manager prior to the actual provision of case management services.

#### **Amendment Number 40**

The matters about which ESRA may formulate case management document rules is now proposed to be the following:

- (a) the provision of case management documents by the Commonwealth to case managers;
- (b) the creation of case management documents by case managers;
- (c) the handling, copying and storage of case management documents by case managers;

- (d) the amendment of case management documents;
- (e) the return of case management documents to the Commonwealth;
- (f) the destruction of, or of copies of, case management documents held by case managers;
- (g) the retention of case management documents by case managers;
- (h) the giving of information relating to rules about any of the above-mentioned matters, where the information is provided to a person who is or has been referred to a case manager under part 4.3.

The list of matters which may be the subject of the case management document rules is proposed to be expanded to provide for more certainty in their structure and content and for the giving of information on the nature and use of case management documents to those persons who have been referred to case managers.

A new subclause 53(3A) would require the CES obtain the persons' consent prior to providing case managers with documents containing information extracted from:

- (a) a "sensitive personal record" relating to the person; or
- (b) a person's criminal record.

"Sensitive personal record" would be defined by new clause 53(8) to be inserted by amendment 33.

The person's consent must be given in a form specified in the case management document rules.

#### **Amendment Number 41**

A new subclause 53(6A) would require the case management document rules to be consistent with the *Privacy Act 1988*.

A new subclause 53(6B) is proposed to ensure that the ESRA Board consults with the Privacy Commissioner prior to making determinations on case management documents and case management document rules under subsections (2) and (3).

#### **Amendment Number 42**

##### *Definition*

A new subclause 53(8) would provide a definition of "sensitive personal record" referred to in the new subclause 53(3A).

A "sensitive personal record" would be defined as a record about a person that is made by a medical practitioner or other health worker (including for example, nurses, occupational therapists, physiotherapists, radiographers, optometrists, and counsellors), psychologists and social workers and the record is made when those persons are acting in their professional capacity.

**Amendment Number 43**

Clause 54(2)(a) is proposed to be amended to make it clear that documents can be provided to a case manager in anticipation of the provision of case management services to a person.

**Amendment Number 44**

Clause 117(3) proposes that the register of investigations under Part 4.7 maintained by ESRA contain a short summary of the nature of the complaint.

The new subclause 117(3A) would prevent that summary from including information which would enable the identification of an individual, without the written consent of the individual concerned.

**Amendment Number 45**

Clause 121 relates to searches to monitor compliance by contracted case managers with their terms of accreditation and the conditions under which they are engaged.

Clause 121(1) is proposed to be amended to provide that searches may only be made between the hours of 9:00am and 5:00pm on a business day.

**Amendment Number 46**

Clause 121(2A) is proposed to be added to further provide that a search may only be made where an inspector believes on reasonable grounds that:

- (a) ESRA has already made reasonable efforts to exercise other powers and these have proved insufficient to achieve the purpose; or
- (b) an attempt by ESRA to exercise such powers would not be effective.

**Amendment Number 47**

Clause 121(6) is proposed to be added to provide a definition of "business day", which excludes a Saturday, Sunday or Public Holiday.

**Amendment Number 48**

A minor technical amendment is required to paragraph 125(4)(e). The reference to "Part 4.8" should be to "Part 4.7".

**Amendment Number 49**

This amendment would alter the heading to Part 4 of the Bill to reflect decisions of the Employment Secretary taken under clause 21 (which provides for the determination that special circumstances exist for a person to be declared a participant in the case management system) to be the subject of administrative review provisions contained in the Bill.

### **Amendment Number 50**

Clause 132 would be amended to provide for administrative review of decisions made under Part 4.2 of the Act. This in effect would be to allow for review of determinations by the Employment Secretary about the inclusion of persons as participants in the case management system in special circumstances pursuant to the new clause 21(1A).

### **Amendment Number 51**

*Automatic payment of job search or newstart allowance if review of section 34 terms decision sought*

Clause 34 provides for the Employment Secretary to give the person a notice that the person has failed to enter into a Case Management Activity Agreement. Under clause 35(4)(a) a person is not qualified for a job search or newstart allowance as a result of failing to enter into an Agreement.

