



Disability Services Act 1986

No. 129 of 1986

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Disability Services Act 1986

No. 129 of 1986

An Act relating to the provision of services for persons with disabilities

[Assented to 9 December 1986]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Disability Services Act 1986*.

Commencement

2. (1) This Act (other than Part II) shall come into operation on a day to be fixed by Proclamation.

(2) Part II shall come into operation on a day to be fixed by Proclamation, which may be the same day as, or a later day than, the day fixed under sub-section (1).

Objects

3. The objects of this Act are—

- (a) to replace provisions of the *Handicapped Persons Assistance Act 1974*, and of Part VIII of the *Social Security Act 1947*, with provisions that are more flexible and more responsive to the needs and aspirations of persons with disabilities;
- (b) to ensure that persons with disabilities receive the services necessary to enable them to achieve their maximum potential as members of the community;
- (c) to ensure that services provided to persons with disabilities—
 - (i) further the integration of persons with disabilities in the community, and complement services available generally to persons in the community;
 - (ii) enable persons with disabilities to achieve positive outcomes, such as increased independence, employment opportunities and integration in the community; and
 - (iii) are provided in ways that promote in the community a positive image of persons with disabilities and enhance their self-esteem;
- (d) to ensure that the outcomes achieved by persons with disabilities by the provision of services for them are taken into account in the granting of financial assistance for the provision of such services;
- (e) to encourage innovation in the provision of services for persons with disabilities; and
- (f) to achieve positive outcomes, such as increased independence, employment opportunities and integration in the community, for persons with disabilities who are of working age by the provision of comprehensive rehabilitation services,

and this Act shall be construed and administered accordingly.

Interpretation

4. In this Act, unless the contrary intention appears—

“officer” means a person holding, or performing the duties of, an office in the Department;

“Secretary” means the Secretary to the Department.

Principles, objectives and guidelines

5. The Minister may formulate principles and objectives to be furthered, and guidelines to be complied with, in the administration of this Act.

Extension of Act to certain external Territories

6. This Act extends to the Territory of Cocos (Keeling) Islands and to the Territory of Christmas Island.

**PART II—FUNDING OF SERVICES FOR PERSONS WITH
DISABILITIES**

Division 1—General

Interpretation

7. In this Part, unless the contrary intention appears—

“accommodation support services” means services to assist persons with disabilities to develop or maintain suitable residential arrangements in the community;

“advocacy services” means—

- (a) self-advocacy services, namely, services to assist persons with disabilities to develop or maintain the personal skills and self-confidence necessary to enable them to represent their own interests in the community;
- (b) citizen-advocacy services, namely, services to facilitate persons in the community to assist—
 - (i) persons with disabilities; or
 - (ii) the families of, and other persons who provide care for or assistance to, persons with disabilities, to represent their interests in the community; or
- (c) group-advocacy services, namely, services to facilitate community organisations to represent the interests of groups of persons with disabilities;

“competitive employment training and placement services” means services to assist persons with disabilities to obtain and retain, or retain, paid employment in the work-force, and includes—

- (a) services to increase the independence, productivity or integration of persons with disabilities in work settings;
- (b) employment preparation, and employment and vocational training services; and
- (c) services to assist the transition of persons with disabilities from special education, or employment in supported work settings, to paid employment in the work-force;

“eligible organisation” means—

- (a) a body corporate (other than a body corporate that is carried on for the purpose of profit or gain to its individual members);
- (b) a local governing body established by or under a law of a State or Territory;
- (c) a tertiary institution within the meaning of the *Commonwealth Tertiary Education Commission Act 1977*; or
- (d) any other society, association or body (other than a society, association or body that is carried on for the purpose of profit or gain to its individual members) approved by the Minister for the purposes of this definition;

“eligible service” means a service included in a class of services approved by the Minister under section 9;

“independent living training services” means services to assist persons with disabilities to develop or maintain the personal skills and self-confidence necessary to enhance their independence, and self-reliance, in the community;

“information services” means services to facilitate access to information by—

- (a) persons with disabilities; and
- (b) the families of, and other persons who provide care for or assistance to, persons with disabilities,

and includes—

- (c) services to provide the information necessary to enable persons with disabilities to live full lives as members of the community (whether the information is provided to those persons or generally to persons in the community); and
- (d) services to facilitate access by persons with disabilities to information available generally to persons in the community;

“prescribed service” has the same meaning that that term had in the *Handicapped Persons Assistance Act 1974* immediately before the commencement of this Part;

“print disability services” means services to facilitate access to, or the use of, printed materials by persons who, because of disabilities, are unable to read, hold or manipulate printed materials in standard form;

“recreation services” means services to facilitate the integration of, and participation by, persons with disabilities in recreation and leisure activities available generally to persons in the community;

“research or development activity” means—

- (a) research with respect to the provision of services for persons included in the target group;
- (b) the investigation of the need for services for persons included in the target group;
- (c) the initiation of services for persons included in the target group;
- (d) the planning of the provision of eligible services for persons included in the target group;
- (e) the development of proposals for the provision of eligible services for persons included in the target group;
- (f) the development or implementation of training programs for—
 - (i) persons engaged in the provision of eligible services;
or

