

*Department of the
Parliamentary Library*



INFORMATION AND RESEARCH SERVICES

Bills Digest

No. 54 2001–02

Disability Services Amendment (Improved Quality Assurance) Bill 2001

ISSN 1328-8091

© Copyright Commonwealth of Australia 2001

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of the Parliamentary Library, other than by Senators and Members of the Australian Parliament in the course of their official duties.

This paper has been prepared for general distribution to Senators and Members of the Australian Parliament. While great care is taken to ensure that the paper is accurate and balanced, the paper is written using information publicly available at the time of production. The views expressed are those of the author and should not be attributed to the Information and Research Services (IRS). Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion. Readers are reminded that the paper is not an official parliamentary or Australian government document. IRS staff are available to discuss the paper's contents with Senators and Members and their staff but not with members of the public.

Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2646.

Information and Research Services publications are available on the ParlInfo database.

On the Internet the Department of the Parliamentary Library can be found at:

<http://www.aph.gov.au/library/>

Published by the Department of the Parliamentary Library, 2001

I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

Bills Digest
No. 54 2000–01

Disability Services Amendment (Improved Quality Assurance) Bill 2001

Mary Anne Neilsen
Law and Bills Digest Group
17 September 2001

Contents

Purpose	1
Background	1
Disability Quality and Standards Working Party.	2
Disability Services Amendment (Improved Quality Assurance) Bill 2001	3
Financial impact.	4
Main Provisions	4
Employment services	4
Eligible, transitional and prescribed services	5
Standards.	5
Accreditation and certification	6
Grants for employment services	7
Failure to meet standards	10
Delegation by Minister.	10
Endnotes.	10

Disability Services Amendment (Improved Quality Assurance) Bill 2001

Date Introduced: 23 August 2001

House: Senate

Portfolio: Family and Community Services

Commencement: 1 January 2002 apart from sections 1-3 which commence on Royal Assent.

Purpose

The Bill amends the *Disability Services Act 1986* in order to establish a new quality assurance system in relation to disability employment services and rehabilitation programs.

Background

The Department of Family and Community Services (FaCS) has programs that provide employment support for people with disabilities through either open or supported employment services. These services are mainly charitable, non-profit agencies that are contracted by FaCS to provide employment support. FaCS currently funds 435 organisations to provide more than 870 specialist employment services, which are used by 49,285 people with disabilities. \$279 million has been allocated to these programs in 2000–2001.¹ FaCS also provides vocational rehabilitation through 160 Commonwealth Rehabilitation Service Australia outlets at a cost of \$101.9 million (2000–2001).²

These disability employment and rehabilitation providers are funded under the *Disability Services Act 1986*. That Act came into operation in 1987 with one of its objects being to assist persons with disabilities to achieve positive outcomes, such as increased independence, employment opportunities and integration in the community.³

In 1993, the then Labour Government introduced the Disability Services Standards with the intention of improving the standard of services being offered. These standards set out eleven areas of service quality that consumers are entitled to expect. They include service access; privacy, dignity and confidentiality; employment conditions; employment support; and employment skills & development.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

These Disability Services Standards were introduced with a new legislative regime that recognises three levels of performance against them - minimum, enhanced and eligible levels. The intention being that services should improve through the three tiers and reach the eligibility classification level.

Monitoring of service quality against the Disability Services Standards is required under Section 14K of the Disability Services Act. It involves an annual self-assessment process undertaken by each service and a five yearly audit by FaCS to measure compliance against the standards.

According to the Explanatory Memorandum to the Bill, this process of improvement has met with limited success and many of the supported employment services have not made the expected improvements to meet the highest level of standards. Currently, 39 per cent of funded services meet the Disability Services Standards at the minimum level.⁴

Disability Quality and Standards Working Party

In its 1996/97 Budget, the Government announced its intention to reform the quality assurance process for disability employment assistance services.⁵ A Disability Quality and Standards Working Party was set up to review the current system, its terms of reference being to:

- conduct a review of the Disability Services Standards for continuing suitability
- develop models for quality assurance systems which would provide an objective way of auditing and monitoring standards of service, and
- develop mechanisms for ensuring that people with disabilities are able to participate fully in the quality assurance process.

