

Act 1993 No. 3

DISABILITY SERVICES BILL 1993*

NEWSOUTHWALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

By an agreement entered into on 30 July 1991 between the Commonwealth and each of the States and Territories, the State has undertaken to develop disability services programs in accordance with the requirements of that agreement and to enact legislation complementary to the Disability Services Act 1986 of the Commonwealth so as to enable those requirements to be met.

In general terms, the agreement allocates the administrative responsibility for certain services (principally in relation to the vocational training and employment of persons with disabilities) to the Commonwealth and for certain other services (principally in relation to accommodation support, respite care, independent living training, recreation and information) to the States and Territories. The agreement also provides the basis on which these services are to be funded, involving payments from the Commonwealth to the States and Territories.

The objects of this Bill are:

- (a) to require the Minister to ensure that the provision to persons with disabilities of designated services (that is, services that are provided or funded by the Minister and that are prescribed by regulations under the proposed Act as being designated services) is carried out in a manner that conforms with the objects of the proposed Act and the principles and applications of principles set out in Schedule 1 to the proposed Act; and
- (b) to declare that the Minister is to have the function of facilitating the provision of designated services to persons with disabilities; and
- (c) to enable the Minister to approve the provision of financial assistance with respect to the provision of designated services to persons with disabilities and the conduct of certain kinds of research and development; and

* Amended in committee—see table at end of volume.

- (d) to require recipients of financial assistance to enter into performance agreements with the Minister with respect to the designated services to be provided by them as a result of their receiving financial assistance; and
- (e) to ensure that periodic reviews are carried out in relation to the provision of designated services to persons with disabilities as a result of the granting of financial assistance under the proposed Act; and
- (f) to require public authorities to prepare and publish plans for their services to further the principles and applications of principles set out in Schedule 1 to the proposed Act; and
- (g) to enact other provisions of a minor, consequential or ancillary nature; and
- (h) to make consequential amendments to other Acts.

PART—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 specifies the objects of the proposed Act and requires the proposed Act to be construed and administered in accordance with them. These objects are a specific head of consideration under proposed sections 6 and 10.

Clause 4 defines certain expressions (including "approved research or development activity", "designated service", "eligible organisation", "financial assistance" and "service") for the purposes of the proposed Act.

Clause 5 specifies the target group for the purposes of the proposed Act. A person belongs to the target group if the person has a disability (however arising and whether or not of a chronic episodic nature):

- (a) that is attributable to an intellectual, psychiatric, sensory, physical or like impairment or to a combination of such impairments; and
- (b) that is permanent or is likely to be permanent; and
- (c) that results in:
 - a significantly reduced capacity in one or more major life activities such as communication, learning, mobility, decision-making or self-care; and
 - the need for support, whether or not of an ongoing nature.

A temporary patient, continued treatment patient or forensic patient or similar person, within the meaning of the Mental Health Act 1990, is in the target group only if the services provided conform with that Act.

A service is taken to be provided for persons in the target group only if it is provided predominantly for persons in the target group.

PART2—DISABILITY SERVICES

Division 1—General

Clause 6 provides that it is the duty of the Minister to ensure that designated services that are provided to persons in the target group, either directly or indirectly, are provided in conformity with the objects of the proposed Act and the principles and applications of principles set out in Schedule 1 to the proposed Act.

Clause 7 allows this duty to be modified in relation to designated services being provided before the commencement of the proposed Act. The modification is to accord with a transition plan prepared by or at the direction of the Minister and has effect for a limited period.

Clause 8 provides that the Minister has the function of facilitating the provision of designated services to persons in the target group and that this function may be exercised by the provision of designated services (either directly or indirectly), by the provision of financial assistance or by the encouragement of the provision of designated services by other persons.

Clause 9 requires public authorities to prepare and publish plans for their services to further the principles and applications of principles set out in Schedule 1 to the proposed Act.

Division 2—Financial assistance

Clause 10 enables the Minister to approve the provision of financial assistance to:

- (a) a person in the target group; or
- (b) a person providing direct care or support to a person in the target group; or
- (c) an eligible organisation providing designated services to persons in the target group; or
- (d) a person conducting an approved research or development activity.

Approval is not to be given unless the making of such a grant would conform with the objects of the proposed Act and the principles and applications of principles set out in Schedule 1 to the proposed Act.