- (ii) the families of, and other persons who provide care for or assistance to, persons included in the target group;
 - (g) the investigation of outcomes achieved by persons included in the target group by the provision of eligible services; or
 - (h) other activities approved by the Minister for the purposes of this definition;
- “respite care services” means services for relief or assistance, for a limited period of time and whether on a planned or unplanned basis, to—
- (a) the families of, and other persons who provide care for or assistance to, persons with disabilities living in the community; or
 - (b) persons with disabilities living in the community;
- “service” includes a service consisting of the supplying of goods, whether or not accompanied by the provision of other services;
- “State” includes the Northern Territory;
- “supported employment services” means services to support the paid employment of persons with disabilities, being persons—
- (a) for whom competitive employment at or above the relevant award wage is unlikely; and
 - (b) who, because of their disabilities, need substantial ongoing support to obtain or retain paid employment.

Target group, &c.

8. (1) The target group for the purposes of this Part consists of persons with a disability that—

- (a) is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of such impairments;
- (b) is permanent or likely to be permanent; and
- (c) results in—
 - (i) a substantially reduced capacity of the person for communication, learning or mobility; and
 - (ii) the need for ongoing support services.

(2) Where a service is provided predominantly for persons included in the target group, the service shall be taken, for the purposes of this Part, to be provided for persons in the target group notwithstanding that the service is also provided for some persons who are not included in the target group.

Approval of services

9. (1) The Minister may approve a class of services for the purposes of this Part if the Minister is satisfied that the provision of services included in that class of services would—

- (a) further the objects of this Act set out in section 3 and the principles and objectives formulated under section 5; and

(b) comply with the guidelines formulated under section 5 that are applicable to the giving of approvals under this section.

(2) Without limiting the generality of sub-section (1), the Minister may, under that sub-section, approve services of any of the following kinds, or services that are included in services of any of the following kinds:

- (a) accommodation support services;
- (b) advocacy services;
- (c) competitive employment training and placement services;
- (d) independent living training services;
- (e) information services;
- (f) print disability services;
- (g) recreation services;
- (h) respite care services;
- (j) supported employment services.

Division 2—Grants for Eligible Services and Research and Development Activities

Financial assistance for eligible services

10. (1) Subject to sub-section (3), the Minister may approve the making of a grant of financial assistance to a State or eligible organisation in relation to the provision by the State or eligible organisation of an eligible service for persons included in the target group.

(2) Without limiting the generality of sub-section (1), the Minister may, under that sub-section, approve the making, in relation to the provision of an eligible service, of a grant with respect to any of the following:

- (a) recurrent expenditure incurred or to be incurred;
- (b) the cost of—
 - (i) acquiring land (with or without buildings);
 - (ii) acquiring, erecting, altering or extending buildings;
 - (iii) acquiring, altering or installing equipment.

(3) The Minister shall not approve the making of a grant under sub-section (1) unless the Minister is satisfied that the making of the grant would—

- (a) further the objects of this Act set out in section 3 and the principles and objectives formulated under section 5; and
- (b) comply with the guidelines formulated under section 5 that are applicable to the making of grants under sub-section (1) of this section.

(4) Where the Minister approves the making of a grant of financial assistance to a State or eligible organisation under sub-section (1) in relation to the provision by the State or eligible organisation of an eligible service

for persons included in the target group, the Minister shall, subject to subsection (6) and the regulations—

- (a) determine the amount of the financial assistance or the manner in which the amount of the financial assistance is to be calculated;
- (b) determine the time or times at which, and the instalments (if any) in which, the financial assistance is to be paid; and
- (c) specify the terms and conditions on which the financial assistance is granted.

(5) Without limiting the generality of paragraph (4) (c), the terms and conditions that may be specified pursuant to that paragraph include terms and conditions with respect to—

- (a) the purposes for which the financial assistance may be applied;
- (b) the amounts to be applied by the State or eligible organisation for those purposes or any other purpose, and the source of amounts to be so applied;
- (c) the outcomes to be achieved by persons included in the target group by the provision of the eligible service, and the rights of those persons in relation to the provision of the eligible service or otherwise;
- (d) the furnishing of information;
- (e) the provision of certificates with respect to the fulfillment of terms and conditions;
- (f) the repayment of financial assistance;
- (g) the giving of security for the fulfillment of terms and conditions; and
- (h) the use and disposal of, and the recovery of amounts that under the terms and conditions are to be taken as representing the Commonwealth's interest in—
 - (i) land acquired (with or without buildings);
 - (ii) buildings acquired, erected, altered or extended; and
 - (iii) equipment acquired, altered or installed.

as a result of the application of the financial assistance or of the financial assistance and other money.

(6) Where a grant of financial assistance is to be paid in instalments, the instalments shall be paid within 5 years after the approval of the making of the grant.