The Working Party in its report, *Assuring Quality*⁶, recommended amongst other things, that:

- the existing quality assurance system set down in the *Disability Services Act 1986* be replaced
- the existing Disability Services Standards be retained to provide the values base for a new quality assurance system for Commonwealth funded disability employment services, subject to the addition of two new core standards to cover staff recruitment and training and prevention of abuse and neglect
- a transparent accreditation process be introduced as part of the proposed funding reforms to indicate service providers' compliance with the standards and eligibility for funding
- service providers' access to Commonwealth funding be conditional upon achievement of accreditation

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- new independent auditing mechanisms against objective performance indicators be introduced to replace the existing annual self assessment by service providers and five yearly audits by Departmental staff, and
- auditors be independent of the service provider being audited, and skilled in auditing techniques and procedures and the assessment of disability services, have knowledge of people with disabilities in regard to their varying support and communication needs and ways of involving them in the audit process.⁷

The majority view of the Working Party preferred accreditation of service providers to be verified by a generic auditing process without reference to the proposed accreditation and quality body. Under this model, the accreditation and quality body would act as an advisory body, not empowered to grant accreditation. Third party auditors from audit bodies accredited for the AS/NZS ISO 9002: 1994 would conduct audits and verify accreditation.

The Disability Services Amendment (Improved Quality Assurance) Bill 2001 (the Bill) is the Government's response to these recommendations.

Disability Services Amendment (Improved Quality Assurance) Bill 2001

The quality assurance system proposed in the Bill is based on a system of accreditation and certification. It involves the use of skilled audit teams whose competence and impartiality will be monitored by an independent, accreditation agency, the Joint Accreditation System of Australia and New Zealand (JAS-ANZ).

JAS-ANZ is a government entity, a not-for-profit, self-funding organisation, established under Treaty between Australia and New Zealand in 1991. It is the peak accreditation body for the certification of various systems, products and sector-specific schemes.

The certification agencies approved by JAS-ANZ will be responsible for putting together audit teams that will meet the skills and competencies outlined in the *General Criteria and Guidelines for Bodies Operating Assessment and Certification of Disability Employment Services* (Procedure 18 of the JAS-ANZ Auditing Criteria). Each audit team is to include a person with a disability.

Accredited certification agencies will assess disability employment services against the Disability Services Standards.

A service's certification status will, after a transition period of up to three years, be linked to funding, so that after December 2004, only those existing disability employment assistance and rehabilitation services that are certified will receive Commonwealth funding under the Disability Services Act.

During the first six months of 2001, FaCS conducted a trial of this proposed accreditation/certification scheme. It involved certification audits of 22 disability services

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

and accreditation of six potential certification bodies. The Explanatory Memorandum provides more detail of this trial.⁸

Financial impact

The measures in the Bill were announced in the 2001–2002 Budget. Estimated expenditure for the quality assurance measure is \$2.0m in 2001–2002, \$4.7m in 2002–2003, \$5.3m in 2003–2004 and \$5.2 in 2004–2005.⁹

Main Provisions

The Bill establishes a new quality assurance system for disability employment services. It makes funding for the provision of certain services dependent on the service provider holding a certificate of compliance issued by an accredited certification body. This arrangement will apply to those services that are referred to as 'employment services'.

Employment services

Central to the proposed regime is the amended definition of 'employment service'. Currently defined in section 7 as a service that focuses on obtaining paid employment by persons with disabilities, **item 10** adds to this definition to specify that it includes:

- competitive employment training and placement services
- supported employment services
- services that immediately before 1 January 2002 were transitional services or prescribed services, and
- any service that the Minister determines for that purpose under new section 9A.

