



Disability Services Act 1986

Act No. 129 of 1986 as amended

This compilation was prepared on 8 January 2013
taking into account amendments up to Act No. 169 of 2012

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act relating to the provision of services for persons with disabilities

Part I—Preliminary

1 Short title *[see Note 1]*

This Act may be cited as the *Disability Services Act 1986*.

2 Commencement *[see Note 1]*

- (1) This Act (other than Part II) shall come into operation on a day to be fixed by Proclamation.
- (2) Part II shall come into operation on a day to be fixed by Proclamation, which may be the same day as, or a later day than, the day fixed under subsection (1).

3 Objects

- (1) The objects of this Act are:
 - (a) to replace provisions of the *Handicapped Persons Assistance Act 1974*, and of Part VIII of the *Social Security Act 1947*, with provisions that are more flexible and more responsive to the needs and aspirations of persons with disabilities;
 - (b) to assist persons with disabilities to receive services necessary to enable them to work towards full participation as members of the community;
 - (c) to promote services provided to persons with disabilities that:
 - (i) assist persons with disabilities to integrate in the community, and complement services available generally to persons in the community;
 - (ii) assist persons with disabilities to achieve positive outcomes, such as increased independence, employment opportunities and integration in the community; and
 - (iii) are provided in ways that promote in the community a positive image of persons with disabilities and enhance their self-esteem;

Section 3A

- (d) to ensure that the outcomes achieved by persons with disabilities by the provision of services for them are taken into account in the granting of financial assistance for the provision of such services;
 - (e) to encourage innovation in the provision of services for persons with disabilities; and
 - (f) to assist in achieving positive outcomes, such as increased independence, employment opportunities and integration in the community, for persons with disabilities who are of working age by the provision of comprehensive rehabilitation services.
- (2) In construing the objects and in administering this Act, due regard must be had to:
- (a) the limited resources available to provide services and programs under this Act; and
 - (b) the need to consider equity and merit in accessing those resources.

3A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

4 Interpretation

In this Act, unless the contrary intention appears:

Commonwealth employee means:

- (a) an APS employee; or
- (b) an employee of a body (whether incorporated or not) established for a public purpose by, or under, a law of the Commonwealth.

officer means:

- (a) a Commonwealth employee; or
- (b) a person who performs services on behalf of the Department under a contract made between the person and the Commonwealth; or
- (c) an employee of a person referred to in paragraph (b).

Secretary means the Secretary of the Department.

5 Principles, objectives and guidelines

- (1) The Minister must, by legislative instrument, formulate principles and objectives to be furthered and guidelines to be complied with in the administration of this Act.
- (2) A copy of the guidelines formulated under subsection (1) is to be laid before each House of the Parliament within 15 sitting days of that House after the guidelines are formulated and the guidelines take effect only as provided by the following provisions of this section.
- (3) If:
 - (a) a notice of motion to amend the guidelines is given in either House of the Parliament within 15 sitting days after the guidelines have been laid before that House; and
 - (b) the guidelines, whether or not as amended, are subsequently approved by that House; and
 - (c) the other House approves the guidelines in the form approved by the firstmentioned House;the guidelines take effect in the form so approved from the day on which that other House approves the guidelines in that form.
- (4) If no notice of a motion to amend the guidelines is given in the House of Representatives or the Senate within 15 sitting days of the particular House after the guidelines have been laid before that House, the guidelines take effect from the day immediately after that 15th sitting day or, where that day differs in respect of each House, the later of those days.

5A Standards for the provision of certain services and programs

- (1) The Minister may, by legislative instrument, determine:
 - (a) eligibility standards to be observed in the provision of an eligible service referred to in Part II; and
 - (b) disability employment standards to be observed in the provision of an employment service referred to in that Part; and
 - (ba) disability advocacy standards to be observed in the provision of an advocacy service referred to in that Part; and
 - (c) rehabilitation program standards to be observed in the provision of rehabilitation programs referred to in Part III.

Section 6

- (2) When the Minister determines disability employment standards under paragraph (1)(b), disability advocacy standards under paragraph (1)(ba) or rehabilitation program standards under paragraph (1)(c), the Minister must, by legislative instrument, also approve key performance indicators to be applied in assessing whether the standards have been observed.

6 Extension of Act to certain external Territories

This Act extends to the Territory of Cocos (Keeling) Islands and to the Territory of Christmas Island.

Part IA—Accreditation and certification for the purposes of certain services and programs

6A Definitions

In this Act, unless the contrary intention appears:

accreditation means accreditation under this Part.

accredited certification body means a certification body that holds a current accreditation.

accrediting authority means an authority approved by the Secretary under section 6B for the purpose of granting accreditation to certification bodies.

certificate of compliance has the meaning given by section 6D, 6DA or 6E, as the case requires.

certification body means a body that carries out certifying functions.

certifying functions means:

- (a) assessing, by reference to the relevant key performance indicators:
 - (i) whether an employment service meets the disability employment standards; and
 - (ia) whether an advocacy service meets the disability advocacy standards; and
 - (ii) whether the provision of rehabilitation programs meets the rehabilitation program standards; and
- (b) giving certificates of compliance in respect of employment services or advocacy services, or in respect of the provision of rehabilitation programs, that meet the relevant standards.

current accreditation means an accreditation that has not been withdrawn.

current certificate of compliance means a certificate of compliance that is in force.

Section 6B

key performance indicators means key performance indicators approved under subsection 5A(2).

person, in relation to the provision of a rehabilitation program, includes the Commonwealth and an authority of the Commonwealth.

6B Secretary may approve accrediting authorities

- (1) The Secretary may approve an authority that has the function of granting accreditation to certification bodies that the authority is satisfied will carry out certifying functions competently and impartially.
- (2) The Secretary must not approve an authority under subsection (1) unless the Secretary is satisfied that the authority:
 - (a) is internationally recognised as a suitable authority to grant accreditation of the kind mentioned in that subsection; and
 - (b) will perform its functions in an independent and impartial way.

6C Accrediting authority may grant accreditation to certification bodies

- (1) The functions of an accrediting authority are:
 - (a) to assess, in accordance with disability auditing criteria established by it and made publicly available in such manner as it considers appropriate, whether certification bodies will carry out certifying functions competently and impartially; and
 - (b) if it is satisfied that a certification body will carry out those functions competently and impartially, to grant accreditation to the body.
- (2) If an accrediting authority ceases to be satisfied that an accredited certification body is carrying out certifying functions competently or impartially, the authority must, by written notice given to the body, withdraw the body's accreditation.

- (3) If an accrediting authority grants accreditation to a certification body or withdraws the accreditation granted to a certification body, the authority must, as soon as practicable, notify the Secretary in writing of the grant or withdrawal, as the case may be, of the accreditation and of the authority's reasons for its decision to grant or withdraw the accreditation.
- (4) An accreditation continues in force until:
 - (a) it is withdrawn; or
 - (b) if the authority that granted the accreditation ceases to be an accrediting authority—the end of the period of 3 months after the cessation;whichever first occurs.

6D Accredited certification body may give certificates of compliance to providers of employment services

- (1) If:
 - (a) an accredited certification body is requested by a State or eligible organisation to give the State or organisation a certificate under this section in respect of an employment service provided by the State or organisation; and
 - (b) the accredited certification body is satisfied that the service meets the disability employment standards;the accredited certification body must give to the State or organisation a certificate (a *certificate of compliance*) stating that the service meets those standards.
- (2) If an accredited certification body that has given a certificate of compliance to a State or organisation in respect of a service ceases to be satisfied that the service meets the disability employment standards, the accredited certification body must, by written notice given to the State or organisation, revoke the certificate.
- (3) If an accredited certification body gives a certificate of compliance to a State or eligible organisation, or revokes a certificate of compliance so given, the accredited certification body must, as soon as practicable, notify the Secretary in writing of the giving or revocation, as the case may be, of the certificate and of the accredited certification body's reasons for its decision to give or revoke the certificate.

Section 6DA

- (4) A certificate of compliance continues in force until:
- (a) it is revoked; or
 - (b) if the accredited certification body that gave the certificate ceases to be accredited—the end of the period of 3 months after the cessation;
- whichever first occurs.

6DA Accredited certification body may give certificates of compliance to providers of advocacy services

- (1) If:
- (a) an accredited certification body is requested by a State or eligible organisation to give the State or organisation a certificate under this section in respect of an advocacy service provided by the State or organisation; and
 - (b) the accredited certification body is satisfied that the service meets the disability advocacy standards;
- the accredited certification body must give to the State or organisation a certificate (a *certificate of compliance*) stating that the service meets those standards.

Revocation of certificate

- (2) If:
- (a) an accredited certification body has given a certificate of compliance to a State or eligible organisation in respect of an advocacy service; and
 - (b) the accredited certification body ceases to be satisfied that the service meets the disability advocacy standards;
- the accredited certification body must, by written notice given to the State or organisation, revoke the certificate.

Notification to Secretary

- (3) If:
- (a) an accredited certification body gives a certificate of compliance to a State or eligible organisation; or
 - (b) an accredited certification body revokes a certificate of compliance;

the accredited certification body must, as soon as practicable, notify the Secretary in writing of the giving or revocation of the certificate and of its reasons for giving or revoking the certificate.

Period certificate of compliance is in force

- (4) A certificate of compliance continues in force until:
- (a) it is revoked; or
 - (b) if the accredited certification body that gave the certificate ceases to be accredited—the end of the period of 3 months after the cessation;
- whichever occurs first.

Certificates are not legislative instruments

- (5) A certificate under subsection (1) is not a legislative instrument.

6E Accredited certification body may give certificates of compliance to providers of rehabilitation programs

- (1) If:
- (a) an accredited certification body is requested by a person to give the person a certificate under this section in respect of the provision of rehabilitation programs by the person; and
 - (b) the accredited certification body is satisfied that the provision of the programs meets the rehabilitation program standards;
- the accredited certification body must give to the person a certificate (a *certificate of compliance*) stating that the provision of the programs meets those standards.
- (2) If an accredited certification body that has given a certificate of compliance to a person in respect of the provision of rehabilitation programs ceases to be satisfied that the provision of the programs meets the rehabilitation program standards, the accredited certification body must, by written notice given to the person, revoke the certificate.
- (3) If an accredited certification body gives a certificate of compliance to a person in respect of the provision of rehabilitation programs, or revokes a certificate of compliance so given, the accredited certification body must notify the Secretary in writing of the giving or revocation, as the case may be, of the certificate and of the

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accredited certification body's reasons for its decision to give or revoke the certificate.

- (4) A certificate of compliance continues in force until:
- (a) it is revoked; or
 - (b) if the accredited certification body that gave the certificate ceases to be accredited—the end of the period of 3 months after the cessation;
- whichever first occurs.