Review of outcomes of financial assistance for eligible services

11. The Minister shall ensure that, at intervals of not more than 5 years, a review is conducted of the extent to which each State or eligible organisation that has received grants of financial assistance under section 10 has fulfilled the terms and conditions on which the grants were made and, in particular, of the extent to which outcomes required by those terms and conditions have been achieved by persons included in the target group.

Financial assistance for research and development activities

12. (1) Subject to sub-section (3), the Minister may approve the making of a grant of financial assistance to a person in relation to a research or development activity being undertaken, or to be undertaken, by the person.

(2) Without limiting the generality of sub-section (1), the Minister may, under that sub-section, approve the making, in relation to a research and development activity, of a grant with respect to any of the following:

- (a) recurrent expenditure incurred or to be incurred;
- (b) the cost of—
 - (i) acquiring land (with or without buildings);
 - (ii) acquiring, erecting, altering or extending buildings;
 - (iii) acquiring, altering or installing equipment.

(3) The Minister shall not approve the making of a grant under sub-section (1) unless the Minister is satisfied that the making of the grant would—

- (a) further the objects of this Act set out in section 3 and the principles and objectives formulated under section 5; and
- (b) comply with the guidelines formulated under section 5 that are applicable to the making of grants under sub-section (1) of this section.

(4) Where the Minister approves the making of a grant of financial assistance to a person under sub-section (1) in relation to a research or development activity being undertaken, or to be undertaken, by the person, the Minister shall, subject to the regulations—

- (a) determine the amount of the financial assistance or the manner in which the amount of the financial assistance is to be calculated;
- (b) determine the time or times at which, and the instalments (if any) in which, the financial assistance is to be paid; and
- (c) specify the terms and conditions on which the financial assistance is granted.

(5) Without limiting the generality of paragraph (4) (c), the terms and conditions that may be specified pursuant to that paragraph include terms and conditions with respect to—

- (a) the purposes for which the financial assistance may be applied;
- (b) the amounts to be applied by the person for those purposes or any other purpose, and the source of amounts to be so applied;
- (c) the furnishing of information;
- (d) the provision of certificates with respect to the fulfillment of terms and conditions;
- (e) the repayment of financial assistance;
- (f) the giving of security for the fulfillment of terms and conditions;

- (g) the use and disposal of, and the recovery of amounts that under the terms and conditions are to be taken as representing the Commonwealth's interest in—
 - (i) land acquired (with or without buildings);
 - (ii) buildings acquired, erected, altered or extended; and
 - (iii) equipment acquired, altered or installed,as a result of the application of the financial assistance or of the financial assistance and other money; and
 - (h) the use, disposal, and ownership of anything produced by the research or development activity.
- (6) In this section, "person" includes a State or eligible organisation.

Division 3—Grants for Prescribed Services

Financial assistance for prescribed services

13. (1) Where the Minister is of the opinion—

- (a) that the making of a grant of financial assistance under this sub-section to an eligible organisation in relation to the provision by the eligible organisation of a prescribed service for persons included in the target group would be in the interests of those persons;
- (b) that the eligible organisation will take adequate steps towards meeting the objects of this Act set out in section 3 and the principles and objectives formulated under section 5; and
- (c) that the making of the grant would comply with the guidelines formulated under section 5 that are applicable to the making of grants under this sub-section,

then, notwithstanding that the Minister is not satisfied that the making of the grant would further the objects of this Act and those principles and objectives, but subject to sub-section (5), the Minister may approve the making of the grant.

(2) Without limiting the generality of sub-section (1), the Minister may, under that sub-section, approve the making, in relation to the provision of a prescribed service, of a grant with respect to any of the following:

- (a) recurrent expenditure incurred or to be incurred;
- (b) the cost of—
 - (i) acquiring land (with or without buildings);
 - (ii) acquiring, erecting, altering or extending buildings;
 - (iii) acquiring, altering or installing equipment.

(3) Where the Minister approves the making of a grant of financial assistance to an eligible organisation under sub-section (1) in relation to the provision by the eligible organisation of a prescribed service for persons included in the target group, the Minister shall, subject to sub-section (5) and the regulations—

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- (a) determine the amount of the financial assistance or the manner in which the amount of the financial assistance is to be calculated;
 - (b) determine the time or times at which, and the instalments (if any) in which, the financial assistance is to be paid; and
 - (c) specify the terms and conditions on which the financial assistance is granted.
- (4) Without limiting the generality of paragraph (3) (c), the terms and conditions that may be specified pursuant to that paragraph include terms and conditions with respect to—
- (a) the purposes for which the financial assistance may be applied;
 - (b) the amounts to be applied by the eligible organisation for those purposes or any other purpose, and the source of amounts to be so applied;
 - (c) the outcomes to be achieved by persons included in the target group by the provision of the prescribed service, and the rights of those persons in relation to the provision of the prescribed service or otherwise;
 - (d) the furnishing of information;
 - (e) the provision of certificates with respect to the fulfillment of terms and conditions;
 - (f) the repayment of financial assistance;
 - (g) the giving of security for the fulfillment of terms and conditions; and
 - (h) the use and disposal of, and the recovery of amounts that under the terms and conditions are to be taken as representing the Commonwealth's interest in—
 - (i) land acquired (with or without buildings);
 - (ii) buildings acquired, erected, altered or extended; and
 - (iii) equipment acquired, altered or installed,as a result of the application of the financial assistance or of the financial assistance and other money.
- (5) Financial assistance is not payable under sub-section (1) after 30 June 1992.

