



**Employment and Workplace Relations
Legislation Amendment (Welfare to
Work and Vocational Rehabilitation
Services) Act 2007**

No. 65, 2007

**An Act to amend the *Social Security Act 1991*, and
for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 65, 2007

**An Act to amend the *Social Security Act 1991*, and
for other purposes**

[Assented to 15 April 2007]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Act 2007*.

2 Commencement

- (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
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	15 April 2007
2. Schedule 1, items 1 to 5	1 July 2007.	1 July 2007
3. Schedule 1, items 6 and 7	The day on which this Act receives the Royal Assent.	15 April 2007
4. Schedule 1, items 8 to 16	1 July 2007.	1 July 2007
5. Schedule 1, items 17 to 54	The day on which this Act receives the Royal Assent.	15 April 2007

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Disability Services Act 1986

1 Section 4

Insert:

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.

2 Section 4 (definition of *officer*)

Repeal the definition, substitute:

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).

3 Paragraph 19(1)(b)

After “guidelines”, insert “(if any)”.

4 Subsection 19(2)

Repeal the subsection, substitute:

- (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.

5 Section 20

Repeal the section, substitute:

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.

6 After subsection 21A(1)

Insert:

- (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.

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.

8 Subsection 22(1)

Repeal the subsection, substitute:

- (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.

9 Subsection 22(2)

Repeal the subsection, substitute:

- (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.

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;
- 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.

11 Paragraphs 27(1)(c), (d) and (e)

Omit “an officer”, substitute “a Commonwealth employee”.

12 Subsection 27(2)

Omit “An officer”, substitute “A Commonwealth employee”.

13 Subsection 27(2)

Omit “the officer” (wherever occurring), substitute “the Commonwealth employee”.

14 Subsection 27(7)

Omit “an officer”, substitute “a Commonwealth employee”.

15 Subsection 33(1)

Omit “an officer”, substitute “an APS employee in the Department”.

16 Section 34

Repeal the section, substitute:

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.

**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 Act 1991

18 Subsection 1061A(1) (note 1)

Omit "section 1047A", substitute "Division 3 of Part 2.21".

19 Subparagraph 1061PJ(2A)(a)(ii)

Omit "last", substitute "first".

20 Subparagraph 1061PJ(2A)(a)(iii)

Omit "on that day".

21 After subparagraph 1061PJ(2A)(a)(iii)

Insert:

- (iiia) ceased to be so qualified as a result of the first decision about the person's capacity to work made on or after 1 July 2006; and

22 Subparagraph 1061PJ(2A)(a)(iv)

Omit “that day”, substitute “the day immediately before ceasing to be qualified for that disability support pension,”.

23 Subparagraph 1061PJ(2A)(b)(ii)

After “allowance,”, insert “was qualified for parenting payment and”.

24 Subparagraph 1061PJ(2A)(b)(iii)

Omit “on that day ceased to be qualified for a parenting payment”, substitute “ceased to be qualified for that parenting payment”.

25 Subparagraph 1061PJ(2A)(b)(iv)

Omit “that day”, substitute “the day immediately before ceasing to be qualified for that parenting payment,”.

26 Subparagraph 1061PJ(2B)(a)(ii)

Omit “last”, substitute “first”.

27 Subparagraph 1061PJ(2B)(a)(iii)

Omit “on that day”.

28 After subparagraph 1061PJ(2B)(a)(iii)

Insert:

- (iia) if he or she was receiving a disability support pension—
ceased to be so qualified as a result of the first decision
about the person’s capacity to work made on or after
1 July 2006; and

29 Subparagraph 1061PJ(2B)(a)(iv)

Omit “that day”, substitute “the day immediately before ceasing to be qualified for that disability support pension,”.

30 Subparagraph 1061PJ(2B)(b)(ii)

After “allowance,”, insert “was qualified for parenting payment and”.

31 Subparagraph 1061PJ(2B)(b)(iii)

Omit “on that day ceased to be qualified for a parenting payment”, substitute “ceased to be qualified for that parenting payment”.