Part II—Funding of services for persons with disabilities

Division 1—General

7 Interpretation

In this Act, unless the contrary intention appears:

accommodation support services means services to assist persons with disabilities to develop or maintain suitable residential arrangements in the community and, without limiting the generality of the foregoing, includes attendant care services, namely, services to persons with disabilities to assist them with personal administration, transport, mobility, transfers, personal hygiene, bathing, grooming, dressing, eating and drinking, and similar personal activities.

ACNC type of entity means an entity that meets the description of a type of entity in column 1 of the table in subsection 25-5(5) of the *Australian Charities and Not-for-profits Commission Act 2012*.

advocacy service means:

- (a) a service that seeks to support persons with disabilities to exercise their rights and freedoms, being rights and freedoms recognised or declared by the Disabilities Convention, through:
 - (i) one-to-one support; or
 - (ii) supporting them to advocate for themselves, whether individually, through a third party or on a group basis; or
- (b) a service that seeks to introduce and influence long-term changes to ensure that the rights and freedoms of persons with disabilities, being rights and freedoms recognised or declared by the Disabilities Convention, are attained and upheld so as to positively affect the quality of their lives; or
- (c) a service included in a class of services approved by the Minister under section 9B.

applicable standards for a service means:

- (a) for an eligible service—the eligibility standards; or
- (b) for an employment service in respect of which a transitional grant is being received—the standards referred to in paragraph 12AB(2)(c).

competitive employment training and placement services means services (also known as open employment services) to assist persons with disabilities to obtain and retain, or retain, paid employment in the work-force, and includes:

- (a) services to increase the independence, productivity or integration of persons with disabilities in work settings; and
- (b) employment preparation, and employment and vocational training services; and
- (c) services to assist the transition of persons with disabilities from special education, or employment in supported work settings, to paid employment in the work-force.

Disabilities Convention means the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006.

Note: The text of the Convention is set out in Australian Treaty Series 2008 No. 12 ([2008] ATS 12). In 2011, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

disability advocacy standards means the standards determined by the Minister under paragraph 5A(1)(ba) in relation to the provision of an advocacy service.

disability employment standards means the standards determined by the Minister under paragraph 5A(1)(b) in relation to the provision of an employment service.

eligibility standards means the standards determined by the Minister under paragraph 5A(1)(a) in relation to the provision of eligible services.

eligible organisation means:

- (a) a body corporate that is:
 - (i) registered under the *Australian Charities and Not-for-profits Commission Act 2012*; or
 - (ii) a not-for-profit entity that is not an ACNC type of entity;

- (b) a local governing body established by or under a law of a State or Territory;
- (c) a tertiary institution within the meaning of the *Employment, Education and Training Act 1988*; or
- (d) any other society, association or body approved by the Minister for the purposes of this definition.

eligible service means a service of any of the following kinds:

- (a) accommodation support services;
- (c) independent living training services;
- (d) information services;
- (e) print disability services;
- (f) recreation services;
- (g) respite care services;
- (h) services included in a class of services approved by the Minister under section 9.

employment service means a service for persons with disabilities that either:

- (a) provides, or facilitates access to, wage generating employment for the majority of its clients; or
- (b) has as its primary goal the achievement of paid employment for its clients;

and, without limiting the generality of the above, includes a service of any of the following kinds:

- (c) competitive employment training and placement services;
- (d) supported employment services;
- (e) services that, immediately before 1 July 2002, were transitional services within the meaning of this Act as in force at that time;
- (f) services that, immediately before 1 July 2002, were prescribed services within the meaning of this Act as in force at that time;
- (g) services included in a class of services approved by the Minister under section 9A.

independent living training services means services to assist persons with disabilities to develop or maintain the personal skills and self-confidence necessary to enhance their independence, and self-reliance, in the community.

information services means services to facilitate access to information by:

- (a) persons with disabilities; and
- (b) the families of, and other persons who provide care for or assistance to, persons with disabilities;

and includes:

- (c) services to provide the information necessary to enable persons with disabilities to live full lives as members of the community (whether the information is provided to those persons or generally to persons in the community); and
- (d) services to facilitate access by persons with disabilities to information available generally to persons in the community.

orders means the orders made by the Minister under section 14F.

pre-2002-03 grant has the meaning given by subsection 12AA(1).

print disability services means services to facilitate access to, or the use of, printed materials by persons who, because of disabilities, are unable to read, hold or manipulate printed materials in standard form.

receiving a grant of financial assistance: a State or eligible organisation is taken to be receiving a particular grant of financial assistance from the time when the grant is approved until immediately after payment, or payment of the last instalment, of the grant is made.

recreation services means services to facilitate the integration of, and participation by, persons with disabilities in recreation and leisure activities available generally to persons in the community.

research or development activity means:

- (a) research with respect to the provision of services for persons included in the target group;
- (b) the investigation of the need for services for persons included in the target group;
- (c) the initiation of services for persons included in the target group;
- (d) the planning of the provision of eligible services for persons included in the target group;

- (e) the development of proposals for the provision of eligible services for persons included in the target group;
- (f) the development or implementation of training programs for:
 - (i) persons engaged in the provision of eligible services; or
 - (ii) the families of, and other persons who provide care for or assistance to, persons included in the target group;
- (g) the investigation of outcomes achieved by persons included in the target group by the provision of eligible services; or
- (h) other activities approved by the Minister, by legislative instrument, for the purposes of this definition.

respite care services means services for relief or assistance, for a limited period of time and whether on a planned or unplanned basis, to:

- (a) the families of, and other persons who provide care for or assistance to, persons with disabilities living in the community; or
- (b) persons with disabilities living in the community.

service includes a service consisting of the supplying of goods, whether or not accompanied by the provision of other services.

State includes the Northern Territory.

supported employment services means services to support the paid employment of persons with disabilities, being persons:

- (a) for whom competitive employment at or above the relevant award wage is unlikely; and
- (b) who, because of their disabilities, need substantial ongoing support to obtain or retain paid employment.

transitional grant of financial assistance means a grant of financial assistance approved under Subdivision A of Division 2A of Part II.

transitional period means the period:

- (a) beginning on 1 July 2002; and
- (b) ending on 31 December 2004.

8 Target group etc.

- (1) The target group for the purposes of this Part consists of persons with a disability that:

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- (a) is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of such impairments;
 - (b) is permanent or likely to be permanent; and
 - (c) results in:
 - (i) a substantially reduced capacity of the person for communication, learning or mobility; and
 - (ii) the need for ongoing support services.
- (2) Where a service is provided predominantly for persons included in the target group, the service shall be taken, for the purposes of this Part, to be provided for persons in the target group notwithstanding that the service is also provided for some persons who are not included in the target group.

9 Approval of additional eligible services

The Minister may, by legislative instrument, approve a class of services for the purposes of paragraph (h) of the definition of *eligible service* in section 7 if the Minister is satisfied that the provision of services included in that class of services would:

- (a) further the objects of this Act set out in section 3 and the principles and objectives formulated under section 5; and
- (b) comply with the guidelines formulated under section 5 that are applicable to the giving of approvals under this section.

9A Approval of additional employment services

The Minister may, by legislative instrument, approve a class of services for the purposes of paragraph (g) of the definition of *employment service* in section 7 if the Minister is satisfied that the provision of services included in that class of services would:

- (a) further the objects of this Act set out in section 3 and the principles and objectives formulated under section 5; and
- (b) comply with the guidelines formulated under section 5 that are applicable to the giving of approvals under this section.

9B Approval of additional advocacy services

The Minister may, by legislative instrument, approve a class of services for the purposes of paragraph (c) of the definition of

advocacy service in section 7 if the Minister is satisfied that the provision of a service included in that class of services would:

- (a) further the objects of this Act set out in section 3 and the principles and objectives formulated under section 5; and
- (b) further the implementation of the Disabilities Convention.

Division 2—Grants for eligible services and research and development activities

10 Financial assistance for eligible services

- (1) Subject to subsection (3), the Minister may approve the making of a grant of financial assistance to a State or eligible organisation in relation to the provision by the State or eligible organisation of an eligible service for persons included in the target group.
- (2) Without limiting the generality of subsection (1), the Minister may, under that subsection, approve the making, in relation to the provision of an eligible service, of a grant with respect to any of the following:
 - (a) recurrent expenditure incurred or to be incurred;
 - (b) the cost of acquiring land (with or without buildings);
 - (c) the cost of acquiring, erecting, altering or extending buildings;
 - (d) the cost of acquiring, altering or installing equipment.
- (3) The Minister must not approve the making of a grant unless:
 - (a) the Minister is satisfied that the making of the grant would:
 - (i) further the objects of this Act set out in section 3 and the principles and objectives formulated under section 5; and
 - (ii) comply with the guidelines formulated under section 5 that are applicable to the making of grants under subsection (1); and
 - (b) the Minister is satisfied:
 - (i) if the State or eligible organisation has not previously received a grant of financial assistance under this Part in respect of the provision of the service—that the State or eligible organisation will meet the eligibility standards in respect of the provision of the service by the day determined by the Minister under paragraph (4)(ba); or
 - (ii) that the State or eligible organisation is meeting the eligibility standards in respect of the provision of the service.

- (3A) A grant of financial assistance is subject to the condition that the State or eligible organisation receiving the grant meets the eligibility standards in respect of the provision of the eligible service:
- (a) if the Minister has determined a day under paragraph (4)(ba) in respect of the service—on and from that day; or
 - (b) in any other case—on and from the day on which the grant of financial assistance is made.
- (4) Where the Minister approves the making of a grant of financial assistance to a State or eligible organisation under subsection (1) in relation to the provision by the State or eligible organisation of an eligible service for persons included in the target group, the Minister shall, subject to subsection (6) and the regulations:
- (a) determine the amount of the financial assistance or the manner in which the amount of the financial assistance is to be calculated; and
 - (b) determine the time or times at which, and the instalments (if any) in which, the financial assistance is to be paid; and
 - (ba) if the State or eligible organisation providing the eligible service has not previously received a grant of financial assistance under this Part in respect of the provision of the service—determine a day by which the State or eligible organisation must meet the eligibility standards in respect of the provision of the service; and
 - (c) specify any other terms and conditions on which the financial assistance is granted.
- (4A) In determining a day under paragraph (4)(ba) in respect of the provision of a service, the Minister must not determine a day that is more than 12 months later than the day on which the Minister approves the making of a grant to the State or eligible organisation in respect of the provision of the service.
- (5) Without limiting the generality of paragraph (4)(c), the terms and conditions that may be specified pursuant to that paragraph include terms and conditions with respect to:
- (a) the purposes for which the financial assistance may be applied;
 - (b) the amounts to be applied by the State or eligible organisation for those purposes or any other purpose, and the source of amounts to be so applied;
-

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- (c) the outcomes to be achieved by persons included in the target group by the provision of the eligible service, and the rights of those persons in relation to the provision of the eligible service or otherwise;
 - (d) the furnishing of information;
 - (e) the provision of certificates with respect to the fulfilment of terms and conditions;
 - (f) the repayment of financial assistance;
 - (g) the giving of security for the fulfilment of terms and conditions; and
 - (h) the use and disposal of, and the recovery of amounts that under the terms and conditions are to be taken as representing the Commonwealth's interest in:
 - (i) land acquired (with or without buildings);
 - (ii) buildings acquired, erected, altered or extended; and
 - (iii) equipment acquired, altered or installed;as a result of the application of the financial assistance or of the financial assistance and other money.
- (6) Where a grant of financial assistance is to be paid in instalments, the instalments shall be paid within 5 years after the approval of the making of the grant.