Financial assistance for upgrading of prescribed services

14. (1) Where an eligible organisation is providing a service that is a prescribed service for persons included in the target group, the Minister may, subject to sub-sections (3) and (6), approve the making of a grant of financial assistance to the eligible organisation in order to enable the eligible organisation to take the steps necessary to become eligible for a grant of financial assistance under section 10 in relation to the provision of the service.

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(2) Without limiting the generality of sub-section (1), the Minister may, under that sub-section, approve the making, in relation to an eligible organisation, of a grant with respect to any of the following:

- (a) recurrent expenditure incurred or to be incurred;
- (b) the cost of—
 - (i) acquiring land (with or without buildings);
 - (ii) acquiring, erecting, altering or extending buildings;
 - (iii) acquiring, altering or installing equipment.

(3) The Minister shall not approve the making of a grant under sub-section (1) unless the Minister is satisfied that the making of the grant would—

- (a) further the objects of this Act set out in section 3 and the principles and objectives formulated under section 5; and
- (b) comply with the guidelines formulated under section 5 that are applicable to the making of grants under sub-section (1) of this section.

(4) Where the Minister approves the making of a grant of financial assistance to an eligible organisation under sub-section (1), the Minister shall, subject to sub-section (6) and the regulations—

- (a) determine the amount of the financial assistance or the manner in which the amount of the financial assistance is to be calculated;
- (b) determine the time or times at which, and the instalments (if any) in which, the financial assistance is to be paid; and
- (c) specify the terms and conditions on which the financial assistance is granted.

(5) Without limiting the generality of paragraph (4) (c), the terms and conditions that may be specified pursuant to that paragraph include terms and conditions with respect to—

- (a) the purposes for which the financial assistance may be applied;
- (b) the amounts to be applied by the eligible organisation for those purposes or any other purpose, and the source of amounts to be so applied;
- (c) the furnishing of information;
- (d) the provision of certificates with respect to the fulfillment of terms and conditions;
- (e) the repayment of financial assistance;
- (f) the giving of security for the fulfillment of terms and conditions; and
- (g) the use and disposal of, and the recovery of amounts that under the terms and conditions are to be taken as representing the Commonwealth's interest in—
 - (i) land acquired (with or without buildings);
 - (ii) buildings acquired, erected, altered or extended; and

(iii) equipment acquired, altered or installed,
as a result of the application of the financial assistance or of the
financial assistance and other money.

(6) Financial assistance is not payable under sub-section (1) after
30 June 1992.

Division 4—Miscellaneous

Agreements with respect to terms and conditions of grants

15. (1) Where the Minister approves the making of a grant of financial assistance to a person under this Part, the financial assistance is not payable to the person unless the person enters into an agreement with the Minister containing the same terms and conditions as those on which the financial assistance was granted.

(2) Where—

- (a) the Minister, with the consent of a person, varies the terms and conditions on which financial assistance was granted to the person under this Part; and
- (b) the person has previously entered into an agreement with the Minister containing those terms and conditions,

the agreement shall be taken to be varied accordingly.

(3) In this section, “person” includes an eligible organisation, but does not include a State.

Agreements may be entered into with transferees of land, &c.

16. (1) Where—

(a) either of the following sub-paragraphs apply—

- (i) a grant of financial assistance to a person under this Part has been made on terms and conditions with respect to the use or disposal of any land, building or equipment;
- (ii) a person has entered into an agreement under this sub-section under which the person is required to comply with terms and conditions with respect to the use or disposal of any land, building or equipment; and

(b) the person has transferred, or proposes to transfer, the whole or a part of the person’s interest in the land, building or equipment to another person,

the Minister may enter into an agreement with the other person under which the other person is required to comply, or will, upon the transfer being effected, be required to comply, with terms and conditions, whether with respect to the use or disposal of the land, building or equipment or otherwise.

(2) In sub-section (1), “person” includes a State or eligible organisation.

PART III—PROVISION OF REHABILITATION SERVICES BY THE COMMONWEALTH

Division 1—General

Interpretation

17. In this Part—

“rehabilitation allowance” means a rehabilitation allowance under Part VIII of the *Social Security Act 1947*;

“rehabilitation program” means a rehabilitation program under this Part, and, except in section 20, includes a follow-up program under this Part;

“unsupported”, in relation to the paid employment of a person, means unsupported by services provided to assist persons with disabilities to retain paid employment.

Target group

18. The target group for the purposes of this Part consists of persons who—

(a) have attained 14 years of age but have not attained 65 years of age; and

(b) have a disability that—

(i) is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of such impairments; and

(ii) results in a substantially reduced capacity of the person—

(A) to obtain or retain unsupported paid employment; or

(B) to live independently.

