



Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006

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Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006

Date introduced: 7 December 2006

House: House of Representatives

Portfolio: Employment and Workplace Relations

Commencement: Royal Assent except for items 1–5 and 8–16 of Schedule 1, which commence on 1 July 2007.

Purpose

To amend the *Disability Services Act 1986* to allow for the introduction of a contestable rehabilitation-services market from July 2007, and to make a number of minor changes to the Social Security Law.

Background

Rehabilitation services

The Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005 amended subsection 20(1) of the Disability Services Act 1986 (DSA) so that rehabilitation services could be provided in a much more flexible way than had applied in the past. The old section required rehabilitation to produce a vocational result. The new section provides for rehabilitation to be provided if it would result in the person having a substantially increased capacity to

- obtain or retain paid employment (whether or not the employment would be unsupported), or
- live independently.

The former Commonwealth Rehabilitation Service, now known as CRS Australia, has for a long time used the old prescriptive direction in subsection 20(1) of the DSA to determine the allocation of rehabilitation assistance. This assistance has been targeted at individuals who will realise a vocational outcome by way of rehabilitation. However, this interpretation by the CRS has been quite literal, often providing rehabilitation only where it is assessed that the person would realise a job outcome from rehabilitation alone. This may be very appropriate in cases where the person has a job to return to, or has very current labour-market skills and needs rehabilitation assistance alone to return to work. However, most of the income-support recipients on Disability Support Pension (DSP) (and

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other income-support payments) who have the potential to benefit from rehabilitation, do not have a job to return to or current labour-market skills.

While the CRS was not providing these persons with rehabilitation, they were also missing out on vocational-skills-enhancement processes under various government jobseeker-assistance programs, such as Working Nation and today the Job Network. This was because these persons required rehabilitation before vocational assistance could benefit them. Many people on income-support payments (DSP and other payments) who had a medical condition affecting their work capacity, but who could benefit from rehabilitation and vocational training, fell through the cracks and were left behind.

Private-sector rehabilitation services

The process of opening up the provision of rehabilitation services to the private sector commenced in May 2006 when Minister Stone announced that:

“The Australian Government wants to ensure that people who require work-based rehabilitation have a greater choice of rehabilitation providers to assist them to re-enter the workforce,” Dr Stone said. “From 1 July 2007 work-focussed rehabilitation services for up to 22,000 people will be provided by the private sector through an open tender process,” she said....

“Offering choice in vocational rehabilitation services means individuals will go to the service that best suits them and the resulting competition will promote innovation, resulting in better ways to help people overcome disability and rejoin the workforce as soon as possible,” Dr Stone said.¹

An industry alert was issued on 27 June 2006 to tell potential tenderers about the new arrangements.² An exposure draft of the purchasing arrangements for 2007–09 followed on 11 August 2006³ and the request for tenders was issued on 27 September 2006.⁴

CRS Australia currently provides services at 170 sites around Australia. Under the new arrangements the number of sites offering services is expected to increase to about 400.⁵ Up to 56,000 people are expected to benefit from rehabilitation services each year under the new arrangements during 2007–09.⁶ Forty per cent of this business will be open for tender to the private sector.⁷

The new places are to provide assistance to those people with part-time participation requirements as a result of the recent welfare-to-work reforms. The Welfare-to-Work package included \$192 million for vocational rehabilitation services for this group over the three years to June 2009. Private-sector providers will deliver up to fifty per cent of the services to this group, but only up to twenty per cent of services to income-support recipients with no activity-test requirements or full-time activity-test requirements.⁸

This Bill amends the DSA to allow rehabilitation services to be provided by private-sector services. The Secretary will no longer be required to approve each individual rehabilitation

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program. This function was delegated to CRS Australia. In a contestable market where CRS Australia is one of a number of providers, such an arrangement would be inappropriate. Similarly, changes are made to allow the new providers to undertake cost-recovery work, rather than leaving it all in the hands of CRS Australia.

Other amendments provide for:

- new entrants to the market to have a 12-month grace period to attain certification of compliance with the rehabilitation standards under the DSA, and
- the repeal of the provision allowing jobseekers with participation requirements to opt out of rehabilitation. This option will only be available to those who have volunteered for rehabilitation and therefore do not have participation obligations.

The Senate Employment, Workplace Relations and Education Committee is undertaking an inquiry into the Bill, and its report is due by 20 February 2007. The submissions are available at:

http://www.aph.gov.au/Senate/committee/eet_ctte/wr_workchoices06/submissions/sublist.htm.

Issues raised in submissions include:

- the need for an appeal system so that clients can seek changes to the rehabilitation decisions made by private providers. Clients of CRS Australia, as clients of a government body, have a system in place, but it is unclear how clients of private providers can seek review of decisions.⁹
- concern that the 12-month grace period to attain certification of compliance with the rehabilitation standards under the DSA for new providers could undermine standards of service.¹⁰
- concern about the future of CRS Australia in a competitive market where the standards and employee conditions applying in a government agency may put it at a disadvantage. The CPSU submission explored this issue at some length.¹¹

Social Security Law amendments

Pensioner Education Supplement

Entitlement for Pensioner Education Supplement (PES) continues for sole parents and people with disabilities who move from Parenting Payment or Disability Support Pension (DSP) to Newstart Allowance (NSA) or Youth Allowance (YA) as a result of the Welfare-to-Work reforms that commenced in July 2006. This Bill adjusts this arrangement so that DSP recipients who are moved to NSA or YA after a review will only retain PES if it was their first review after 1 July 2006. This appears to be a significant change for this group, and it has attracted criticism in a number of the submissions to the Senate Committee examining the Bill.¹² The change would reduce the financial support

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for this group of people with disabilities part of the way through their course of study and potentially affect their ability to complete those studies.