12 Financial assistance for research and development activities

- (1) Subject to subsection (3), the Minister may approve the making of a grant of financial assistance to a person in relation to a research or development activity being undertaken, or to be undertaken, by the person.
- (2) Without limiting the generality of subsection (1), the Minister may, under that subsection, approve the making, in relation to a research or development activity, of a grant with respect to any of the following:
 - (a) recurrent expenditure incurred or to be incurred;
 - (b) the cost of acquiring land (with or without buildings);
 - (c) the cost of acquiring, erecting, altering or extending buildings;
 - (d) the cost of acquiring, altering or installing equipment.

- (3) The Minister shall not approve the making of a grant under subsection (1) unless the Minister is satisfied that the making of the grant would:
- (a) further the objects of this Act set out in section 3 and the principles and objectives formulated under section 5; and
 - (b) comply with the guidelines formulated under section 5 that are applicable to the making of grants under subsection (1) of this section.
- (4) Where the Minister approves the making of a grant of financial assistance to a person under subsection (1) in relation to a research or development activity being undertaken, or to be undertaken, by the person, the Minister shall, subject to the regulations:
- (a) determine the amount of the financial assistance or the manner in which the amount of the financial assistance is to be calculated;
 - (b) determine the time or times at which, and the instalments (if any) in which, the financial assistance is to be paid; and
 - (c) specify the terms and conditions on which the financial assistance is granted.
- (5) Without limiting the generality of paragraph (4)(c), the terms and conditions that may be specified pursuant to that paragraph include terms and conditions with respect to:
- (a) the purposes for which the financial assistance may be applied;
 - (b) the amounts to be applied by the person for those purposes or any other purpose, and the source of amounts to be so applied;
 - (c) the furnishing of information;
 - (d) the provision of certificates with respect to the fulfilment of terms and conditions;
 - (e) the repayment of financial assistance;
 - (f) the giving of security for the fulfilment of terms and conditions;
 - (g) the use and disposal of, and the recovery of amounts that under the terms and conditions are to be taken as representing the Commonwealth's interest in:
 - (i) land acquired (with or without buildings);
 - (ii) buildings acquired, erected, altered or extended; and

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- (iii) equipment acquired, altered or installed;
as a result of the application of the financial assistance or of
the financial assistance and other money; and
 - (h) the use, disposal, and ownership of anything produced by the
research or development activity.
- (6) In this section, *person* includes a State or eligible organisation.

Division 2A—Grants for employment services

Subdivision A—Transitional grants

12AA Application of Subdivision

- (1) Subject to subsection (2), this Subdivision authorises the giving of approval in certain circumstances to the making, during the transitional period, of grants of financial assistance to a State or eligible organisation in respect of an employment service if, and only if:
 - (a) approval was given under this Part as previously in force for a grant (the *pre-2002-03 grant*) of financial assistance in respect of the service that related to the financial year that began on 1 July 2001; and
 - (b) payment of, or payment of at least one instalment of, the grant has been made.

Note: The *Disability Services Act 1986* as previously in force continues to apply in relation to grants that relate to the financial year that began on 1 July 2001 (see item 52 of Schedule 1 to the *Disability Services Amendment (Improved Quality Assurance) Act 2002*).

- (2) This Subdivision does not authorise the giving of approval at a particular time (the *relevant time*) to the making of a grant of financial assistance to a State or eligible organisation in respect of an employment service where:
 - (a) at the relevant time, the State or organisation holds a current certificate of compliance in relation to the provision of the service; or
 - (b) before the relevant time, the State or organisation obtained a certificate of compliance in relation to the provision of the service, and so obtained the certificate at a time when it was receiving a grant of financial assistance that had been approved under section 12AB, even if it does not hold a current certificate of compliance in relation to the provision of the service; or
 - (c) before the relevant time, the State or organisation received a grant of financial assistance in respect of the service that was approved under section 12AD; or

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- (d) both of the following apply:
 - (i) before the relevant time, the State or organisation received a grant of financial assistance in respect of the service that was approved under section 12AB;
 - (ii) that grant of financial assistance has been terminated for any reason.

12AB Transitional financial assistance for employment services

- (1) Subject to subsection (2), the Minister may approve the making of a grant of financial assistance to a State or eligible organisation in relation to the provision by the State or organisation of an employment service for persons included in the target group.
- (2) The Minister must not approve the making of a grant under subsection (1) unless:
 - (a) the Minister is satisfied that the making of the grant would:
 - (i) further the objects of this Act set out in section 3 and the principles and objectives formulated under section 5; and
 - (ii) comply with the guidelines formulated under section 5 that are applicable to the making of grants under subsection (1); and
 - (b) both of the following apply:
 - (i) the Minister has determined a day by which the State or organisation must obtain a certificate of compliance in respect of the service for which the grant is sought;
 - (ii) the State or organisation has given a written notice to the Minister, in accordance with the procedure set out in the relevant guidelines formulated under section 5, stating its intention to seek to obtain such a certificate on or before that day; and
 - (c) the Minister is satisfied that the State or organisation is meeting the standards that were the applicable standards in respect of the service under this Act as in force when the pre-2002-03 grant was approved.
- (3) The Minister may make determinations for the purposes of subparagraph (2)(b)(i) and may vary such a determination so as to fix a later day than the day specified in the determination.

However, the day specified in a determination, or in a determination as varied, cannot be later than 31 December 2004.

- (4) A grant of financial assistance under this section to a State or eligible organisation in relation to the provision of an employment service is subject to the following conditions:
- (a) a condition that the State or organisation meets the standards referred to in paragraph (2)(c) at all times before:
 - (i) the day determined by the Minister for the purposes of subparagraph (2)(b)(i) in relation to the service; or
 - (ii) the day on which the State or organisation receives, or first receives, a certificate of compliance in respect of the service;whichever is the earlier;
 - (b) a condition that the State or organisation holds a current certificate of compliance in respect of the service at all times on and after the day applying under paragraph (a) and before the end of the period to which the grant relates.

Subdivision B—Grants (other than transitional grants)

12AC Application of Subdivision

This Subdivision authorises the giving of approval in certain circumstances to the making, on or after 1 July 2002, of grants (other than transitional grants) of financial assistance to a State or eligible organisation in respect of an employment service.

12AD Financial assistance for employment services

- (1) Subject to subsection (2), the Minister may approve the making of a grant of financial assistance to a State or eligible organisation in relation to the provision by the State or organisation of an employment service for persons included in the target group.
- (2) The Minister must not approve the making of a grant under subsection (1) unless:
 - (a) the Minister is satisfied that the making of the grant would:
 - (i) further the objects of this Act set out in section 3 and the principles and objectives formulated under section 5; and

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- (ii) comply with the guidelines formulated under section 5 that are applicable to the making of grants under subsection (1); and
- (b) either of the following applies:
 - (i) the State or organisation holds a current certificate of compliance in respect of the service for which the grant is sought;
 - (ii) the Minister has determined a day by which the State or organisation must obtain a certificate of compliance in respect of the service and the State or organisation has given a written notice to the Minister, in accordance with the procedure set out in the relevant guidelines formulated under section 5, stating its intention to seek to obtain such a certificate on or before that day.
- (3) Subparagraph (2)(b)(ii) does not apply in respect of the giving of an approval at a particular time (the *relevant time*) to the making of a grant to a State or eligible organisation in respect of a service if a grant in respect of the service:
 - (a) had been approved before 1 July 2002 under this Part as previously in force; or
 - (b) had been approved on or after that date and before the relevant time under section 12AB or under this section; whether or not the grant is still being received at the relevant time.
- (4) The Minister may make determinations for the purposes of subparagraph (2)(b)(ii) and may vary such a determination so as to fix a later day than the day specified in the determination. However, the day specified in a determination, or in a determination as varied, cannot be later than 12 months after the day on which the grant to which the determination relates is approved.
- (5) A grant of financial assistance under this section to a State or eligible organisation in relation to the provision of an employment service is subject to the condition that the State or organisation:
 - (a) if subparagraph (2)(b)(i) applies in respect of the approval given by the Minister for the making of the grant—holds a current certificate of compliance in respect of the service at all times during the period to which the grant relates; or
 - (b) if subparagraph (2)(b)(ii) applies in respect of the approval given by the Minister for the making of the grant—holds a

current certificate of compliance in respect of the service at all times on and after:

- (i) the day determined by the Minister for the purposes of that subparagraph in relation to the service; or
- (ii) the day on which the State or organisation receives, or first receives, a certificate of compliance in respect of the service;

whichever is the earlier, and before the end of the period to which the grant relates.

Subdivision C—Provisions applicable in respect of all grants under this Division

12AE Ancillary provisions relating to grants in respect of employment services

- (1) Without limiting the generality of subsection 12AB(1) or 12AD(1), the Minister may, under that subsection, approve, in relation to the provision of an employment service, the making of a grant about any of the following:
 - (a) recurrent expenditure incurred or to be incurred;
 - (b) the cost of acquiring land (with or without buildings);
 - (c) the cost of acquiring, erecting, altering or extending buildings;
 - (d) the cost of acquiring, altering or installing equipment.
- (2) If the Minister approves the making of a grant of financial assistance to a State or eligible organisation under section 12AB or 12AD in relation to the provision by the State or organisation of an employment service for persons included in the target group, the Minister must, subject to subsection (4) and the regulations:
 - (a) determine the amount of the financial assistance or the manner in which the amount of the financial assistance is to be calculated; and
 - (b) determine the time or times at which, and the instalments (if any) in which, the financial assistance is to be paid; and
 - (c) specify any other terms and conditions on which the financial assistance is granted.

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- (3) Without limiting the generality of paragraph (2)(c), the terms and conditions that may be specified pursuant to that paragraph include terms and conditions about any of the following:
- (a) the purposes for which the financial assistance may be applied;
 - (b) the amounts to be applied by the State or organisation for those purposes or any other purpose, and the source of amounts to be so applied;
 - (c) the outcomes to be achieved by persons included in the target group by the provision of the employment service, and the rights of those persons in relation to the provision of the employment service or otherwise;
 - (d) the provision of information;
 - (e) the provision of certificates with respect to the fulfilment of terms and conditions;
 - (f) the repayment of financial assistance;
 - (g) the giving of security for the fulfilment of terms and conditions;
 - (h) the use and disposal of, and the recovery of amounts that under the terms and conditions are to be taken as representing the Commonwealth's interest in:
 - (i) land acquired (with or without buildings); and
 - (ii) buildings acquired, erected, altered or extended; and
 - (iii) equipment acquired, altered or installed;as a result of the application of the financial assistance or of the financial assistance and other money.
- (4) If a grant of financial assistance under this Division is to be paid in instalments, the instalments must be paid within 5 years after the approval of the making of the grant.