Exercise of powers

19. The Secretary shall not exercise a power conferred by sub-section 20 (1) or 22 (3) or section 24 unless the Secretary is satisfied that the exercise of the power would—

(a) further the objects of this Act set out in section 3 and the principles and objectives formulated under section 5; and

(b) comply with the guidelines formulated under section 5 that are applicable to the exercise of the power.

Division 2—Rehabilitation Services

Provision of rehabilitation programs

20. (1) Subject to section 21, where the Secretary is satisfied that the provision of a rehabilitation program for a person in the target group would result in a substantially increased capacity of the person—

(a) to obtain or retain paid employment (whether or not the employment would be unsupported); or

(b) to live independently,

the Secretary may, on behalf of the Commonwealth, approve the provision of the rehabilitation program for the person, together with any follow-up program that the Secretary considers necessary or desirable.

(2) The Secretary may, for the purpose of determining whether the provision of a rehabilitation program (including any follow-up program) for a person should be approved under sub-section (1), on behalf of the Commonwealth, take such measures, and enter into such arrangements, as the Secretary considers necessary or desirable.

(3) Without limiting the generality of sub-section (2), the Secretary may, for the purpose referred to in that sub-section, provide, or arrange for the provision of—

- (a) diagnostic and assessment services; and
- (b) accommodation, transportation and personal support services.

(4) Where the Secretary approves the provision of a rehabilitation program (including any follow-up program) for a person, the Secretary may, on behalf of the Commonwealth, take such measures, and enter into such arrangements, as the Secretary considers necessary or desirable to ensure that the rehabilitation program is provided for the person.

(5) Without limiting the generality of sub-section (4), the Secretary may, for the purposes of a rehabilitation program (including any follow-up program), provide, or arrange for the provision of—

- (a) employment and vocational training, educational courses and programs, and mobility and other independent living training;
- (b) diagnostic and assessment services, medical services, occupational therapy, physiotherapy, speech therapy, and counselling and social work services;
- (c) accommodation, transportation and personal support services;
- (d) prostheses and aids, including—
 - (i) home and work-place modifications;
 - (ii) modifications to vehicles, appliances and equipment; and
 - (iii) wheelchairs, guide dogs and hearing aids;
- (e) the maintenance and repair of prostheses and aids;
- (f) books, tools of trade and other equipment and appliances; and
- (g) any other goods and services the Secretary considers necessary or desirable.

(6) The Secretary may, on behalf of the Commonwealth, in connection with the provision of rehabilitation programs (including follow-up programs), provide, or arrange for the provision of, such buildings, plant, equipment, amenities, facilities and other things as the Secretary considers necessary or desirable, including, without limiting the generality of the foregoing, accommodation, transportation, and recreational, leisure and social amenities and facilities.

Restriction of rehabilitation programs to Australian citizens, &c.

21. A rehabilitation program shall not be provided for a person unless the person is—

- (a) an Australian citizen; or
- (b) a person resident in Australia whose continued presence in Australia is not subject to a limitation as to time imposed by or under a law of the Commonwealth.

Cost of rehabilitation programs

22. (1) The cost of and incidental to—

- (a) a rehabilitation program provided for a pensioner or beneficiary; and
- (b) determining whether the provision of a rehabilitation program for a pensioner or beneficiary should be approved under sub-section 20 (1),

shall be borne by the Commonwealth.

(2) Subject to sub-section (3), the cost, as determined by the Secretary, of and incidental to—

- (a) a rehabilitation program provided for a person who is not a pensioner or beneficiary; and
- (b) determining whether the provision of a rehabilitation program for a person who is not a pensioner or beneficiary should be approved under sub-section 20 (1),

shall be borne by the person.

(3) The Secretary may direct—

- (a) that sub-section (2) does not apply; or
- (b) that sub-section (2) does not apply in relation to—
 - (i) specified costs; or
 - (ii) a specified part of the cost referred to in that sub-section,

in relation to a specified person, or persons included in a specified class of persons, and, where the Secretary so directs, any cost that by virtue of the direction is not to be borne by that person or those persons shall be borne by the Commonwealth.

(4) In this section, “pensioner or beneficiary” means a person who—

- (a) is qualified or eligible to receive—
 - (i) a pension under Part III or Part IV of the *Social Security Act 1947*;
 - (ii) a benefit under Part IVAAA or VII of that Act; or
 - (iii) an allowance under Part VIIA or VIII of that Act; or
- (b) is eligible to receive a service pension, a wife’s service pension or a carer’s service pension under Part III of the *Veterans’ Entitlements Act 1986*.

