

1991

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

DISABILITY SERVICES BILL 1991

EXPLANATORY MEMORANDUM

**Circulated by the authority of the Minister for Housing
and Community Services**

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Disability Services Bill 1991

Explanatory Memorandum

Outline

The Disability Services Bill 1991 ("the Bill") establishes a system for the administration of funding for persons with disabilities and providers of services to persons with disabilities.

It sets out the human rights principles to be furthered and requirements to be complied with by providers of services to persons with disabilities.

Grants to providers of services and persons with disabilities may only be made where the Minister, making the grant, is satisfied that the making of the grant would further the principles and comply with the requirements of the Act.

Transitional provisions in the Bill will enable the Minister to make grants to providers of services even though the Minister is not satisfied that the grant would further the principles and that the programs and services funded by the grant comply with the requirements of the Bill. This provision will enable the making of grants to providers of services which are unable to immediately satisfy the requirements of the Bill, but are in the process of changing the delivery of their services so that they further the principles and comply with the requirements of the Bill.

The Bill gives effect to the Territory's agreement with the Commonwealth signed on 30 July 1991, ("the Agreement"), to enact legislation for the provision of disability services, containing such provisions as the Commonwealth and Territory agree, to enable the Territory to provide services in accordance with the Agreement.

Under the terms of the Agreement Territory disability services legislation must complement the Commonwealth *Disability Services Act 1986* and, in particular, be in accordance with the principles and objectives formulated pursuant to section 5 of that Act.

The provisions of the Bill, which have been agreed upon by the Commonwealth and the Territory, satisfy the requirements of the Agreement.

Financial Implications

There are no direct financial implications arising from the Bill.

Details of the Bill are provided in the Attachment.

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Formal clause

Clause 1 is a formal clause which refers to the short title of the Bill.

Commencement

Clause 2 provides for the commencement of the Bill.

Subclause 2(1) provides for sections 1 and 2 of the Bill to commence upon the notification of the Act in the *Gazette*.

Subclause 2(2) provides for the remaining provisions to commence on a day fixed by the Minister by notice in the *Gazette*.

Subclause 2(3) provides that where a provision of the Bill has not commenced within six months of the day on which the Act is notified in the *Gazette*, that provision will come into effect upon the first day after the expiration of that six month period.

Objects

Clause 3 sets out the objects of the Bill and provides that the Bill is to be construed and administered in accordance with those objects.

Interpretation

Clause 4 provides for the interpretation of terms used in the Bill.

Act binds the Crown

Clause 5 provides that the Bill binds the Crown.

Financial assistance for providers of services

Clause 6 deals with the Minister's approval of grants of financial assistance.

Subclause 6(1) empowers the Minister to approve a grant of financial assistance to a provider of services, a person with a disability or a researcher.

Subclause 6(2) prohibits the Minister from approving such a grant unless the Minister is satisfied that the grant would further the human rights principles set out in Schedule 1 of the Bill and comply with any guidelines made pursuant to the Bill and that the programs and services funded by the grant would comply with the requirements set out in Schedule 2 of the Bill being requirements to be complied with in relation to the design and implementation of programs and services relating to persons with disabilities.

The terms 'provider of services', 'researcher' and 'disability' are defined in clause 4.

Terms and conditions

Clause 7 deals with terms and conditions upon which a grant may be made.

Subclause 7(1) prohibits the receipt of a grant by a person or an organisation unless the person or organisation has entered into a written agreement with the Minister regarding the terms and conditions on which a grant is to be made.

Subclause 7(2) provides that a reference in subclause 7(1) to an agreement between the Minister and an organisation includes, in the case of an unincorporated association, an agreement between the Minister and a person on behalf of the association.

Subclause 7(3) requires that an agreement relating to the provision of services must specify the objectives to be achieved by or in relation to the person receiving the services and may include other provisions requiring, in the event of a contravention of a term or condition of the grant, the recipient of the grant to pay to the Minister an amount equal to the amount of the grant or part of the grant.

Subclause 7(3) requires a provider of services or a researcher subject to an agreement to comply with guidelines made pursuant to the Bill, which are applicable to that provider of services or researcher.

Subclause 7(4) provides that a reference in an agreement to a condition includes the condition that the grantee shall comply with guidelines made pursuant to the Bill.

Review of effectiveness of grants

Clause 8 requires the Minister to review the effectiveness of grants. It provides that at least once every five years the Minister must review the extent to which grantees have fulfilled the terms and conditions of any grants which they have received and the extent to which objectives specified in the terms and conditions of the grant have been achieved.

Approval of activities

Clause 9 deals with the approval of research and development activities.

Subclause 9(1) provides that the Minister may, by instrument, approve activities for the purposes of paragraph (h) of the definition of "research and development activity" in clause 4.

Subclause 9(2) provides that an instrument of approval under subsection (1) is disallowable. Consequently, such an instrument of approval will be of no effect if it fails to satisfy the notification and tabling requirements of section 10 of the *Subordinate Laws Act 1989*

and it will be subject to scrutiny and disallowance by the Legislative Assembly.

Guidelines

Clause 10 deals with the Minister's capacity to issue guidelines.

Subclause 10(1) provides that the Minister may, by instrument published in the Gazette, issue guidelines, not inconsistent with the Bill, relating to the making of grants and relating to the application and implications of the principles and requirements set out in the Schedules to the Bill.

Subclause 10(2) provides that the guidelines may make provision in relation to, among other matters, the terms and conditions of the grant, the manner of calculating grants and the timing of payments.

Subclause 10(3) provides that a guideline must be of a general nature and not limited to apply to a particular person or body.

Subclause 10(4) provides that an instrument issued under clause 10 is disallowable. Consequently, a guideline will be of no effect if it fails to satisfy the notification and tabling requirements of section 10 of the *Subordinate Laws Act 1989* and it will be subject to scrutiny and disallowance by the Legislative Assembly.

Transitional

Clause 11 is a transitional provision which will enable the Minister to make grants to providers of services even though the Minister is not satisfied that the grant would further the principles set out in Schedule 1 and that the programs and services funded by the grant comply with the requirements set out in Schedule 2. This provision will enable the making of grants to providers of services which are unable to immediately satisfy the requirements of the Bill, but are in the process of changing the delivery of their services so that they further the principles in Schedule 1 and comply with the requirements in Schedule 2.

Subclause 11(1) provides that this section, unless sooner repealed, ceases to be in force after 31 December 1994. By this time providers of services would be expected to have adopted practices which would enable any grant of financial assistance to a provider of services to be made under clause 6 of the Bill.

Subclause 11(2) provides that notwithstanding the provisions of subclause 6(2) of the Bill where the Minister is satisfied that a grant to a provider of services, in relation to a person with a disability, would be in the interests of that person, the provider would take adequate steps to ensure that programs and services funded by the grant would comply with the requirements set out in Schedule 2 and the grant would comply with any guidelines issued under the Bill, the Minister may approve the grant.

Schedule 1 sets out human rights principles to be furthered in relation to persons with disabilities.

Schedule 2 sets out requirements to be complied with in relation to the design and implementation of programs and services relating to people with disabilities.