Division 3—Grants for advocacy services

13 Financial assistance for advocacy services

- (1) The Minister may approve:
 - (a) the making of a grant of financial assistance to a State in relation to the provision by the State of an advocacy service for persons included in the target group; or
 - (b) the making of a grant of financial assistance to an eligible organisation in relation to the provision by the organisation of an advocacy service for persons included in the target group.
- (2) However, the Minister must not approve the making of a grant under subsection (1) unless:
 - (a) the Minister is satisfied that the making of the grant would:
 - (i) further the objects of this Act set out in section 3 and the principles and objectives formulated under section 5; and
 - (ii) comply with the guidelines formulated under section 5 that are applicable to the making of grants under subsection (1); and
 - (b) either of the following applies:
 - (i) the State or organisation holds a current certificate of compliance in respect of the advocacy service;
 - (ii) the Minister has, under this section, specified a day by which the State or organisation must obtain a certificate of compliance in respect of the advocacy service and the State or organisation has given a written notice to the Minister stating its intention to seek to obtain such a certificate on or before that day.

Ministerial determinations

- (3) The Minister may make a determination specifying a day for the purposes of subparagraph (2)(b)(ii). The day cannot be later than 18 months after the day on which the determination is made.
- (4) If subparagraph (2)(b)(ii) applies in respect of a grant, the Minister may vary the determination under subsection (3) to specify a later

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day. The later day cannot be later than 18 months after the day on which the grant is approved.

Statutory conditions

- (5) A grant of financial assistance under this section to a State or eligible organisation in relation to the provision of an advocacy service is subject to the condition that the State or organisation holds a current certificate of compliance in respect of the service:
- (a) if subparagraph (2)(b)(i) applies in respect of the grant—at all times during the period to which the grant relates; or
 - (b) if subparagraph (2)(b)(ii) applies in respect of the grant—at all times on and after:
 - (i) the day specified in relation to the service under whichever of subsections (3) and (4) applies; or
 - (ii) the day on which the State or organisation receives a certificate of compliance in respect of the service; whichever is the earlier, and before the end of the period to which the grant relates.

Note: See section 14 for other conditions.

Approvals and determinations are not legislative instruments

- (6) The following are not legislative instruments:
- (a) an approval under subsection (1);
 - (b) a determination under subsection (3).

14 Ancillary provisions relating to grants in respect of advocacy services

- (1) Without limiting subsection 13(1), the Minister may, under that subsection, approve the making of a grant of financial assistance, in relation to the provision of an advocacy service, about any of the following:
- (a) recurrent expenditure incurred or to be incurred;
 - (b) the cost of acquiring land (with or without buildings);
 - (c) the cost of acquiring, erecting, altering or extending buildings;
 - (d) the cost of acquiring, altering or installing equipment.

- (2) If the Minister approves the making of a grant of financial assistance under subsection 13(1), the Minister must, subject to subsection (4) of this section and to the regulations:
- (a) determine the amount of the financial assistance or the manner in which the amount of the financial assistance is to be worked out; and
 - (b) determine the time or times at which, and the instalments (if any) in which, the financial assistance is to be paid; and
 - (c) determine any other terms and conditions on which the financial assistance is granted.

Examples of conditions

- (3) Without limiting paragraph (2)(c), the terms and conditions that may be determined include terms and conditions about any of the following:
- (a) the purposes for which the financial assistance may be applied;
 - (b) the amounts to be applied by the State or organisation for those purposes or any other purpose, and the source of amounts to be so applied;
 - (c) the outcomes to be achieved by persons included in the target group by the provision of the advocacy service, and the rights of those persons in relation to the provision of the advocacy service or otherwise;
 - (d) the provision of information;
 - (e) the provision of certificates with respect to the fulfilment of terms and conditions;
 - (f) the repayment of financial assistance;
 - (g) the giving of security for the fulfilment of terms and conditions;
 - (h) the use and disposal of, and the recovery of amounts that under the terms and conditions are to be taken as representing the Commonwealth's interest in:
 - (i) land acquired (with or without buildings); and
 - (ii) buildings acquired, erected, altered or extended; and
 - (iii) equipment acquired, altered or installed;as a result of the application of the financial assistance or of the financial assistance and other money.

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Instalment payments

- (4) If a grant of financial assistance under this Division is to be paid in instalments, the instalments must be paid within 5 years after the approval of the making of the grant.

Determinations are not legislative instruments

- (5) A determination under subsection (2) is not a legislative instrument.

Division 3A—Disability Standards Review Panels

14B Establishment

- (1) The Minister must establish a Disability Standards Review Panel for each State or Territory.
- (2) A Panel so established may operate in respect of one or more States and Territories.

14C Functions

- (1) The functions of a Disability Standards Review Panel for a State or Territory are:
 - (a) to review and to report, in writing, to the Minister on the performance, in the State or Territory, of a service in relation to which the Minister proposes to make a declaration under section 14G; and
 - (b) to undertake such other functions as the Minister directs.
- (2) The Panel is to perform its functions:
 - (a) at the Minister's direction; or
 - (b) at the written request of an eligible organisation that is providing a service in relation to which the Minister proposes to make a declaration under section 14G.
- (3) In conducting the review, the Panel is to consider whether the applicable standards were met in respect of the provision of the service.
- (4) The Panel's report is to include:
 - (a) its findings and the reasons for those findings; and
 - (b) its recommendations to the Minister arising from those findings.
- (5) In this section:

service means:

 - (a) an eligible service; or
 - (b) an employment service in respect of which a transitional grant is being received.

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14D Powers

Subject to this Part, a Disability Standards Review Panel has power to do all things necessary or convenient to be done in connection with the performance of its functions.

14E Performance of a Disability Standards Review Panel's functions

In performing its functions, a Disability Standards Review Panel:

- (a) must act with as little formality as possible; and
- (b) must act as quickly as is appropriate given the requirements of this Part and the need properly to consider a matter before it; and
- (c) is not bound by the rules of evidence; and
- (d) may inform itself on anything relevant to the matter before it in any way it thinks fit; and
- (e) may receive information or submissions orally or by written statements; and
- (f) may, in respect of a matter before it, consult such persons as it thinks fit.

14F Minister may make orders

The Minister may, by legislative instrument, make orders providing for the following matters:

- (a) the notice requirements to be complied with before the Minister makes a declaration under section 14G;
- (b) the procedures to be followed prior to a Disability Standards Review Panel conducting a review under section 14C;
- (c) the procedures to be followed by the Panel in conducting the review;
- (d) the making of recommendations under paragraph 14C(4)(b);
- (e) the appointment, terms and conditions of appointment, resignation and termination of appointment of Panel members;
- (f) the duties associated with holding office as a Panel member;
- (g) any other matter relating to the establishment or the operation of a Panel in relation to which it is necessary or convenient to make an order under this section.

Division 3B—Failure to meet applicable standards or hold certificate of compliance

14G Declaration of failure to meet standards

- (1) This section applies if, at any time (the *relevant time*):
- (a) an eligible organisation is receiving a grant of financial assistance under Division 2 in respect of the provision of an eligible service; or
 - (b) an eligible organisation is receiving a transitional grant of financial assistance in respect of the provision of an employment service, and the relevant time:
 - (i) is a time on or before the day determined by the Minister for the purposes of subparagraph 12AB(2)(b)(i); and
 - (ii) where the organisation received a certificate of compliance in respect of the service before that day—is a time before the day on which the certificate was received;

and, in either case, the organisation is not meeting the applicable standards in respect of the service.

- (1A) The Minister may make a declaration:
- (a) stating that the organisation is not meeting the applicable standards in respect of the service and, consequently, is in breach of the condition of the grant in subsection 10(3A) or paragraph 12AB(4)(a), as the case may be; and
 - (b) specifying the actions that will be taken as a result of the failure to comply with the condition.
- (2) The actions specified under paragraph (1A)(b) may be either or both of the following:
- (a) all or any of the actions that, under the terms and conditions of the grant of financial assistance, may be taken as a result of the failure to comply with the condition specified under paragraph (1A)(a);
 - (b) action taken under section 14J.
- (3) Actions of a kind referred to in subsection (2) may only be taken if they are specified under paragraph (1A)(b).

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- (4) The Minister must provide a copy of the declaration to the eligible organisation concerned.

14GA Consequences of failure to hold certificate

- (1) This section applies if:
- (a) an eligible organisation is receiving a grant of financial assistance in relation to the provision of an employment service or an advocacy service; and
 - (b) the organisation is in breach of the condition of the grant referred to in subsection 12AD(5) or 13(5), as the case requires.
- (2) The Minister may make a declaration:
- (a) stating that the organisation is in breach of that condition of the grant; and
 - (b) specifying the actions that will be taken as a result of that breach.
- (3) The actions specified under paragraph (2)(b) may be either or both of the following:
- (a) all or any of the actions that, under the terms and conditions of the grant of financial assistance, may be taken as a result of a breach of the condition referred to in subsection 12AD(5) or 13(5), as the case requires;
 - (b) action taken under section 14J.
- (4) Actions of a kind referred to in subsection (3) may only be taken if they are specified under paragraph (2)(b).
- (5) The Minister must provide a copy of the declaration to the eligible organisation concerned.
- (6) A declaration made under subsection (2) is not a legislative instrument.

14H Certain matters to occur before Minister makes a declaration or takes action

- (1) The Minister must not make a declaration under section 14G in relation to an eligible service or an employment service in respect of which a transitional grant is being received unless:

- (a) a Disability Standards Review Panel has been established for the State or Territory in which the service operates; and
 - (b) any requirements of the orders have been complied with; and
 - (c) the Minister has complied with any guidelines in force under section 5 that relate to the making of such a declaration; and
 - (d) if an eligible organisation has applied, under the orders, to the Panel for a review under section 14C of the performance of the service—the Minister, in making the declaration, has had regard to the recommendations made by the Panel under paragraph 14C(4)(b).
- (2) Nothing in this section implies that, in making the declaration, the Minister is obliged to give effect to the recommendations made by the Panel if he or she is satisfied that there is a more appropriate course of action.