Division 3—Miscellaneous

Recovery of costs of rehabilitation programs borne by the Commonwealth

23. (1) In this section—

“compensation”, in relation to a person who has undertaken, or is undertaking, a rehabilitation program, means any payment by way of compensation or damages, or that is, in the opinion of the Secretary, in the nature of compensation or damages, in respect of the disability by reason of which the rehabilitation program has been or is being provided, but does not include a payment for which the person has made contributions or a payment made under a law, or a provision of a law, of the Commonwealth, or a State or Territory, being a law or provision prescribed for the purposes of this definition;

“cost”, in relation to a person’s rehabilitation program, means the cost, as determined by the Secretary, of and incidental to the program, and includes—

(a) any allowances paid to the person under section 24; and

(b) any allowances paid to the person under sub-section 48 (3) or 49C (3) of the *Defence (Re-establishment) Act 1965*,

but does not include any part of the cost that is not borne by the Commonwealth.

(2) Where—

(a) a person who is undertaking, or has undertaken, a rehabilitation program recovers or receives compensation from another person; or

(b) the Secretary, by notice in writing served on a person who is undertaking, or has undertaken, a rehabilitation program, notifies the person that the person is, in the opinion of the Secretary, entitled to recover or receive compensation from another person,

the person who is undertaking, or has undertaken, the rehabilitation program is, subject to sub-section (3) and notwithstanding section 22, liable to pay to the Commonwealth an amount equal to the cost of the rehabilitation program.

(3) Where the Secretary is satisfied that special circumstances exist by reason of which a person liable under sub-section (2) to pay an amount to the Commonwealth should be released in whole or in part from that liability, the Secretary may release the person accordingly.

(4) Where the Secretary is satisfied that special circumstances exist by reason of which the whole or a part of an amount paid to, or recovered by, the Commonwealth under this section by or from a person who is undertaking, or has undertaken, a rehabilitation program should be refunded to the person, the Secretary may make a refund accordingly.

(5) The Secretary may, by notice in writing served on a person (in this section referred to as the “person liable to pay compensation”) liable to pay

compensation to or on behalf of another person (in this section referred to as the "person entitled to receive compensation") who is undertaking, or has undertaken, a rehabilitation program, inform the person liable to pay compensation that the Secretary proposes to recover from the person liable to pay compensation the cost of the rehabilitation program.

(6) The Secretary may, in the same notice or in a subsequent notice in writing served on the person liable to pay compensation, specify—

- (a) the cost of the rehabilitation program provided, or being provided, to the person entitled to receive compensation; and
- (b) an amount (not exceeding the amount of that cost) payment of which is claimed by the Secretary,

and thereupon the person liable to pay compensation is liable to pay to the Commonwealth—

- (c) the amount so specified; or
- (d) the amount of the compensation (less any amounts paid, in accordance with an approval given under sub-section (7), to the person entitled to receive compensation by the person liable to pay compensation),

whichever is the lesser amount.

(7) After the service on a person of a notice under sub-section (5), the person shall not, except with the approval of the Secretary and in accordance with that approval, pay an amount of compensation to or on behalf of the person entitled to receive compensation until the Secretary has specified under sub-section (6) the amount that the person liable to pay compensation is liable to pay to the Commonwealth.

(8) Payment of an amount to the Commonwealth under sub-section (6) shall, to the extent of the payment, operate as a discharge to the person liable to pay compensation against the person entitled to receive compensation.

(9) Where the Secretary is satisfied that special circumstances exist by reason of which the whole or a part of an amount paid to, or recovered by, the Commonwealth by or from the person liable to pay compensation should be paid to the person entitled to receive compensation, the Secretary may make a payment accordingly.

(10) This section binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

(11) This section has effect, in relation to the Commonwealth or an authority of the Commonwealth, notwithstanding the provisions of any other Act.

(12) Any amount that a person is liable to pay to the Commonwealth under this section may be recovered in a court of competent jurisdiction as debt due to the Commonwealth, but the Commonwealth is not entitled to

recover the cost of a rehabilitation program that is being undertaken, or has been undertaken, by a person from both—

- (a) the person who is undertaking, or has undertaken, the rehabilitation program; and
- (b) a person liable to pay compensation to or on behalf of the person who is undertaking, or has undertaken, the rehabilitation program.

(13) A reference in sub-section (5) or (12) to a person liable to pay compensation includes a reference to an insurer who, under a contract of insurance, is liable to indemnify the person liable to pay the compensation against such liability.

Training allowance and living-away-from-home allowance

24. (1) Where a person is undertaking a rehabilitation program that consists of, or includes, employment or vocational training, the Secretary may, whether or not the person is also receiving a rehabilitation allowance, approve payment of a training allowance to the person.

(2) The rate of a training allowance is such amount per week as is, subject to paragraph (3) (a), determined by the Minister.

(3) The Minister—

- (a) shall determine different rates of training allowance for the purposes of sub-section (2) in respect of persons undertaking full-time employment or vocational training and persons undertaking part-time employment or vocational training; and
- (b) may determine different rates of training allowance in respect of different classes of persons having regard to their age.

(4) Where the Secretary is satisfied that a person to whom payment of a training allowance has been approved is required to live away from the person's usual place of residence for the purpose of undertaking employment or vocational training, the Secretary may approve payment to the person of a living-away-from-home allowance, in addition to the training allowance, at the rate determined by the Minister for the purposes of this sub-section.