Clause 135A is proposed to be added to provide for the automatic payment of job search or newstart allowance when a person applies for a review of a decision by the Employment Secretary to give a notice under clause 34 because of the person's failure to agree to the terms of an activity agreement proposed by a case manager. The provisions allowing for automatic payment reflect those of the *Social Security Act 1991* relating to similar decisions in respect of job search and newstart activity agreements.

*The current clause 139 incorporates proposed rights of review to the SSAT and the AAT under the Social Security Act 1991 by reference to certain parts of that Act.*

*Amendments 42, 43 and 44 are proposed to be made to allow for substantive provisions relating to review rights to be included in the Employment Services Act.*

*Some provisions of the Social Security Act 1991 would remain incorporated by reference where this is more convenient.*

### **Amendment Number 52**

A new heading "Subdivision A - Object of Division" would be added before clause 138

### **Amendment Number 53**

The reference in clause 138 to "This result is achieved by applying relevant provisions of the *Social Security Act 1991*." would be omitted.

### **Amendment Number 54**

Clause 139 would be omitted and the following heading and clauses are added:

#### **Subdivision B - Review by the Social Security Appeals Tribunal**



*Clause 139 - Application for Review*

This clause would provide for a person whose interests are affected by a decision under clause 136 (which relates to decisions reviewed by the Employment Secretary), to apply to the Social Security Appeals Tribunal (SSAT) for a review of that decision.

*Clause 139A - Application requirement for certain section 32 decisions*

Clause 32 relates to the terms of a Case Management Activity Agreement. The clause proposes that an application to the SSAT for a review of a decision relating to the terms of a Case Management Activity Agreement must expressly state it is an application for review of that decision.

*Clause 139B - Automatic payment of job search allowance or newstart allowance if review of section 34 terms decision sought*

Clause 34 would provide for the Employment Secretary to give the person a notice that the person has failed to enter into a Case Management Activity Agreement. Under clause 35(4)(a) a person would no longer be qualified for a job search or newstart allowance under the *Social Security Act 1991* as a result of failing to enter into an Agreement.

Clause 139B would be added to provide for the automatic payment of job search or newstart allowance when a person applies for a review of a decision by the Employment Secretary to give a notice under clause 34 because of the person's failure to agree to the terms of an activity agreement proposed by a case manager. The provisions allowing for automatic payment reflect those of the *Social Security Act 1991* relating to similar decisions in respect of job search and newstart activity agreements.

*Clause 139C - Social Security Appeals Tribunal review powers*

This clause would provide that, when the SSAT reviews a decision, it must affirm, vary or set aside the decision under review. If the SSAT sets aside a decision it would either substitute a new decision or refer the matter back to the Employment Secretary together with directions or recommendations.

Clause 139C(2) would provide that the SSAT may exercise all the powers conferred by the Act on the CES or the Employment Secretary.

Under proposed clause 139C(3), where the SSAT sets aside a decision, the SSAT or the Employment Secretary (as the case requires) may deem a certain event to have occurred for the purposes of the Act.

This clause would not apply to decisions under clause 32 to the extent that they relate to the terms of a Case Management Activity Agreement that is in force.

*Clause 139D - Social Security Appeals Tribunal review powers (Case Management Activity Agreement decision)*

It is proposed that, if a person applies to the SSAT for a review of a decision under clause 32, to the extent that the decision relates to the terms of a Case Management Activity Agreement that is in force, the SSAT may only either affirm the decision or set the decision aside and refer the matter back to the Employment Secretary for reconsideration in accordance with any recommendations the SSAT may make

*Clause 139E - Date of effect of Social Security Appeals Tribunal decisions*

Clause 139E(1) would provide that, subject to subclauses (2) and (3), a decision of the SSAT comes into effect immediately on the making of the decision.

Clause 139E(2) would provide that the SSAT may specify a later date for the operation of the decision.