'Competitive employment training and placement services' are redefined as services assisting persons with disabilities to obtain or retain paid employment (**item 6, section 7**). 'Supported employment services' will continue to be defined as services supporting the paid employment of persons with disabilities (section 7). 'Prescribed services' are essentially services providing or otherwise assisting with, obtaining paid employment for persons with disabilities.¹⁰ 'Transitional services' are defined as being prescribed services working towards meeting the eligibility standards.¹¹

New section 9A gives the Minister a discretionary power to approve an additional class of an employment service if the Minister is satisfied that the provision of services included in that class would further the objects of the Disability Services Act and its principles and objectives, and would comply with the relevant guidelines (**item 20**).

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

As a consequence of the amendments made by **item 10**, 'transitional services' and 'prescribed services' will be subsumed in the definition of employment services. The definitions of 'transitional services' and 'prescribed service' in section 7 are therefore to be repealed by **item 18** and **item 14**, respectively. **Items 19 and 20** also make amendments that are consequential to this new definition of employment services.

Eligible, transitional and prescribed services

Currently, the Disability Services Act provides for the making of grants on the condition that an eligible service is meeting the eligibility standards, a transitional service is meeting the enhanced standards and a prescribed service is meeting the minimum standards. The standards for these different levels of services are determined by the Minister under section 9C.

As 'transitional services' and 'prescribed services' are to be subsumed into the definition of employment services¹², the provisions dealing with transitional and prescribed standards become obsolete. Consequently, **item 11** repeals the definition of 'enhanced standards' and **item 12** repeals the definition of 'minimum standards'.

The new quality assurance system that proposes to link financial assistance under the Disability Services Act with certification of services will not apply to eligible services. The current assessment system and grant conditions will continue to apply to those services.

The inclusion in the new definition of 'employment service' of two types of services currently defined as eligible services (ie 'competitive employment training and placement services' and 'supported employment services') necessitates a consequential amendment to the definition of 'eligible service'.

Item 9 repeals and replaces the definition of 'eligible service'. The new definition is reduced in scope and includes accommodation support services, advocacy services, independent living training services, information services, print disability services, recreation services, respite services and services included in a class of services approved for that purpose by the Minister under new section 9. It no longer includes any type of employment services.

Standards

The proposed system of funding for disability employment services is to be tied directly to accreditation, and accreditation is to be assessed according to standards determined by the Minister.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Item 1 inserts **new section 5A** which enables the Minister to determine eligible standards,¹³ disability employment standards and rehabilitation program standards. The Minister must also determine key performance indicators to be applied in assessing whether the standards have been met. Determinations made under new section 5A are disallowable instruments (**item 46**).

Items 11 and 12 remove the definitions of enhanced standards and minimum standards as they will have no application under the proposed new scheme.

Item 2 is a saving provision relating to Ministerial determinations of eligibility standards.

Accreditation and certification

Item 3 inserts Part IA into the Disability Services Act. It provides the framework for the new accreditation and certification system for disability employment services and rehabilitation programs.

New section 6A of the Disability Services Act includes definitions relevant to the accreditation and certification process. For example, it includes definitions of certificate of compliance, certifying functions and accreditation.

Under **new section 6B**, the Secretary of FaCS may approve an authority that has the function of granting accreditation to certification bodies. This approval will be dependant on the Secretary being satisfied the authority is internationally recognised as an accreditation body and will perform its functions in an independent and impartial way.

An accrediting authority is defined in section 6A as an authority approved by the Secretary under **new section 6B** for the purpose of granting accreditation to certification bodies. It is intended that the Joint Accreditation System of Australia and New Zealand (JAS-ANZ), will be the approved accrediting authority.

New section 6C deals with granting and withdrawal of accreditation by an accrediting authority (ie JAS-ANZ). Under **new subsection 6C(1)** the functions of an accrediting authority are to assess whether certification bodies will carry out certifying functions competently and impartially and, if so, to grant accreditation to the body. According to the Explanatory Memorandum, the assessment is carried out in accordance with disability auditing criteria established by the accrediting authority and made publicly available.¹⁴

Under **new subsection 6C(2)** an accrediting authority must withdraw accreditation if it is no longer satisfied that an accredited certification body is carrying out its functions competently and impartially.