(5) Allowances under this section are payable from such dates, in respect of such periods, in such instalments and at such times as the Secretary determines.

(6) Sections 135TC and 135TD, sub-section 140 (1) and sections 144 and 146 of the *Social Security Act 1947* apply in relation to allowances under this section as if, in those provisions—

- (a) a reference to an allowance under the *Social Security Act 1947* included a reference to an allowance under this section; and
- (b) a reference to the Secretary were a reference to the Secretary to the Department.

Arrangements for provision of rehabilitation programs

25. (1) The Secretary may enter into an arrangement with a person under which the Secretary may, on behalf of the Commonwealth, provide, or arrange for the provision of, a rehabilitation program for that person or for such person, or persons included in such class of persons, as is specified in the arrangement.

(2) An arrangement under sub-section (1) shall contain provision for the payment to the Commonwealth of the cost, as determined by the Secretary, of and incidental to, the rehabilitation program or rehabilitation programs provided under the arrangement or such part of that cost (if any) as the Secretary, having regard to the circumstances of a particular case, directs.

(3) Section 21 does not apply to the provision of a rehabilitation program pursuant to an arrangement under sub-section (1).

(4) Section 22 does not apply in relation to a person for whom a rehabilitation program is provided pursuant to an arrangement under sub-section (1).

(5) Sections 23 and 24 do not apply in relation to a person for whom a rehabilitation program is provided pursuant to an arrangement under sub-section (1) except in so far as the Secretary otherwise directs.

Review of decisions under Part

26. (1) In this section, "reviewable decision" means a decision (within the meaning of the *Administrative Appeals Tribunal Act 1975*) of the Secretary, or a delegate of the Secretary, under this Part.

(2) A person affected by a reviewable decision who is dissatisfied with the decision may, by notice in writing given to the Secretary within 30 days after the day on which the decision first comes to the notice of the person, or within such further period as the Secretary allows, request the Secretary to reconsider the decision.

(3) There shall be set out in the request the reasons for making the request.

(4) Upon receipt of the request, the Secretary shall reconsider the decision and may affirm or revoke the decision or vary the decision in such manner as the Secretary thinks fit.

(5) Where the Secretary affirms, revokes or varies a decision, the Secretary shall, by notice in writing served on the person who made the request, inform the person of the result of the reconsideration of the decision and the reasons for affirming, revoking or varying the decision, as the case may be.

(6) Applications may be made to the Administrative Appeals Tribunal for review of reviewable decisions that have been affirmed or varied under sub-section (4).

Power to obtain information, &c.

27. (1) Where the Secretary believes on reasonable grounds that a person is capable of furnishing information, producing documents or giving evidence in relation to any matter that might affect, or have affected—

- (a) the payment of an allowance under this Part to the person or any other person; or
- (b) the liability of the person or any other person to pay an amount to the Commonwealth under section 23,

the Secretary may, by notice served on the person, require the person—

- (c) to furnish, within a reasonable period and in a reasonable manner, being a period and manner specified in the notice, any such information to an officer specified in the notice;
- (d) to produce, within a reasonable period and in a reasonable manner, being a period and manner specified in the notice, any such documents to an officer specified in the notice; or
- (e) to appear, at a reasonable time and place specified in the notice, before an officer specified in the notice to give any such evidence, either orally or in writing, and to produce any such documents.

(2) An officer specified in a notice given pursuant to paragraph (1) (e) may require any evidence that is to be given to the officer in compliance with the notice to be given on oath or affirmation, and for that purpose the officer may administer an oath or affirmation.

(3) A person shall not—

- (a) refuse or fail to comply with a notice under sub-section (1) to the extent that the person is capable of complying with it; or
- (b) in purported compliance with such a notice, knowingly furnish information or give evidence that is false or misleading in a material particular.

Penalty: \$1,000 or imprisonment for 6 months.

(4) A person is not excused from furnishing information, producing a document or giving evidence pursuant to a notice under sub-section (1) on the ground that the information or evidence, or the production of the document, may tend to incriminate the person, but any information furnished, document produced or evidence given pursuant to a notice under sub-section (1), and any information or thing (including any document) obtained as a direct or indirect consequence of the furnishing of the information, production of the document or giving of the evidence, as the case may be, is not admissible in evidence against the person in any criminal proceedings, other than proceedings for an offence against sub-section (3).

(5) This section binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

(6) This section does not require a person to furnish information, produce a document or give evidence to the extent that in doing so the person would contravene a law of the Commonwealth.

(7) Nothing contained in any law of a State or Territory shall operate so as to prevent any person from furnishing any information, producing any documents or giving any evidence to an officer pursuant to a notice under sub-section (1).

Secrecy

28. (1) A person shall, if the Secretary so directs, before performing any duties or exercising any powers under this Part, make before a Justice of the Peace or a Commissioner for Declarations a declaration in accordance with a form approved for the purpose by the Secretary.