Clause 139E(3) would provide that, where the SSAT varies or sets aside a decision under review, the date of effect of the SSAT's decision is the date on which the decision under review has or had effect. Clause 139E(4) would allow for the SSAT to order that subclause (3) will not apply in particular cases.

This clause would not apply to a decision under clause 32 to the extent that the decision relates to the terms of a Case Management Activity Agreement that is in force.

*Clause 139F - Date of effect of Social Security Appeals Tribunal decision (Case Management Activity Agreement decision)*

It is proposed that, if a person applies to the SSAT for a review of a decision under clause 32, to the extent that the decision relates to the terms of a Case Management Activity Agreement that is in force, the SSAT decision comes into effect immediately on the giving of the decision or such other later date as the SSAT may specify.

*Clause 139G - Application requirements*

This proposed clause deals with the application requirements relating to review by the SSAT. Applications may be made in writing to an office of the SSAT, the Department of Employment, Education and Training or the Department of Social Security. Oral applications may also be made to an office of the SSAT and a written record must be made by the person in the SSAT office receiving the application, noting the date on which the application was made.

It is proposed that an application may include a statement of reasons for seeking the review.

*Clause 139H - Variation of decision before review completed*

It is proposed that, if a decision under review is varied, or set aside and a new decision is substituted, before the SSAT has made a determination, then the application for review will be treated as an application for a review of the decision as varied or the new decision as the case may be. A person may then either proceed with the application for review or withdraw the application under section 1274 of the *Social Security Act 1991*.

*Clause 139J - Parties to Social Security Appeals Tribunal review*

This clause proposes that the parties to a review by the SSAT are the applicant, the Employment Secretary and any other person made a party by order of the National Convenor of the Social Security Appeals Tribunal following an application in writing requesting to be made a party.

*Clause 139K - Social Security Appeals Tribunal's objectives*

The SSAT, in carrying out its functions under the Act, would be required to pursue the objective of providing a mechanism for review that is fair, just, economical, informal and quick. These objectives are the same requirements that the SSAT has under the *Social Security Act 1991*.

**Subdivision C - Additional provisions relating to review of decisions**

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

Subject to the changes described below, it is proposed that the provisions of Parts 6.3 and 6.4 of the *Social Security Act 1991* (which deal with review of decisions) apply in relation to the review of decisions by the SSAT or the Administrative Appeals Tribunal under the *Employment Services Act* as if they apply to the review of decisions under the *Social Security Act 1991*.

**The first change**

References to the Social Security Secretary (other than those in section 1269 of the *Social Security Act 1991*) would be replaced by references to the Employment Secretary. Section 1269 of the *Social Security Act 1991* relates to the power of the National Convenor of the SSAT to request the Social Security Secretary to exercise certain information gathering powers under that Act.

**The second change**

In relation to subsections 1279(2) and (5) of the *Social Security Act 1991* (which relate to inconsistency of review procedures with the provisions of that Act), the reference would be changed to mean both the *Social Security Act 1991* and the *Employment Services Act*.

In relation to subsection 1283(4) of the *Social Security Act 1991* (which allows the Social Security Secretary to deem an event to have occurred in relation to the review of a decision by the Administrative Appeals Tribunal), the reference would be changed to mean the *Employment Services Act*.

### **The third change**

References to the Department of Social Security would be replaced by references to the Department of Employment, Education and Training.

### **The fourth change**

The reference in subsection 1264(2) of the *Social Security Act 1991* to section 1260 of that Act would be replaced by a reference to section 139J of the *Employment Services Act*. This deals with the right to apply to the National Convenor of the SSAT to be made a party to a review.

### **The fifth change**

Each reference to section 1246 of the *Social Security Act 1991* would be replaced by a reference to section 139K of the *Employment Services Act*. This deals with the objectives of the SSAT.

### **The sixth change**

Each reference to section 1284 of the *Social Security Act 1991* to an officer would be replaced by a reference to the Employment Secretary. This deals with variations etc. of decisions.