An accrediting authority must notify the Secretary in writing of any grant or withdrawal of accreditation, and include in the notification, the authority's reasons for its decision (**new subsection 6C(3)**).

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

A certification body is defined as a body that carries out certifying functions. Certifying functions mean assessing whether an employment service or a rehabilitation program meet the relevant standards and giving certificates of compliance where appropriate (**new section 6A**).

New section 6D deals with certification of employment services.

Under **new subsection 6D(1)** if a State (including the Northern Territory) or eligible organisation¹⁵ requests a certificate of compliance, the certification authority, must give the certificate, provided it is satisfied that the particular employment service meets the disability employment standards.

Under **new subsection 6D(2)** a certification body, no longer satisfied that the service meets the disability employment standards, must revoke the certificate. According to the Explanatory Memorandum the certification body will carry out full three-yearly audits and annual surveillance audits to ensure that only services that continue to meet the disability employment standards are certified.¹⁶

A certification authority must notify the Secretary in writing when it grants or revokes a certificate of compliance and include in the notification, the authority's reasons for its decision (**new subsection 6D(2)**)

A certificate of compliance continues until either it is revoked or, if the certification body ceases to be accredited, then until three months after accreditation ceases.

New section 6E establishes a similar framework for certification of rehabilitation programs.

Grants for employment services

Item 21 inserts new Division 2A into Part II of the Disabilities Services Act. The new Division deals with grants for employment services. These are categorised as either 'transitional grants' or 'other than transitional grants'.

New sections 12AA and 12AB relate to approval of transitional grants, that is grants for employment services, approved during a three-year transitional period and receiving funding during the financial year, 2001–2002 under the existing arrangements.

New subsection 12AA(1) specifies when, and in respect of which employment services, an approval may be given for a transitional grant in the period from 1 January 2002 until 31 December 2004. Transitional grants may only be given if the particular employment service had already received a grant, or an instalment of a grant, during the financial year 2001–2002. A transitional grant cannot be approved if:

- at the time when the approval would be made, the State or eligible organisation holds or has held a current certificate of compliance in respect of the service

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- before the approval, the State or organisation had received a grant other than the transitional grant under **new section 12AD**, or
- a transitional grant that the State or organisation was previously receiving was terminated (**new subsection 12AA(2)**).

New section 12AB sets out the conditions that apply to receiving a transitional grant for an employment service. These conditions are as follows:

- The service must be provided for persons in a target group¹⁷
- The Minister must be satisfied that the making of the grant would further the object of the Disability Services Act set out in section 3 and would comply with guidelines formulated under section 5
- The Minister has determined a day by which the State or eligible organisation must obtain a certificate of compliance. That day can be no later than 31 December 2004, and
- The Minister is satisfied that the State or organisation is meeting the applicable standards when the grant for the financial year 2001–2002 was paid

In addition, the State or organisation must comply with the following conditions:

- It must meet the relevant standards during the time before obtaining a certificate of compliance, and
- It must hold the certificate of compliance until the end of the period to which the grant relates (**new subsection 12AB(4)**).

New sections 12AC and 12AD relate to approval of 'other than transitional grants'. Essentially these are grants that are tied to a certificate of compliance.

New section 12AD specifies the circumstances under which approval for the making of such a grant may be made:

- The service must be provided for persons in a target group, and¹⁸
- The Minister must be satisfied that the making of the grant would further the object of the Disability Services Act set out in section 3 and would comply with guidelines formulated under section 5.

In addition, the approval is subject to the State or organisation holding a relevant certificate of compliance or alternatively a stated intention to seek to obtain such a certificate by a day stipulated by the Minister. The date for obtaining the certificate of compliance must be within 12 months of approval of the grant. **New subsection 12AD(4)**

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

authorises the Minister to make determinations regarding the day by which the State or organisation must obtain a certificate of compliance.