(2) Subject to sub-section (5), a person shall not, directly or indirectly, except in the performance of duties or exercise of powers under this Part or for the purposes of the administration of the *Social Security Act 1947*, make a record of, or divulge to any person, any information with respect to the affairs of another person acquired by the first-mentioned person in the performance of duties or exercise of powers under this Part.

(3) A person who contravenes sub-section (2) is guilty of an offence against that sub-section.

(4) Subject to sub-section (7), a person shall not, except for the purposes of this Part or the *Social Security Act 1947*, be required—

- (a) to produce in court any document that has come into his or her possession or under his or her control in the performance of duties or exercise of powers under this Part; or
- (b) to divulge to a court any matter or thing that has come to his or her notice in the performance of duties or exercise of powers under this Part.

(5) A person may—

- (a) divulge specified information to such persons as the Secretary directs if the Secretary certifies that it is necessary in the public interest that the information should be so divulged;
- (b) divulge any information to any prescribed authority or person; or
- (c) divulge any information to a person who is expressly or impliedly authorised by the person to whom the information relates to obtain it.

(6) An authority or person to whom information is divulged under sub-section (5), and any person or employee under the control of that authority or person, shall, in respect of that information, be subject to the same rights, privileges, obligations and liabilities under this section as if that authority or person were a person performing duties under this Part and had acquired the information in the performance of those duties.

(7) Where—

- (a) the Secretary certifies that it is necessary in the public interest that specified information should be divulged to a court; or

(b) a person to whom information relates has expressly authorised it to be divulged to a court,

a person may be required—

(c) to produce in court any document containing the information; or

(d) to divulge the information to the court.

(8) In this section, “court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

Offences against secrecy provision indictable offences

29. (1) An offence against sub-section 28 (2) is an indictable offence and, subject to sub-section (3), is punishable on conviction by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years.

(2) Notwithstanding that an offence referred to in sub-section (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

(3) Where, in accordance with sub-section (2), a court of summary jurisdiction convicts a person of an offence against sub-section 28 (2), the penalty that the court may impose is a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months.

Time limit for institution of prosecutions

30. Proceedings for an offence against sub-section 28 (2) may not be commenced more than 3 years after the commission of the offence.

PART IV—MISCELLANEOUS

Principles, &c., to be tabled in the Parliament and disallowable

31. (1) In this section, “disallowable instrument” means—

(a) a principle, objective or guideline formulated under section 5;

(b) an approval given for the purposes of the definition of “research or development activity” in section 7;

(c) an approval given under sub-section 9 (1); and

(d) a determination made by the Minister under section 24.

(2) Sections 48, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply to disallowable instruments as if, in those provisions, references to regulations were references to disallowable instruments, references to a regulation were references to a provision of a disallowable instrument and references to repeal were references to revocation.

(3) Disallowable instruments shall not be taken to be statutory rules within the meaning of the *Statutory Rules Publication Act 1903*, but sub-sections 5 (3) to (3C) (inclusive) of that Act apply to disallowable instruments as they apply to statutory rules.

(4) For the purposes of the application of sub-section 5 (3B) of the *Statutory Rules Publication Act 1903* in accordance with sub-section (3) of this section, the reference in the first-mentioned sub-section to the Minister of State for Sport, Recreation and Tourism shall be read as a reference to the Minister administering this Act.

(5) Section 5 of the *Evidence Act 1905* applies to a disallowable instrument as that section applies to an order made by the Minister.

Principles, &c., to be in writing

32. Any principle, objective, guideline, approval, direction, determination, arrangement or certification formulated, given, made or entered into under this Act shall be formulated, given, made or entered into, as the case may be, in writing.

Delegation by Minister

33. (1) The Minister may, either generally or as otherwise provided in the instrument of delegation, by writing signed by the Minister, delegate to an officer all or any of the powers of the Minister under this Act, other than—

- (a) the power to formulate principles, objectives and guidelines under section 5;
- (b) the power to give approvals for the purposes of the definition of “research or development activity” in section 7;
- (c) the power to give approvals under sub-section 9 (1);
- (d) the power to make determinations under section 24; and
- (e) this power of delegation.

(2) A power delegated under sub-section (1) shall, when exercised by the delegate, be deemed to have been exercised by the Minister.

(3) A delegation of a power by the Minister under sub-section (1) does not prevent the exercise of the power by the Minister.

Delegation by Secretary

34. (1) The Secretary may, either generally or as otherwise provided in the instrument of delegation, by writing signed by the Secretary, delegate to an officer all or any of the powers of the Secretary under this Act, other than this power of delegation.

(2) A power delegated under sub-section (1) shall, when exercised by the delegate, be deemed to have been exercised by the Secretary.

(3) A delegation of a power by the Secretary under sub-section (1) does not prevent the exercise of the power by the Secretary.

Payments to be made out of appropriated money

35. Payments under this Act shall be made out of money appropriated from time to time by the Parliament for the purpose.

Regulations

36. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and, in particular, may make regulations prescribing fines not exceeding \$1,000 for offences against the regulations.

*[Minister's second reading speech—
made in Senate on 12 November 1986
Bill read a second time in House of Representatives
on 26 November 1986]*