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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**EMPLOYMENT AND WORKPLACE RELATIONS LEGISLATION
AMENDMENT (WELFARE TO WORK AND VOCATIONAL
REHABILITATION SERVICES) BILL 2006**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment and Workplace Relations
the Honourable Kevin Andrews MP)

**EMPLOYMENT AND WORKPLACE RELATIONS LEGISLATION
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REHABILITATION SERVICES) BILL 2006**

OUTLINE

A key objective of the Australian Government is to maximise the ability of Australians to find work, particularly those who face the most severe barriers to work, to reduce welfare dependency, to support strong employment growth and the improved productive performance of enterprises in Australia. From 1 July 2006, the Government's Welfare to Work package provided an extra \$192 million for Vocational Rehabilitation Services over the three years to June 2009 to guarantee access to Vocational Rehabilitation Services for all eligible people with new part time activity test or participation requirements when and where they need it. Consistent with the Government's key objectives, this Bill builds on the Welfare to Work reforms, making amendments to the *Disability Services Act 1986* which support the move from 1 July 2007 to a contestable Vocational Rehabilitation Services market. These amendments ensure the continued support and assistance for job seekers to build capacity and find work through employment and related services.

The Bill also makes a number of technical amendments to the social security law and ensures that the Welfare to Work measures which commenced on 1 July 2006 continue to be fairly and consistently applied.

The financial impact of the Bill is minimal.

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NOTES ON CLAUSES

Clause 1 sets out how the Act is to be cited, that is, the *Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Act 2006*.

Clause 2 provides a table that sets out the commencement dates of the various sections to the Act.

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

For ease of description, this explanatory memorandum uses the following abbreviations:

“Disability Services Act” means the *Disability Services Act 1986*

“Social Security Act” means the *Social Security Act 1991*; and

“Administration Act” means the *Social Security (Administration) Act 1999*.

SUMMARY

The amendments made to the Disability Services Act remove the requirement for the provision of individual rehabilitation programs to be approved under that Act. The Secretary's powers to delegate (currently limited to only CRS Australia or the Department) have been broadened. These amendments support the move to a contestable rehabilitation services market from 1 July 2007.

The Bill also amends the social security law and:

- makes technical amendments to the pensioner education supplement and mobility allowance debt calculation provisions;
- reflects changes in terminology replacing the term 'pension period' with 'instalment period' and removing references to the redundant payment of rehabilitation allowance in the New Enterprise Incentive Scheme provisions;
- makes changes to the income test arrangements where a CDEP Scheme payment is payable to (i) reflect the new higher rates payable from 1 July 2006 to certain newstart allowance and youth allowance recipients, and (ii) clarify the way in which income is calculated for some members of a couple;
- allows for financial case management debts to be deducted from social security payments; and
- puts beyond doubt the intended treatment of indexation decisions.

SCHEDULE 1 – AMENDMENTS

EXPLANATION OF CHANGES

Disability Services Act 1986

Item 1 inserts a new definition of Commonwealth employee into section 4 of the Disability Services Act. Commonwealth employee is defined to mean an APS employee or an employee of a body (whether incorporated or not) established for a public purpose by, or under, a law of the Commonwealth. This definition is relevant in the context of who, under section 27 of the Disability Services Act, may require, or be provided with, information in relation to a matter that might affect a payment under Part III of the Disability Services Act or the liability of a person to pay an amount to the Commonwealth under section 23.

Item 2 repeals the current definition of officer and inserts a new definition of officer. An officer means a Commonwealth employee, a person or an employee of such a person who performs services on behalf of the Department under a contract between the person and the Commonwealth. This new definition is relevant for the purposes to whom the Secretary can delegate his or her powers to under Part III of the Disability Services Act. The policy objective of this amendment is to change the current arrangement of CRS Australia and employees of the Department being the only possible delegates of the Secretary under the Disability Services Act. CRS Australia will be a competitor within the Vocational Rehabilitation Services market and it is no longer appropriate that it remains the only non-departmental organisation to whom the Secretary can delegate his powers under Part III of the Disability Services Act.

Item 3 inserts ‘if any’ at paragraph 19(1)(b).

Item 4 repeals and substitutes a new subsection 19(2) and inserts a new subsection 19(3). This amendment reflects changes made to section 20 of the Disability Services Act by Item 5 of this Bill (removing the requirement to have the provision of rehabilitation programs approved). It also provides when the Secretary, under the Disability Services Act, must not enter into arrangements under new subsection 20(1) for the provision of rehabilitation programs for persons in the target group. Under new subsection 19(2) the Secretary must not enter into such arrangements unless:

- the person providing the program holds a current certificate of compliance; or
- there are exceptional circumstances relating to one or more persons in the target group that justify the taking of measures or the entry into the arrangements.