14J Information about Minister’s declaration may be made available to the public

- (1) If:
- (a) an eligible organisation is receiving a grant of financial assistance under this Part in respect of the provision by it of an eligible service, an employment service or an advocacy service; and
 - (b) the Minister has made a declaration under section 14G or 14GA in respect of the organisation’s provision of the service;
- the Minister may make available to the public, in any way the Minister thinks fit, any or all of the following information:
- (c) the eligible organisation’s name and address;
 - (d) the name and address of the service that is the subject of the declaration;
 - (e) the terms of the Minister’s declaration under section 14G or 14GA;
 - (f) details of the eligible organisation’s failure to meet the applicable standards or to hold the certificate of compliance, as the case may be, in respect of the provision of the service;
 - (g) the actions taken in respect of the eligible organisation’s failure.

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Division 3B Failure to meet applicable standards or hold certificate of compliance

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- (2) An action or proceeding, whether criminal or civil, does not lie against a person for publishing in good faith a copy of the information, or a fair extract from, or a fair abstract of, the information.

Division 4—Miscellaneous

14K Review of services funded under Part II

The Minister must ensure that, at intervals of not more than 5 years, a review is conducted of the extent to which a State or an eligible organisation that has received a grant of financial assistance under this Part in respect of the provision of an eligible service, an employment service or an advocacy service has fulfilled the terms and conditions on which the grant was made.

15 Agreements in respect of terms and conditions of grants

- (1) If the Minister approves the making of a grant of financial assistance to an eligible organisation under this Part, the financial assistance is not payable unless the Minister, on the Commonwealth's behalf, enters into an agreement with the eligible organisation containing the same terms and conditions on which the financial assistance was granted.
- (3) Subject to subsection (4), the Minister may only vary the terms and conditions of a grant of financial assistance with the consent of the person to whom the grant was made.
- (4) If:
 - (a) the Minister has made a declaration under section 14G or 14GA in respect of the provision, by an eligible organisation, of an eligible service, an employment service or an advocacy service; and
 - (b) the Minister wishes to take action in respect of the eligible organisation's failure to comply with the terms and conditions of the grant of financial assistance made in respect of the provision of the service;the Minister may, without the eligible organisation's consent, vary the terms and conditions of the grant to take the action.
- (5) If:
 - (a) the Minister varies the terms and conditions of a grant of financial assistance; and

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(b) the person has previously entered into an agreement with the Minister containing those terms and conditions; the agreement is taken to be varied accordingly.

(6) In this section:

person includes a State and an eligible organisation.

16 Agreements may be entered into with transferees of land etc.

(1) Where:

(a) either of the following subparagraphs apply:

(i) a grant of financial assistance to a person under this Part has been made on terms and conditions with respect to the use or disposal of any land, building or equipment;

(ii) a person has entered into an agreement under this subsection under which the person is required to comply with terms and conditions with respect to the use or disposal of any land, building or equipment; and

(b) the person has transferred, or proposes to transfer, the whole or a part of the person's interest in the land, building or equipment to another person;

the Minister may, on the Commonwealth's behalf, enter into an agreement with the other person under which the other person is required to comply, or will, upon the transfer being effected, be required to comply, with terms and conditions, whether with respect to the use or disposal of the land, building or equipment or otherwise.

(1A) Without limiting subsection (1), an agreement may contain terms and conditions providing for the other person to repay the whole, or part of, the grant that was made to the transferor in respect of the land, building or equipment.

(2) In subsection (1), *person* includes a State or eligible organisation.

Part III—Provision of rehabilitation services by the Commonwealth

Division 1—General

17 Interpretation

In this Act, unless the contrary intention appears:

rehabilitation program means a rehabilitation program under this Part, and, except in section 20, includes a follow-up program under this Part.

rehabilitation program standards means the standards determined by the Minister under paragraph 5A(1)(c) in relation to the provision of rehabilitation programs.

unsupported, in relation to the paid employment of a person, means unsupported by services provided to assist persons with disabilities to retain paid employment.

18 Target group

The target group for the purposes of this Part consists of persons who:

- (a) have attained 14 years of age but have not attained 65 years of age; and
- (b) have a disability that:
 - (i) is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of such impairments; and
 - (ii) results in a substantially reduced capacity of the person:
 - (A) to obtain or retain unsupported paid employment; or
 - (B) to live independently.

19 Exercise of powers

- (1) The Secretary shall not exercise a power conferred by subsection 20(1) or 22(3) or section 24 unless the Secretary is satisfied that the exercise of the power would:
 - (a) further the objects of this Act set out in section 3 and the principles and objectives formulated under section 5; and
 - (b) comply with the guidelines (if any) formulated under section 5 that are applicable to the exercise of the power.
- (2) The Secretary must not take measures, or enter into arrangements, under subsection 20(1) for the provision of a rehabilitation program for persons in the target group unless:
 - (a) the person providing the program holds a current certificate of compliance in respect of the provision of rehabilitation programs; or
 - (b) the Secretary is satisfied that 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, despite the person providing the program not holding such a certificate.
- (3) Despite subsection (2), the Secretary may enter into an arrangement with a provider of rehabilitation programs who does not hold a current certificate of compliance in respect of the provision of rehabilitation programs if:
 - (a) the arrangement is for the provision of rehabilitation programs for a period of less than 12 months; or
 - (b) the Secretary is satisfied that the provider is likely to hold such a certificate at the end of the period of 12 months after the day on which the arrangement commences.

Division 2—Rehabilitation services

20 Provision of rehabilitation programs

- (1) Subject to section 21, the Secretary may (on the Commonwealth's behalf) take measures, or enter into arrangements, to provide to persons in the target group such rehabilitation programs, and any follow-up programs, that the Secretary considers necessary or desirable.
- (2) Without limiting the generality of subsection (1), the Secretary may, for the purposes of a rehabilitation program (including any follow-up program), provide, or arrange for the provision of, the following:
 - (a) employment and vocational training, educational courses and programs, and mobility and other independent living training;
 - (b) diagnostic and assessment services, occupational therapy, physiotherapy, speech therapy, and counselling and social work services;
 - (c) accommodation, transportation and personal support services;
 - (d) prostheses and aids, including:
 - (i) home and work-place modifications; and
 - (ii) modifications to vehicles, appliances and equipment;
 - (e) the maintenance and repair of prostheses and aids;
 - (f) books, tools of trade and other equipment and appliances;
 - (g) any other goods and services the Secretary considers necessary or desirable.
- (3) In connection with the provision of rehabilitation programs (including follow-up programs), the Secretary may, on behalf of the Commonwealth:
 - (a) provide; or
 - (b) arrange for the provision of;such buildings, plant, equipment, amenities, facilities and other things as the Secretary considers necessary or desirable, including, but not limited to, accommodation, transportation, and recreational, leisure and social amenities and facilities.

21 Restriction of rehabilitation programs to Australian citizens etc.

A rehabilitation program shall not be provided for a person unless the person is:

- (a) an Australian citizen; or
- (b) a person resident in Australia whose continued presence in Australia is not subject to a limitation as to time imposed by or under a law of the Commonwealth.

21A How are rehabilitation programs ended?

- (1) Provision of a rehabilitation program to a person must end:
 - (a) after that person requests the Secretary, in writing, to stop the provision of the program; or
 - (b) after the time determined by the Secretary under subsection (1A).
- (1AA) Paragraph (1)(a) does not apply to the provision of a rehabilitation program to a person if:
 - (a) the person is required to undertake a specified activity under the *Social Security Act 1991*; and
 - (b) that activity is, or includes, the rehabilitation program.
- (1A) The Secretary may determine that provision of a rehabilitation program must end after a specified time.
- (2) In making a determination under subsection (1A) the Secretary must comply with guidelines (if any) formulated under section 5 that relate to this section.
- (3) The Secretary must cause a copy of the determination to be provided to the person within 14 days of the Secretary making the determination.

22 Cost of rehabilitation programs

- (1) Subject to subsections (1A) and (1B), the Commonwealth is to bear the cost of, and incidental to, a rehabilitation program provided for a pensioner or beneficiary.
 - (1A) If:
 - (a) a rehabilitation program provided for a pensioner or beneficiary includes a course of study at an institution; and
-

(b) the person owes one or more HEC semester debts to the Commonwealth in respect of undertaking the course of study; the pensioner's or beneficiary's HEC semester debts in respect of the course must not be borne by the Commonwealth unless the *Higher Education Funding Act 1988*, or another Act, provides otherwise.

(1B) If:

(a) a rehabilitation program provided for a pensioner or beneficiary includes a course of study with a higher education provider; and

(b) the person owes one or more HELP debts to the Commonwealth in respect of undertaking the course of study; the pensioner's or beneficiary's HELP debts in respect of the course must not be borne by the Commonwealth unless the *Higher Education Support Act 2003*, or another Act, provides otherwise.

(2) Subject to subsection (3), the cost, as determined by the Secretary, of and incidental to a rehabilitation program provided for a person who is not a pensioner or beneficiary is to be borne by the person.

(3) The Secretary may direct:

(a) that subsection (2) does not apply; or

(b) that subsection (2) does not apply in relation to:

(i) specified costs; or

(ii) a specified part of the cost referred to in that subsection; in relation to a specified person, or persons included in a specified class of persons, and, where the Secretary so directs, any cost that by virtue of the direction is not to be borne by that person or those persons shall be borne by the Commonwealth.

(4) In this section:

HEC semester debt has the same meaning as in Chapter 4 of the *Higher Education Funding Act 1988*.

HELP debt has the same meaning as in the *Higher Education Support Act 2003*.

higher education provider has the same meaning as in the *Higher Education Support Act 2003*.

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institution has the same meaning as in Chapter 4 of the *Higher Education Funding Act 1988*.

pensioner or beneficiary means a person who:

- (a) is receiving a social security pension, or a social security benefit, within the meaning of subsection 23(1) of the *Social Security Act 1991*; or
- (d) is eligible to receive a service pension under Part III or income support supplement under Part IIIA of the *Veterans' Entitlements Act 1986*.

Division 3—Miscellaneous

23 Recovery of costs of rehabilitation programs borne by the Commonwealth

- (1) In this section:

compensation, in relation to a person who has undertaken, or is undertaking, a rehabilitation program, means any payment by way of compensation or damages, or that is, in the opinion of the Secretary, in the nature of compensation or damages, in respect of the disability by reason of which the rehabilitation program has been or is being provided, but does not include a payment for which the person has made contributions or a payment made under a law, or a provision of a law, of the Commonwealth, or a State or Territory, being a law or provision prescribed for the purposes of this definition.

cost, in relation to a person's rehabilitation program, means the cost, as determined by the Secretary, of and incidental to the program, and includes any allowances paid to the person under section 24 but does not include any part of the cost that is not borne by the Commonwealth.

- (2) Where:

- (a) a person who is undertaking, or has undertaken, a rehabilitation program recovers or receives compensation from another person; or
- (b) the Secretary, by notice in writing served on a person who is undertaking, or has undertaken, a rehabilitation program, notifies the person that the person is, in the opinion of the Secretary, entitled to recover or receive compensation from another person;

the person who is undertaking, or has undertaken, the rehabilitation program is, subject to subsection (3) and notwithstanding section 22, liable to pay to the Commonwealth an amount equal to the cost of the rehabilitation program.