Financial Case Management debts

The bill also seeks to allow recovery of Financial Case Management debts by deductions from income-support payments. The DEWR submission to the committee explains the change as follows:

Under the Welfare to Work legislation, people in certain circumstances who are subject to an 8-week non payment period, will receive financial case management. This may include receiving funds to pay bills and to buy essential items. In the situation where funds were provided incorrectly, such as because of being given false information, it may be appropriate to raise a debt. Under the current legislation it is possible for debts to be raised, but it is not possible for them to be recovered in the usual way, that is through income support payment deductions.

The bill amends the legislation to enable deductions to be made from income support payments where a recipient has a debt raised against them because of payments made through financial case management that need to be recovered.¹³

Concerns about this measure have been raised in submissions to the Senate Committee¹⁴ because:

- the payments are made to a third party and not to the person who would have to repay the debt, and
- due to the lack of legislative regulation of the payments and the absence of appeal rights regarding granting of the payments or recovery of debts.

The other changes made by the Bill appear to be minor or technical.

Main provisions

Item 2 broadens the definition of officer in **section 4** of the *Disability Services Act 1986* to include employees of private-sector providers of rehabilitation services.

Item 4 inserts **new subsection 19(3)** which provides that the secretary may enter into an arrangement for the provision of rehabilitation services with a provider who does not have a current certificate of compliance if the provider is likely to have such a certificate within 12 months.

Item 5 repeals **existing section 20** and substitutes **new section 20**. New subsection 20(1) contains the main change: the removal of the requirement that rehabilitation programs need to be individually approved under the *Disability Services Act 1986*.

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Item 6 inserts **new subsection 21A(1AA)** which provides that a person undertaking rehabilitation as a participation requirement under the Social Security Act may not have the option to cease rehabilitation on request.

Items 21 and 28 deal with Pensioner Education Supplement eligibility for people moving from Disability Support Pension to Newstart or Youth Allowance.

Item 50 adds new **subsection 1228(3)** to the *Social Security Act 1991* concerning the recovery of Financial Case Management debts.

Endnotes

1. Hon. Dr. Sharman Stone, Minister for Workplace Participation, *More Choice for People Undergoing Rehabilitation*, media release, 18 May 2006, <http://mediacentre.dewr.gov.au/mediacentre/MinisterStone/Releases/MoreChoiceForPeopleUndergoingRehabilitation.htm>
2. Hon. Dr. Sharman Stone, Minister for Workplace Participation, *Industry Alert for Vocational Rehabilitation Services*, media release, 27 June 2006, <http://mediacentre.dewr.gov.au/mediacentre/MinisterStone/Releases/IndustryAlertforVocationalRehabilitationServices.htm>
3. Hon. Dr. Sharman Stone, Minister for Workplace Participation, *Release of Exposure Draft of Purchasing Arrangements for Vocational Rehabilitation Services 2007–2009*, media release, 11 August 2006, <http://mediacentre.dewr.gov.au/mediacentre/MinisterStone/Releases/ReleaseofExposureDraftofPurchasingArrangementsforVocationalRehabilitationServices20072009.htm>
4. Hon. Dr. Sharman Stone, Minister for Workplace Participation, *Request for Tender for Vocational Rehabilitation Services*, media release, 27 September 2006, <http://mediacentre.dewr.gov.au/mediacentre/MinisterStone/Releases/RequestforTenderforVocationalRehabilitationServices.htm>
5. Hon. Dr. Sharman Stone, Minister for Workplace Participation, *Release of Exposure Draft of Purchasing Arrangements for Vocational Rehabilitation Services 2007–2009*, media release, 11 August 2006.
6. Department of Employment and Workplace Relations, *Information Session on the Request for Tender for Vocational Rehabilitation Services 2007–2009*, October 2006, slide 15, <http://www.workplace.gov.au/NR/rdonlyres/2630D503-3124-4364-877D-DEF362C1D6DF/0/VRSRFTPresentation.pdf>
7. *ibid.*, slide 31.
8. Department of Employment and Workplace Relations, *Submission to the Inquiry into the Employment and Workplace Relations Amendment (Welfare to Work and Vocational*

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http://www.aph.gov.au/Senate/committee/eet_ctte/wr_workchoices06/submissions/sub07.pdf

9. Australian Federation of Disability Organisations, *Submission to the Inquiry into the Employment and Workplace Relations Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006*, p. 1,
http://www.aph.gov.au/Senate/committee/eet_ctte/wr_workchoices06/submissions/Sub01.pdf
10. *ibid.*, p. 2.
Community and Public Sector Union, *Submission to the Inquiry into the Employment and Workplace Relations Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006*, p. 3,
http://www.aph.gov.au/Senate/committee/eet_ctte/wr_workchoices06/submissions/Sub06.pdf
11. *ibid.*
12. See submissions to the Inquiry into the Employment and Workplace Relations Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006 from ACOSS, the National Welfare Rights Network and Catholic Social Services,
http://www.aph.gov.au/Senate/committee/eet_ctte/wr_workchoices06/submissions/sublist.htm
13. Department of Employment and Workplace Relations, *Submission to the Inquiry into the Employment and Workplace Relations Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006*, pp. 6–7.
14. See submissions to the Inquiry into the Employment and Workplace Relations Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006 from ACOSS, the National Welfare Rights Network and Catholic Social Services,
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