However, subsection 19(3) provides the Secretary with flexibility to enter into an arrangement with a provider of rehabilitation programs despite the provider not holding a current certificate of compliance. This is where the arrangement is for the provision of programs for less than 12 months or the Secretary is of the opinion that the provider is likely to hold a certificate of compliance at the end of the 12 months after the arrangement commences. This amendment is necessary as some new

providers who are successful in tendering for Vocational Rehabilitation Services may not have sufficient time to obtain a certificate of compliance before the commencement of their contract on 1 July 2007. It is consistent with Part II of the Disability Services Act which provides a similar 12 months grace for new Disability Employment Network and Business Services providers to achieve certification.

Item 5 repeals the current section 20 and inserts new subsections 20(1), (2) and (3). The repeal of the current subsection 20(1) removes the requirement that the provision of rehabilitation programs for people in the target group need to be individually approved under the Disability Services Act.

New subsection 20(1) operates so that, subject to section 21 (restriction of rehabilitation programs to Australian citizens), the Secretary may on the Commonwealth's behalf enter into arrangements for the provision of rehabilitation programs or follow up programs that the Secretary considers necessary or desirable. However, as provided for by subsection 19(1) in entering into any arrangements the Secretary must comply with any guidelines that are in place under section 5.

New subsection 20(2) and (3) reflect existing subsections 20(5) and (6) and provide for the types of services that the Secretary has the discretion to provide or arrange to be provided for the purposes of rehabilitation programs or in connection with rehabilitation programs.

Item 6 inserts new subsection 21A(1AA) which provides that paragraph 21A(1)(a) of the Disability Services Act does not apply to the provision of a rehabilitation program if the person is required to undertake a specified activity under the Social Security Act and the activity is or includes a rehabilitation program.

Current section 21A of the Disability Services Act requires the provision of a vocational rehabilitation program to cease where a person requests this in writing. This applies to all program participants, including job seekers with participation requirements under the Social Security Act.

Under the Welfare to Work changes that commenced on 1 July 2006, some people will have compulsory requirements to participate in an employment service, including a vocational rehabilitation service program based on a Job Capacity Assessment or other assessment.

This provision makes it clear that volunteers such as people receiving disability support pension can still choose to end their participation in a vocational rehabilitation program.

Item 7 provides the application provision for Item 6 with the effect that the amendment to section 21A will apply to any rehabilitation program being provided at the time of the commencement of the Item (being Royal Assent) or subsequent to the commencement of the Item.

Item 8 and 9 make amendments to section 22 as a consequence of the provision of rehabilitation programs no longer needing to be individually approved under the Disability Services Act.

Item 10 provides a savings provision in relation to decisions about costs of programs made prior to 1 July 2007. These decisions will continue to be effective after the changes to section 22 made by this Bill.

Items 11 to 14 amend section 27 to remove the current reference to officer, replacing the references with the new definition of Commonwealth employee. This means that information under section 27 can be requested by, and provided to, a Commonwealth employee as is defined in section 4 (see Item 1).

Item 15 has the effect of ensuring that other amendments made by the Bill do not impact on any of the powers that the Minister may or may not delegate.

Item 16 repeals the current section 34 which deals with the Secretary's ability to delegate his or her powers and substitutes new subsections 34(1) and (2). Subsection 34(1) provides that the Secretary may delegate his or her powers under Part III to an officer as defined in section 4 (see Item 2); and any other powers under the Disability Services Act (other than approvals under subsection 6B(1)) to an APS employee in the Department.

The effect of this amendment is that the Secretary may delegate under Part III his or her powers more broadly than what is currently provided for under the Disability Services Act.(see Item 2). However, subsection (2) ensures that in exercising powers under the delegation, the delegate must comply with any directions of the Secretary. The ability to delegate powers other than those under Part III is not changed. Current subsections (2) and (3) are not replaced in new section 34 because these are effectively dealt with through the *Acts Interpretation Act 1901*.

Item 17 provides a limited time override rule for the purposes of making Guidelines under section 5 of the Disability Services Act that relate to Part III. Currently, section 5 requires any Guidelines to be tabled in Parliament, followed by 15 sitting days, before they will take effect. This amendment allows for the Guidelines to take effect in accordance with the *Legislative Instruments Act 2003* (upon registration with the Federal Register of Legislative Instruments). The Guidelines would still be subject to disallowance by Parliament in accordance with the rules applying to other legislative instruments. The limited override only applies between Royal Assent of the Act and 1 July 2007. This is required because the Guidelines are intended to be remade to reflect amendments made by this Bill and should also commence on 1 July 2007, consistent with the commencement of Vocational Rehabilitation Services contestability and the amendments to the Disability Services Act. Without the limited override, the Guidelines may otherwise have a commencement date later than 1 July 2007.

Social Security Act 1991

Item 18 makes a technical amendment to note 1 in subsection 1061A(1) to refer to Division 3 of Part 2.21 rather than referring to repealed 1047A.

Under Welfare to Work some people who move from disability support pension (DSP) or parenting payment to newstart allowance or youth allowance are able to retain their pensioner education supplement until they complete their current course of study.