- (3) Where the Secretary is satisfied that special circumstances exist by reason of which a person liable under subsection (2) to pay an amount to the Commonwealth should be released in whole or in

Section 23

part from that liability, the Secretary may release the person accordingly.

- (4) Where the Secretary is satisfied that special circumstances exist by reason of which the whole or a part of an amount paid to, or recovered by, the Commonwealth under this section by or from a person who is undertaking, or has undertaken, a rehabilitation program should be refunded to the person, the Secretary may make a refund accordingly.
- (5) The Secretary may, by notice in writing served on a person (in this section referred to as the *person liable to pay compensation*) liable to pay compensation to or on behalf of another person (in this section referred to as the *person entitled to receive compensation*) who is undertaking, or has undertaken, a rehabilitation program, inform the person liable to pay compensation that the Secretary proposes to recover from the person liable to pay compensation the cost of the rehabilitation program.
- (5A) The Secretary may issue a notice under subsection (5):
- (a) whether or not a court or tribunal has made a determination about the entitlement to compensation of the person entitled to receive compensation; and
 - (b) whether or not a person liable to pay compensation has made a payment (with or without admission of liability) in settlement of a claim for damages.
- (6) The Secretary may, in the same notice or in a subsequent notice in writing served on the person liable to pay compensation, specify:
- (a) the cost of the rehabilitation program provided, or being provided, to the person entitled to receive compensation; and
 - (b) an amount (not exceeding the amount of that cost) payment of which is claimed by the Secretary;
- and thereupon the person liable to pay compensation is liable to pay to the Commonwealth:
- (c) the amount so specified; or
 - (d) the amount of the compensation (less any amounts paid, in accordance with an approval given under subsection (7), to the person entitled to receive compensation by the person liable to pay compensation);
- whichever is the lesser amount.

- (7) After the service on a person of a notice under subsection (5), the person shall not, except with the approval of the Secretary and in accordance with that approval, pay an amount of compensation to or on behalf of the person entitled to receive compensation until:
 - (a) the Secretary has specified under subsection (6) the amount that the person liable to pay compensation is liable to pay to the Commonwealth; and
 - (b) the person liable to pay compensation has paid that amount to the Commonwealth.
- (8) Payment of an amount to the Commonwealth under subsection (6) shall, to the extent of the payment, operate as a discharge to the person liable to pay compensation against the person entitled to receive compensation.
- (9) Where the Secretary is satisfied that special circumstances exist by reason of which the whole or a part of an amount paid to, or recovered by, the Commonwealth by or from the person liable to pay compensation should be paid to the person entitled to receive compensation, the Secretary may make a payment accordingly.
- (10) This section binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.
- (11) This section has effect, in relation to the Commonwealth or an authority of the Commonwealth, notwithstanding the provisions of any other Act.
- (12) Any amount that a person is liable to pay to the Commonwealth under this section may be recovered in a court of competent jurisdiction as a debt due to the Commonwealth, but the Commonwealth is not entitled to recover the cost of a rehabilitation program that is being undertaken, or has been undertaken, by a person from both:
 - (a) the person who is undertaking, or has undertaken, the rehabilitation program; and
 - (b) a person liable to pay compensation to or on behalf of the person who is undertaking, or has undertaken, the rehabilitation program.
- (13) A reference in subsection (5), (5A) or (12) to a person liable to pay compensation includes a reference to an insurer who, under a

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contract of insurance, is liable to indemnify the person liable to pay the compensation against such liability.

24 Training allowance and living-away-from-home allowance

- (1) Where a person is undertaking a rehabilitation program that consists of, or includes, employment or vocational training, the Secretary may approve payment of a training allowance to the person.
- (2) The rate of a training allowance is such amount per week as is, subject to paragraph (3)(a), determined, by legislative instrument, by the Minister.
- (3) The Minister:
 - (a) shall determine different rates of training allowance for the purposes of subsection (2) in respect of persons undertaking full-time employment or vocational training and persons undertaking part-time employment or vocational training; and
 - (b) may determine different rates of training allowance in respect of different classes of persons having regard to their age.
- (4) Where the Secretary is satisfied that a person to whom payment of a training allowance has been approved is required to live away from the person's usual place of residence for the purpose of undertaking employment or vocational training, the Secretary may approve payment to the person of a living-away-from-home allowance, in addition to the training allowance, at the rate determined, by legislative instrument, by the Minister for the purposes of this subsection.
- (5) Allowances under this section are payable from such dates, in respect of such periods, in such instalments and at such times as the Secretary determines.
- (6) The following provisions apply in relation to allowances under this section as if an allowance under this section were an age pension under the *Social Security Act 1991*:
 - (a) subsection 1223(1) and paragraph 1223(1AB)(d) (debt arising from recipient's contravention) and sections 1233 to 1237 (recovery, write-off and waiver) of the *Social Security Act 1991*;

- (b) sections 44, 55 and 57 (method of payment), 58 (claim for amounts owing at recipient's death) and 60, 61 and 62 (protection of payment) of the *Social Security (Administration) Act 1999*.

25 Arrangements for provision of rehabilitation programs

- (1) The Secretary may enter into an arrangement with a person under which the Secretary may, on behalf of the Commonwealth, provide, or arrange for the provision of, a rehabilitation program for that person or for such person, or persons included in such class of persons, as is specified in the arrangement.
- (1A) The Secretary may enter into an arrangement with an Agency Head (within the meaning of the *Public Service Act 1999*) under which the Secretary may, on the Commonwealth's behalf, provide, or arrange for the provision of, rehabilitation programs for such persons included in a class of persons specified in the arrangement.
- (2) An arrangement under subsection (1) shall contain provision for the payment to the Commonwealth of the cost, as determined by the Secretary, of and incidental to, the rehabilitation program or rehabilitation programs provided under the arrangement or such part of that cost (if any) as the Secretary, having regard to the circumstances of a particular case, directs.
- (3) Section 21 does not apply to the provision of a rehabilitation program pursuant to an arrangement under subsection (1).
- (4) Section 22 does not apply in relation to a person for whom a rehabilitation program is provided pursuant to an arrangement under subsection (1).
- (5) Sections 23 and 24 do not apply in relation to a person for whom a rehabilitation program is provided pursuant to an arrangement under subsection (1) except in so far as the Secretary otherwise directs.

26 Review of decisions under Part III

- (1) In this section, **reviewable decision** means a decision (within the meaning of the *Administrative Appeals Tribunal Act 1975*) of the Secretary, or a delegate of the Secretary, under this Part.

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- (2) A person affected by a reviewable decision who is dissatisfied with the decision may, by notice in writing given to the Secretary within 30 days after the day on which the decision first comes to the notice of the person, or within such further period as the Secretary allows, request the Secretary to reconsider the decision.
- (3) There shall be set out in the request the reasons for making the request.
- (4) Upon receipt of the request, the Secretary shall reconsider the decision and may affirm or revoke the decision or vary the decision in such manner as the Secretary thinks fit.
- (5) Where the Secretary affirms, revokes or varies a decision, the Secretary shall, by notice in writing served on the person who made the request, inform the person of the result of the reconsideration of the decision and the reasons for affirming, revoking or varying the decision, as the case may be.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires a decision-maker to notify persons whose interests are affected by the decision of the making of the decision and their right to have the decision reviewed. In so notifying, the decision-maker must have regard to the Code of Practice determined under section 27B of that Act.

- (6) Applications may be made to the Administrative Appeals Tribunal for review of reviewable decisions that have been affirmed or varied under subsection (4).

27 Power to obtain information etc.

- (1) Where the Secretary believes on reasonable grounds that a person is capable of furnishing information, producing documents or giving evidence in relation to any matter that might affect, or have affected:
 - (a) the payment of an allowance under this Part to the person or any other person; or
 - (b) the liability of the person or any other person to pay an amount to the Commonwealth under section 23;the Secretary may, by notice served on the person, require the person:
 - (c) to furnish, within a reasonable period and in a reasonable manner, being a period and manner specified in the notice,

any such information to a Commonwealth employee specified in the notice;

- (d) to produce, within a reasonable period and in a reasonable manner, being a period and manner specified in the notice, any such documents to a Commonwealth employee specified in the notice; or
 - (e) to appear, at a reasonable time and place specified in the notice, before a Commonwealth employee specified in the notice to give any such evidence, either orally or in writing, and to produce any such documents.
- (2) A Commonwealth employee specified in a notice given pursuant to paragraph (1)(e) may require any evidence that is to be given to the Commonwealth employee in compliance with the notice to be given on oath or affirmation, and for that purpose the Commonwealth employee may administer an oath or affirmation.
- (3) A person shall not:
- (a) refuse or fail to comply with a notice under subsection (1); or
 - (b) in purported compliance with such a notice, furnish information or give evidence knowing that the information or evidence is false or misleading in a material particular.
- Penalty: \$1,000 or imprisonment for 6 months.
- (3A) Paragraph (3)(a) applies only to the extent to which the person is capable of complying with the notice.
- (4) A person is not excused from furnishing information, producing a document or giving evidence pursuant to a notice under subsection (1) on the ground that the information or evidence, or the production of the document, may tend to incriminate the person, but any information furnished, document produced or evidence given pursuant to a notice under subsection (1), and any information or thing (including any document) obtained as a direct or indirect consequence of the furnishing of the information, production of the document or giving of the evidence, as the case may be, is not admissible in evidence against the person in any criminal proceedings, other than proceedings for an offence against subsection (3).
- (5) This section binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

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- (6) This section does not require a person to furnish information, produce a document or give evidence to the extent that in doing so the person would contravene a law of the Commonwealth.
- (7) Nothing contained in any law of a State or Territory shall operate so as to prevent any person from furnishing any information, producing any documents or giving any evidence to a Commonwealth employee pursuant to a notice under subsection (1).