If a grant is approved under this section, the State or organisation must hold a current certificate of compliance through out the period to which the grant relates (**new paragraph 12AD(5)(a)**).

New section 12AE sets out the additional conditions that apply to all grants for employment services (ie both 'transitional' and 'other than transitional' grants). It largely replicates the current provisions relating to grants for eligible services (see section 10).

Under **new subsection 12AE(1)** the Minister may approve the making of a grant for an employment service with respect to recurrent expenditure, cost of acquiring land, building cost and cost of equipment.

If the Minister approves a grant under **new sections 12AB or 12AD**, he or she must determine:

- the amount of the grant
- the time at which, and the instalments in which, the grant is to be paid, and
- specify any other terms and conditions of a grant (**new subsection 12AE(2)**).

The Minister must also specify any other terms and conditions of a grant (**new paragraph 12AD(2)(c)**). **New subsection 12AE(3)** provides a list of what those other terms and conditions might be. They include:

- the purposes of the grant
- the amounts to be used for each purpose
- the outcomes to be achieved by persons with disability using the service, and their rights in relation to the provision of the service
- the giving of security for the fulfilment of terms and conditions, and
- the use and disposal of the amounts that represent the Commonwealth's interest in land, buildings and equipment.

Payment of the grant by instalments must be completed within 5 years of approval of the grant (**new subsection 12AE(4)**).

Item 22 repeals sections 12A-14A which relate to grants for prescribed and transitional services. After 1 January 2002 grants for prescribed services and transitional services will be made as part of the arrangements for grants for employment services.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Failure to meet standards

Where a service fails to meet applicable standards under the Act, section 14G enables the Minister to make declarations as to the action to be taken as a result of the failure to comply with the condition.

Item 26 repeals and rewords section 14G to take account of the new system of accreditation. Under **new subsection 14G(1A)** the Minister may make a declaration stating that the State or organisation is not meeting the applicable standards and is breaching the conditions of the grant. The Minister may also specify in the declaration the actions that will be taken as a result of the failure to comply with the standards or failure to hold a certificate of compliance.

Items 27-29 are consequential amendments to **item 26**.

Delegation by Minister

Subsection 33(1) lists the Minister's powers under the Disability Services Act that cannot be delegated. **Items 48 and 49** amend subsection 33(1) to add to this list:

- the power to determine standards and approve key performance indicators under new section 5A, and
- the power to give approvals under new sections 9 and 9A.

Item 50 makes amendments that relate to savings and transitional arrangements for grants of financial assistance approved in this financial year.

Endnotes

- 1 *Explanatory Memorandum*, p. i.
- 2 *ibid.*
- 3 Subparagraph 3(1)(c)(ii).
- 4 *Explanatory Memorandum*, p. i.
- 5 The Hon. Judi Moylan, 'Increase benefits for people with a disability' *Press Release*, 20 August 1996.
- 6 April 1997.
- 7 *Assuring Quality*, para 21.
- 8 *Explanatory Memorandum*, p. xi.
- 9 *ibid.*, p. i.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- 10 Section 7.
- 11 In sections 7 and 9A. Note that **item 20** repeals and replaces section 9A.
- 12 see above at p. 4.
- 13 The power for the Minister to determine eligibility standards is currently found in section 9C. This section is repealed by **item 20** and the power is relocated to new section 5A.
- 14 page 9.
- 15 An eligible organisation is defined in section 7 as a body corporate (non-profit), a State or Territory governing body, a tertiary institution or any other society, association or body approved by the Minister for the purpose of this definition.
- 16 p. 11.
- 17 Target group is defined in section 8 of the Act, as consisting of persons with disability that is attributable to an intellectual, psychiatric, sensory or physical impairment or combinations of such impairments, is permanent or likely to be permanent and results in substantially reduced capacity for communication, learning or mobility and the need for ongoing support services.
- 18 *ibid.*

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.