Items 21 and 28 make it clear that people who claimed DSP between 11 May 2005 and 30 June 2006 who were qualified for the pensioner education supplement and who move to newstart or youth allowance, will only be able to continue to access the pensioner education supplement, if they no longer qualified for DSP as a result of their first DSP review after 1 July 2006. **Items 19, 20, 22 to 27 and 29 to 32** make technical amendments to the pensioner education supplement provisions for both DSP and parenting payment recipients who move to newstart or youth allowance to ensure that the provisions operate in accordance with intended policy.

The changes made by **Items 33, 34, 37, 38, 40, 41 and 42** reflect changed terminology in the social security law. As social security payments are now made in respect of 'instalment periods', the term 'pension period' is omitted from section 1187 and the term 'instalment period' is substituted.

Items 35, 36 and 39 make technical amendments including the repeal of subparagraphs 1187(1A)(a)(vi) and (2)(a)(ii) removing the reference in these provisions to rehabilitation allowance. Rehabilitation allowance is no longer a payment available under the Social Security Act. Similarly, **Item 43** repeals subsection 1187(3) as this subsection operates on the basis of rehabilitation allowance being paid.

The change made by **Item 44** ensures that the income test is correctly applied in situations involving members of a couple where a CDEP Scheme payment is payable to one member of the couple while their partner is receiving a social security payment. Currently, paragraph 118C(3)(e) treats the CDEP Scheme payment as part of the ordinary income of the partner of the person who is actually receiving the payment. The amendment made by Item 44 correctly treats the payment as part of the ordinary income of the person to whom the CDEP Scheme payment is payable for the purposes of calculating the rate of the other partner's social security payment.

Stated broadly, section 1188C is concerned with the effect of receiving CDEP Scheme payments where the person (or the person's partner) is also receiving a social security payment. One element relevant to that consideration is working out the person's 'threshold'. This is the purpose of the Table in subsection 1188C(5). For the purposes of identifying the correct threshold, the Table refers to certain characteristics of the person (eg not a member of a couple) and on that basis then refers the reader to appropriate sections in the relevant rate calculators. Under the Welfare to Work

changes, a person can be granted an exemption from the activity test under 602C(3) or (3A) (for newstart allowance purposes) and 542FA(3) or (3A) (for youth allowance purposes). Where such a determination is made, the rate calculators provide for a higher rate of payment. The changes made by **Items 45** and **46** ensure that the Table in subsection 1188C(5) sets the correct threshold for people who are the subject of a determination under the provisions referred to above.

Item 47 has the effect of removing a redundant note at subsection 1224D(1) but retaining the note flagging that interest may be payable if a person has a debt. **Item 48** inserts a new subsection 1224D(3) to make a technical amendment in the advance payment period definition relevant for mobility allowance advances. This definition is relevant in the calculation of advance payment of mobility allowance debts. The note at this new subsection makes it clear that any reduction in the advance payment period that would have occurred under section 1044A (because of a person qualifying for a higher rate of mobility allowance during a standard rate advance period) is not to be taken into account for the purposes of the definition. **Item 49** provides for an application provision of Item 48.

Item 50 amends section 1228 adding a new subsection 1228(3). This provides that if an amount is paid under the scheme administered by the Commonwealth known as Financial Case Management to, or for the benefit of a person, and the amount should not have been made and the person is receiving a social security payment then the amount is an overpayment that is recoverable through deductions of the person's social security payments. Financial case management is a process that assists eligible job seekers with the payment of essential expenses up to the level of income support they would otherwise have received while they are serving an eight-week non-payment period imposed under the Social Security Act.

However, where a person has received Financial Case Management assistance and was not entitled to it - for example because they had undeclared income or, following a successful appeal, they subsequently received income support payments for the period in which assistance was provided - it is appropriate that the value of any assistance provided under the scheme is recovered by the Commonwealth from the job seeker.

Section 1231 sets out the ways in which deductions may be made from a person's social security payment and **Item 51** makes an amendment to this section by including a reference to new subsection 1228(3) so it applies to this new subsection.

Item 52 provides an application provision to the amendments made by Items 50 and 51. The application provision has the effect that Items 50 and 51 apply to any payments of Financial Case Management assistance and to any social security payments made after Royal Assent.

Social Security (Administration) Act 1999

The social security law allows for a recipient's social security payment to be indexed or adjusted by the operation of Part 3.16 of the 1991 Act. These adjustments are made

automatically. However, given the large volume of social security law recipients affected by such determinations to adjust or index their payment, and the fact that the Government routinely issues media releases announcing the new rates, no individual notice of these determinations is sent.

The decision not to issue a notice in this regard is consistent with subparagraph 27A(2)(c)(ii) of the *Administrative Appeals Tribunal Act 1975*. The effect of the amendment at **Item 53** is to deem a social security recipient to have been given a notice informing them of the decision to increase their rate in line with indexation. Notification of this determination is taken to have been given on the day on which the amount was indexed or adjusted.

Item 54 provides the application provision to the amendment made by Item 53.