28 Secrecy

- (1) A person shall, if the Secretary so directs, before performing any duties or exercising any powers under this Part, make before a Justice of the Peace or a Commissioner for Declarations a declaration in accordance with a form approved for the purpose by the Secretary.
- (2) Subject to subsection (5), a person shall not, directly or indirectly, make a record of, or divulge to any person, any information with respect to the affairs of another person acquired by the first-mentioned person in the performance of duties or exercise of powers under this Part.
- (2A) Subsection (2) does not apply if the person records or divulges the information in the performance of duties or exercise of powers under this Part or for the purposes of the administration of the *Social Security Act 1991*.
- (3) A person who contravenes subsection (2) is guilty of an offence against that subsection.
- (3A) Strict liability applies to the element of an offence against subsection (2) that an acquisition of information is an acquisition in the performance of duties or exercise of powers under this Part.
- (4) Subject to subsection (7), a person shall not, except for the purposes of this Part or the *Social Security Act 1991*, be required:
 - (a) to produce in court any document that has come into his or her possession or under his or her control in the performance of duties or exercise of powers under this Part; or

- (b) to divulge to a court any matter or thing that has come to his or her notice in the performance of duties or exercise of powers under this Part.
- (5) A person may:
- (a) divulge specified information to such persons as the Secretary directs if the Secretary certifies that it is necessary in the public interest that the information should be so divulged;
 - (b) divulge any information to any prescribed authority or person; or
 - (c) divulge any information to a person who is expressly or impliedly authorised by the person to whom the information relates to obtain it; or
 - (d) make a record of information with the express or implied authorisation of the person to whom the information relates.
- (6) An authority or person to whom information is divulged under subsection (5), and any person or employee under the control of that authority or person, shall, in respect of that information, be subject to the same rights, privileges, obligations and liabilities under this section as if that authority or person were a person performing duties under this Part and had acquired the information in the performance of those duties.
- (7) Where:
- (a) the Secretary certifies that it is necessary in the public interest that specified information should be divulged to a court; or
 - (b) a person to whom information relates has expressly authorised it to be divulged to a court;
- a person may be required:
- (c) to produce in court any document containing the information; or
 - (d) to divulge the information to the court.
- (8) In this section, **court** includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

29 Offences against secrecy provision indictable offences

- (1) An offence against subsection 28(2) is an indictable offence and, subject to subsection (3), is punishable on conviction by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years.
- (2) Notwithstanding that an offence referred to in subsection (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.
- (3) Where, in accordance with subsection (2), a court of summary jurisdiction convicts a person of an offence against subsection 28(2), the penalty that the court may impose is a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months.

30 Time limit for institution of prosecutions

Proceedings for an offence against subsection 28(2) may not be commenced more than 3 years after the commission of the offence.

Part IV—Miscellaneous

32 Principles etc. to be in writing

Any principle, objective, guideline, approval, direction, determination, declaration, order, arrangement or certification formulated, given, made or entered into under this Act shall be formulated, given, made or entered into, as the case may be, in writing.

33 Delegation by Minister

- (1) The Minister may, either generally or as otherwise provided in the instrument of delegation, by writing signed by the Minister, delegate to an APS employee in the Department all or any of the powers of the Minister under this Act, other than:
 - (a) the power to formulate principles, objectives and guidelines under section 5; and
 - (aa) the power to determine standards under subsection 5A(1); and
 - (ab) the power to approve key performance indicators under subsection 5A(2); and
 - (b) the power to give approvals for the purposes of the definition of *research or development activity* in section 7; and
 - (c) the power to give approvals under section 9; and
 - (ca) the power to give approvals under section 9A; and
 - (caa) the power to give approvals under section 9B; and
 - (cb) the power to make orders under section 14F; and
 - (d) the power to make determinations under section 24; and
 - (e) this power of delegation.
- (2) A power delegated under subsection (1) shall, when exercised by the delegate, be deemed to have been exercised by the Minister.
- (3) A delegation of a power by the Minister under subsection (1) does not prevent the exercise of the power by the Minister.

34 Delegation by Secretary

- (1) The Secretary may, by writing signed by the Secretary:
 - (a) delegate to an officer all or any of the powers of the Secretary under Part III; and
 - (b) delegate to an APS employee in the Department all or any of the Secretary's other powers under this Act, other than the power to give approvals under subsection 6B(1).
- (2) In exercising powers under the delegation, the delegate must comply with any directions of the Secretary.

35 Payments to be made out of appropriated money

Payments under this Act shall be made out of money appropriated from time to time by the Parliament for the purpose.

36 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular, may make regulations prescribing fines not exceeding \$1,000 for offences against the regulations.

Table of Acts**Notes to the *Disability Services Act 1986*****Note 1**

The *Disability Services Act 1986* as shown in this compilation comprises Act No. 129, 1986 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 1 October 2001 is not included in this compilation. For subsequent information *see* Table A.

The *Disability Services Act 1986* was modified by the A.C.T. Self-Government (Consequential Provisions) Regulations (as amended). The modifications are not incorporated in this compilation.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Disability Services Act 1986</i>	129, 1986	9 Dec 1986	5 June 1987 (see Gazette 1986, No. S110)	
<i>Employment, Education and Training Act 1988</i>	80, 1988	24 June 1988	1 July 1988 (see Gazette 1988, No. S190)	—
<i>Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988</i>	99, 1988	2 Dec 1988	2 Dec 1988	—
<i>Community Services and Health Legislation Amendment Act (No. 2) 1990</i>	141, 1990	28 Dec 1990	Part 3 (ss. 11, 12): Royal Assent (a)	—
<i>Social Security (Rewrite) Transition Act 1991</i>	70, 1991	25 June 1991	(b)	—
<i>Veterans' Entitlements (Rewrite) Transition Act 1991</i>	73, 1991	25 June 1991	S. 21: 1 July 1991 (c)	—
<i>Health, Housing and Community Services Legislation Amendment Act 1992</i>	88, 1992	30 June 1992	Part 2 (ss. 4–28): Royal Assent (d)	Ss. 6(2) and 28
<i>Health and Community Services Legislation Amendment Act (No.2) 1993</i>	76, 1993	25 Nov 1993	Part 2 (ss. 3–5): Royal Assent (e)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Human Services and Health Legislation Amendment Act 1994</i>	80, 1994	23 June 1994	Ss. 4 and 5: Royal Assent (<i>f</i>)	—
<i>Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994</i>	164, 1994	16 Dec 1994	S. 26: (<i>g</i>)	—
<i>Student Assistance (Youth Training Allowance—Transitional Provisions and Consequential Amendments) Act 1994</i>	184, 1994	23 Dec 1994	(<i>h</i>)	—
<i>Evidence (Transitional Provisions and Consequential Amendments) Act 1995</i>	3, 1995	23 Feb 1995	S. 14: Royal Assent (<i>i</i>) S. 27: 18 Apr 1995 (<i>i</i>)	S. 14
<i>Human Services and Health Legislation Amendment Act (No. 3) 1995</i>	149, 1995	16 Dec 1995	Schedule 2 (items 2, 3): Royal Assent (<i>j</i>)	—
<i>Social Security and Veterans' Affairs Legislation Amendment Act 1995</i>	1, 1996	9 Jan 1996	Schedule 15: 20 Sept 1996 (<i>k</i>)	—
<i>Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998</i>	45, 1998	17 June 1998	Schedule 13 (items 10, 11): 1 July 1998 (<i>l</i>)	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 397, 398): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (<i>m</i>)	—
<i>Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001</i>	10, 2001	22 Mar 2001	Schedule 3 (item 6): 19 Apr 2001 (<i>n</i>)	—
<i>Family and Community Services Legislation Amendment (Application of Criminal Code) Act 2001</i>	137, 2001	1 Oct 2001	2 Oct 2001	S. 4 [see Table A]
<i>Disability Services Amendment (Improved Quality Assurance) Act 2002</i>	28, 2002	5 Apr 2002	Schedule 1 (items 2–52): 1 July 2002 Remainder: Royal Assent	Sch. 1 (items 3, 52) [see Table A]
<i>Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003</i>	150, 2003	19 Dec 2003	Schedule 2 (items 98–101): (<i>o</i>)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005</i>	154, 2005	14 Dec 2005	Schedule 23 (items 1–5): 1 July 2006	Sch. 23 (item 5) [see Table A]
<i>Social Security and Family Assistance Legislation Amendment (Miscellaneous Measures) Act 2006</i>	108, 2006	27 Sept 2006	Schedule 6 (item 2): (p) Schedule 8 (items 87–93): Royal Assent	—
<i>Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Act 2007</i>	65, 2007	15 Apr 2007	Schedule 1 (items 1–5, 8–16): 1 July 2007 Remainder: Royal Assent	Sch. 1 (items 7, 10, 17) [see Table A]
<i>Statute Law Revision Act 2011</i>	5, 2011	22 Mar 2011	Schedule 7 (item 53): 19 Apr 2011	—
<i>Human Services Legislation Amendment Act 2011</i>	32, 2011	25 May 2011	Schedule 4 (item 94A): 1 July 2011	—
<i>Social Security and Other Legislation Amendment Act 2011</i>	145, 2011	29 Nov 2011	Schedule 4: 30 Nov 2011	Sch. 4 (items 24–26) [see Table A]
<i>Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012</i>	169, 2012	3 Dec 2012	Schedule 2 (items 177, 178): 3 Dec 2012 (see s. 2(1)) Schedule 4 (item 15): [see (q) and Note 2]	—

Act Notes

- (a) The *Disability Services Act 1986* was amended by Part 3 (sections 11 and 12) only of the *Community Services and Health Legislation Amendment Act (No. 2) 1990*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (b) Section 2 of the *Social Security (Rewrite) Transition Act 1991* provides as follows:
2. This Act commences immediately after the *Social Security Act 1991* commences. The *Social Security Act 1991* commenced on 1 July 1991.
- (c) Subsection 2(1) of the *Veterans' Entitlements (Rewrite) Transition Act 1991* provides as follows:
- (1) Subject to subsection (2), this Act commences on 1 July 1991, immediately after the commencement of the *Veterans' Entitlements Amendment Act 1991*.
- (d) The *Disability Services Act 1986* was amended by Part 2 (sections 4–28) only of the *Health, Housing and Community Services Legislation Amendment Act 1992*, subsection 2(2) of which provides as follows:
- (2) Part 2 commences, or is taken to have commenced:
 - (a) on the day on which this Act receives the Royal Assent.
 - (b) on 1 July 1992;whichever occurs sooner.
- (e) The *Disability Services Act 1986* was amended by Part 2 (sections 3–5) only of the *Health and Community Services Legislation Amendment Act (No. 2) 1993*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (f) The *Disability Services Act 1986* was amended by sections 4 and 5 only of the *Human Services and Health Legislation Amendment Act 1994*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (g) The *Disability Services Act 1986* was amended by section 26 only of the *Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994*, subsection 2(3) of which provides as follows:
- (3) Divisions 3 and 7 of Part 2 commence on 20 March 1995, immediately after the commencement of Divisions 6 and 7 of Part 2 of the *Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act 1994*.
- (h) Section 2 of the *Student Assistance (Youth Training Allowance—Transitional Provisions and Consequential Amendments) Act 1994* provides as follows:
2. This Act commences on 1 January 1995 immediately after the commencement of the *Student Assistance (Youth Training Allowance) Amendment Act 1994*.
- (i) The *Disability Services Act 1986* was amended by sections 14 and 27 only of the *Evidence (Transitional Provisions and Consequential Amendments) Act 1995*, subsections 2(1) and (13) of which provide as follows:
- (1) This Part and Parts 2 and 3 commence on the day on which this Act receives the Royal Assent.
 - (13) Section 27 of this Act and the Schedule to this Act commence:
 - (a) on the day on which sections 153 and 155 of the *Evidence Act 1995* commence; or
 - (b) if those sections commence on different days—the first day on which both of those sections are in force.