Clause 11 requires the Minister, when approving the provision of financial assistance, to determine the amount of the assistance, its manner of payment and the terms and conditions on which it is to be provided.

Clause 12 specifies the matters to be dealt with in the terms and conditions on which financial assistance may be provided to an eligible organisation in relation to the provision of designated services.

Clause 13 specifies the matters to be dealt with in the terms and conditions on which financial assistance may be provided to a person in relation to the conduct of an approved research or development activity.

Clause 14 provides that financial assistance to be paid in instalments is to be fully paid within 5 years of the relevant approval.

Clause 15 requires the Minister to ensure that a review is conducted at least every 3 years of the extent to which eligible organisations that have received financial assistance have complied with the terms and conditions on which the assistance was provided.

Clause 16 provides for the termination of future instalments of approved financial assistance. Future instalments payable to a person or an eligible organisation are not to be terminated unless the person or organisation has been notified of the proposed termination (including reasons) and has been given an opportunity to make submissions with respect to the proposed termination and unless the Minister has taken those submissions into consideration.

Clause 17 provides that financial assistance is not payable unless the proposed recipient enters into an agreement with the Minister on the same terms and conditions as those on which the granting of the assistance was approved.

Clause 18 enables the Minister to enter into an agreement with the transferee of certain land, buildings or equipment (that is, land, buildings or equipment the subject of an agreement under proposed section 17 containing terms and conditions with respect to their use or disposal) under which the transferee undertakes to observe similar terms and conditions.

Clause 19 requires payments of financial assistance to be made from funds appropriated by Parliament. The clause further provides that nothing in the proposed Act requires financial assistance to be paid otherwise than from funds available to the Minister and, in particular, that nothing in the clause operates so as to appropriate money for the purpose of enabling such a payment to be made.

Division 3—Appeals

Clause 20 specifies the grounds on which appeals may be made concerning the administration of the proposed Act. An appeal is to lie to the community Welfare Appeals Tribunal. After the constitution of the Community Services Appeals Tribunal by the proposed Community Services (Complaints, Appeals and Monitoring) Act 1993 appeals will be made to the Community Services Tribunal.

PART B—MISCELLANEOUS

Clause 21 provides that notices etc. required by or under the terms and conditions of financial assistance under the proposed Act are to be written in other languages where appropriate.

Clause 22 creates an offence (punishable by a fine of up to 10 penalty units (\$1,000)). of making false or misleading statements in or in connection with an application for financial assistance.

Clause 23 provides that proceedings for an offence against the proposed Act or the regulations under the proposed Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Clause 24 provides that the proposed Act is to bind the Crown.

Clause 25 provides that nothing in proposed section 3 (Objects) or Schedule 1 (Principles and applications of principles) (nor in the application of those provisions by proposed section 6 etc.) gives rise to, or affects any civil cause of action. However, the clause does not affect consideration of those provisions on an appeal under proposed section 20.

Clause 26 enables the Governor to make regulations for the purposes of the proposed Act. The regulations will be able to create offences punishable by a fine of up to 10 penalty units (\$1,000).

Clause 27 repeals a regulation in force with respect to provisions of the Disability Services and Guardianship Act 1987 as a consequence of amendments made to that Act by Schedule 2.

Clause 28 gives effect to the Schedule of amendments of other Acts.

Clause 29 requires the Minister to review the proposed Act for the purpose of determining the ongoing validity of the Act's policy objectives. The review is to be carried out within 5 years after the date of assent to the Act and a report on the outcome of the review is to be tabled in Parliament within 12 months after the end of that 5 year period.

SCHEDULE 1—PRINCIPLES AND APPLICATIONS OF PRINCIPLES

SCHEDULE 2—AMENDMENT OF OTHER ACTS

Amendments are made to the Community Welfare Act 1987 so as to require the Minister to comply with the requirements of Division 2 of Part 2 of the proposed Act when providing financial assistance under the Community Welfare Act 1987 to people in the target pup. Consequential changes are also made in relation to the Community Welfare Appeals Tribunal.

Amendments are made to the Disability Services and Guardianship Act 1987 so as to vary the long and short titles to that Act and so as to repeal Part 2 of that Act relating to disability services.

Amendments are made to the Home Care Service Act 1988 so as to require the Home Care Service to comply with Division 2 of Part 2 of the proposed Act when providing financial assistance under the Home Service Act 1988 to people in the target group