Sections 153 and 155 commenced on 18 April 1995.

Act Notes

- (j) The *Disability Services Act 1986* was amended by Schedule 2 (items 2 and 3) only of the *Human Services and Health Legislation Amendment Act (No. 3) 1995*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (k) The *Disability Services Act 1986* was amended by Schedule 15 only of the *Social Security and Veterans' Affairs Legislation Amendment Act 1995*, subsection 2(5)(e) of which provides as follows:
- (5) The following provisions commence, or are taken to have commenced, on 20 September 1996:
- (e) Schedules 12, 13, 14 and 15.
- (l) The *Disability Services Act 1986* was amended by Schedule 13 (items 10 and 11) only of the *Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) to (10), this Act commences on 1 July 1998.
- (m) The *Disability Services Act 1986* was amended by Schedule 1 (items 397 and 398) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.
- (n) The *Disability Services Act 1986* was amended by Schedule 3 (item 6) only of the *Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001*, subsection 2(4) of which provides as follows:
- (4) Schedule 3 commences at the same time as the *Defence Reserve Service (Protection) Act 2001*.
- (o) Subsection 2(1) (item 8) of the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
8. Schedule 2, items 95 to 103	The later of: (a) 1 January 2004; and (b) immediately after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .	1 January 2004

- (p) Subsection 2(1) (item 8) of the *Social Security and Family Assistance Legislation Amendment (Miscellaneous Measures) Act 2006* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Act Notes

Provision(s)	Commencement	Date/Details
8. Schedule 6, item 2	Immediately after the commencement of item 21 of Schedule 1 to the <i>Disability Services Amendment (Improved Quality Assurance) Act 2002</i> .	1 July 2002
(q)	Subsection 2(1) (item 14) of the <i>Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012</i> provides as follows:	
	(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.	
Provision(s)	Commencement	Date/Details
14. Schedule 4, Part 2, Division 2	The later of: (a) immediately after the commencement of the provision(s) covered by table item 3; and (b) immediately after the commencement of Schedule 1 to the <i>Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Act 2012</i> . However, the provision(s) do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.	[see Note 2] (paragraph (b) applies)

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part I	
S. 3	am. No. 88, 1992
S. 3A	ad. No. 137, 2001
S. 4	am. No. 28, 2002; No. 65, 2007; No. 5, 2011
S. 5	rs. No. 88, 1992 am. No. 108, 2006
S. 5A	ad. No. 28, 2002 am. No. 108, 2006; No. 145, 2011
Part IA	
Part IA	ad. No. 28, 2002
S. 6A	ad. No. 28, 2002 am. No. 145, 2011
Ss. 6B, 6C	ad. No. 28, 2002
Heading to s. 6D	am. No. 145, 2011
S. 6D	ad. No. 28, 2002
S. 6DA	ad. No. 145, 2011
S. 6E	ad. No. 28, 2002
Part II	
Division 1	
S. 7	am. No. 80, 1988; No. 141, 1990; No. 88, 1992; No. 28, 2002; No. 108, 2006; No. 145, 2011; No. 169, 2012
S. 9	rs. No. 28, 2002 am. No. 108, 2006
S. 9A	ad. No. 88, 1992 rs. No. 28, 2002 am. No. 108, 2006
S. 9B	ad. No. 88, 1992 rep. No. 28, 2002 ad. No. 145, 2011
S. 9C	ad. No. 88, 1992 rep. No. 28, 2002
Division 2	
S. 10	am. No. 88, 1992; No. 149, 1995
S. 11	rep. No. 88, 1992
S. 12	am. No. 88, 1992; No. 149, 1995
Division 2A	
Div. 2A of Part II	ad. No. 28, 2002
Subdivision A	
Ss. 12AA, 12AB	ad. No. 28, 2002
Subdivision B	
Ss. 12AC, 12AD	ad. No. 28, 2002

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision C	
S. 12AE.....	ad. No. 28, 2002 am. No. 145, 2011
Division 3	
Heading to Div. 3 of..... Part II	rs. No. 88, 1992 rep. No. 28, 2002 ad. No. 145, 2011
Div. 3 of Part II	rep. No. 28, 2002 ad. No. 145, 2011
S. 12A	ad. No. 88, 1992 rep. No. 28, 2002
S. 13	am. No. 88, 1992 rep. No. 28, 2002 ad. No. 145, 2011
S. 14	rs. No. 88, 1992 rep. No. 28, 2002 ad. No. 145, 2011
S. 14A	ad. No. 88, 1992 rep. No. 28, 2002
Division 3A	
Div. 3A of Part II	ad. No. 88, 1992
S. 14B	ad. No. 88, 1992
S. 14C.....	ad. No. 88, 1992 am. No. 28, 2002
Ss. 14D, 14E	ad. No. 88, 1992
S. 14F	ad. No. 88, 1992 am. No. 108, 2006
Division 3B	
Heading to Div. 3B of..... Part II	rs. No. 28, 2002
Div. 3B of Part II	ad. No. 88, 1992
S. 14G.....	ad. No. 88, 1992 am. No. 28, 2002
Heading to s. 14GA.....	am. No. 145, 2011
S. 14GA	ad. No. 28, 2002 am. No. 145, 2011
S. 14H.....	ad. No. 88, 1992 am. No. 28, 2002
S. 14J.....	ad. No. 88, 1992 am. No. 76, 1993; No. 28, 2002; No. 145, 2011
Division 4	
Heading to s. 14K.....	rs. No. 28, 2002 am. No. 145, 2011
S. 14K	ad. No. 88, 1992 am. No. 28, 2002; No. 145, 2011
S. 15	rs. No. 88, 1992 am. No. 28, 2002; No. 145, 2011

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 16	am. No. 88, 1992; No. 76, 1993
Part III	
Division 1	
S. 17	am. No. 70, 1991; No. 88, 1992; No. 28, 2002
S. 19	am. No. 28, 2002; No. 65, 2007
Division 2	
S. 20	am. No. 88, 1992; No. 154, 2005 rs. No. 65, 2007
S. 21A	ad. No. 88, 1992 am. No. 154, 2005; No. 65, 2007
S. 22	am. Nos. 70 and 73, 1991; No. 88, 1992; Nos. 164 and 184, 1994; No. 1, 1996; No. 45, 1998; No. 28, 2002; No. 150, 2003; No. 65, 2007
Division 3	
S. 23	am. No. 80, 1994; No. 10, 2001
S. 24	am. No. 70, 1991; No. 88, 1992; No. 28, 2002; No. 108, 2006
S. 25	am. No. 88, 1992; No. 146, 1999
S. 26	am. No. 80, 1994
S. 27	am. No. 137, 2001; No. 65, 2007
S. 28	am. No. 70, 1991; No. 137, 2001; No. 32, 2011
Part IV	
S. 31	am. No. 99, 1988; No. 88, 1992; No. 3, 1995; No. 28, 2002 rep. No. 108, 2006
S. 32	am. No. 88, 1992
S. 33	am. No. 88, 1992; No. 28, 2002; No. 65, 2007; No. 145, 2011
S. 34	am. No. 28, 2002 rs. No. 65, 2007

Note 2

Note 2

Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012 (No. 169, 2012)

The following amendment commences immediately after the commencement of Schedule 1 to the *Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Act 2012* (still a Bill). However, the amendment may not commence, *see* subsection 2(1) (item 14):

Schedule 4

15 Section 7 (subparagraph (a)(ii) of the definition of *eligible organisation*)

After “not-for-profit entity”, insert “(within the meaning of the *Income Tax Assessment Act 1997*)”.

As at 8 January 2013 the amendment is not incorporated in this compilation.

Table A

Table A

Application, saving or transitional provisions

Family and Community Services Legislation Amendment (Application of Criminal Code) Act 2001 (No. 137, 2001)

4 Application of amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Disability Services Amendment (Improved Quality Assurance) Act 2002
(No. 28, 2002)

Schedule 1

3 Saving

A determination made by the Minister that was in force under paragraph 9C(a) of the *Disability Services Act 1986* immediately before the commencement of item 2 continues in force as if it had been made by the Minister under paragraph 5A(1)(a) inserted in that Act by that item but applies only in relation to eligibility services within the meaning of that Act as amended by this Schedule.

Table A

52 Transitional—pre-2002-03 grants of financial assistance under Disability Services Act

Despite the amendments made by this Schedule, the *Disability Services Act 1986* as in force immediately before the commencement of this item continues to apply in respect of grants of financial assistance in respect of employment services approved before 1 July 2002 as if those amendments had not been made.

Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005 (No. 154, 2005)

Schedule 23

5 Application provision

The amendments of the *Disability Services Act 1986* made by this Schedule apply to all rehabilitation programs being considered for approval on or after the commencement of this Schedule.

Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Act 2007
(No. 65, 2007)

Schedule 1

7 Application

The amendment made by item 6 applies to a rehabilitation program that:

- (a) is being provided to a person at the commencement of this item; or
- (b) commences to be provided to a person on or after the commencement of this item.

10 Saving

- (1) Despite the repeal of subsection 22(2) of the *Disability Services Act 1986* by item 9, a determination that:
 - (a) was made, before the commencement of that item, under that subsection; and
 - (b) was in force immediately before that commencement;

Table A

continues in force after that commencement as if the repeal had not occurred.

- (2) To avoid doubt, despite the repeal of subsection 22(2) of the *Disability Services Act 1986* by item 9, a direction that:
- (a) was given, before the commencement of that item, under subsection 22(3) of that Act in relation to subsection 22(2) of that Act; and
 - (b) was in force immediately before that commencement;
- continues in force after that commencement as if the repeal had not occurred.

17 Guidelines formulated for Part III under subsection 5(1)—transitional provision

Subsections 5(2), (3) and (4) of the *Disability Services Act 1986* do not apply to guidelines:

- (a) that relate to Part III of that Act as amended by this Act; and
- (b) that are formulated under subsection 5(1) of that Act on or after the day on which this Act receives the Royal Assent and before 1 July 2007.

Social Security and Other Legislation Amendment Act 2011
(No. 145, 2011)

Schedule 4

24 Saving—accreditations

The amendments made by items 4 and 5 do not affect the validity of an approval in force under section 6B, or an accreditation in force under section 6C, of the *Disability Services Act 1986* immediately before the commencement of those items.

25 Saving—existing grants in respect of advocacy services

Despite the amendments and repeals made by this Schedule, the *Disability Services Act 1986*, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to grants of financial assistance approved before that commencement in respect of advocacy services.

Table A

26 Saving—existing declarations of failure to hold certificate

A declaration made under subsection 14GA(2) of the *Disability Services Act 1986* before the commencement of this item has effect, on and after that commencement, as if it had been made under subsection 14GA(2) of that Act as amended by this Act.