32 Subparagraph 1061PJ(2B)(b)(iv)

Omit “that day”, substitute “the day immediately before ceasing to be qualified for that parenting payment,”.

33 Paragraph 1187(1)(a)

Omit “a pension period”, substitute “an instalment period”.

34 Paragraph 1187(1)(b)

Omit “pension period”, substitute “instalment period”.

35 Subparagraph 1187(1A)(a)(va)

Omit “or”.

36 Subparagraph 1187(1A)(a)(vi)

Repeal the subparagraph.

37 Paragraph 1187(1A)(a)

Omit “a pension period”, substitute “an instalment period”.

38 Paragraph 1187(1A)(b)

Omit “pension period”, substitute “instalment period”.

39 Subparagraph 1187(2)(a)(ii)

Repeal the subparagraph.

40 Paragraph 1187(2)(a)

Omit “a pension period”, substitute “an instalment period”.

41 Paragraph 1187(2)(b)

Omit “pension period”, substitute “instalment period”.

42 Paragraph 1187(2)(c)

Omit “a pension period”, substitute “an instalment period”.

43 Subsection 1187(3)

Repeal the subsection.

44 Paragraph 1188C(3)(e)

Repeal the paragraph, substitute:

- (e) if a payment of a social security benefit referred to in paragraph (a) is payable to the person's partner in respect of the payment period, the ordinary income of the person, for the purposes of working out the rate of the person's partner's social security benefit, includes an amount equal to the person's CDEP payment.

45 Subsection 1188C(5) (after table item 19)

Insert:

19A	Newstart allowance	Not member of a couple and not required to satisfy the activity test because of a determination in relation to the person under subsection 602C(3) or (3A)	The amount worked out under point 1068-B5
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46 Subsection 1188C(5) (at the end of the table)

Add:

35	Youth allowance	Independent, not long term income support student, not member of a couple and has an exemption under section 542FA because of a determination in relation to the person under subsection 542FA(3) or (3A)	The amount worked out under point 1067G-B3A
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47 Subsection 1224D(1) (notes)

Repeal the notes, substitute:

- Note: If the person does not pay the debt or enter into an agreement to pay the debt within a certain time, interest may become payable on the debt (see section 1229). If the person enters into an agreement to pay

the debt and breaches the agreement, interest may become payable on the debt (see section 1229A).

48 At the end of section 1224D

Add:

(3) In this section:

advance payment period for mobility allowance advance is the period of 26 weeks starting on the first payday for which it is practicable to pay the advance and adjust the mobility allowance payments of the recipient.

Note: Any reduction in the advance payment period under section 1044A is not taken into account for the purposes of this definition.

49 Application

The amendment made by item 48 applies in relation to advance payment periods that start on or after the commencement of this item.

50 At the end of section 1228

Add:

(3) If:

- (a) an amount was paid under the scheme administered by the Commonwealth known as Financial Case Management to, or for the benefit of, a person; and
- (b) the amount should not have been paid; and
- (c) the person is receiving a social security payment; and
- (d) the person is qualified for the social security payment under this Act and the social security payment is payable to him or her;

the amount is an overpayment that is recoverable from the person by the Commonwealth by means of deductions.

Note: For *deductions* see section 1231.

51 After paragraph 1231(1)(bb)

Insert:

- (bc) an overpayment described in subsection 1228(3);

52 Application

The amendments made by items 50 and 51 apply to:

- (a) a payment under the scheme administered by the Commonwealth known as Financial Case Management made on or after the commencement of this item; and
- (b) social security payments made on or after the commencement of this item.

Social Security (Administration) Act 1999

53 At the end of section 109

Add:

- (7) For the purposes of this section, if:
 - (a) the Secretary makes a decision constituted by a determination made under section 78 to increase the rate at which a social security payment is being, or has been, paid; and
 - (b) the determination is made because an amount has been indexed or adjusted by the operation of Part 3.16 of the 1991 Act;
- then:
- (c) each person whose rate of social security payment is, or was, affected by the determination is taken to have been given notice of the determination and of the increased rate; and
 - (d) the notice is taken to have been given on the day on which the amount was so indexed or adjusted.

54 Application

The amendment made by item 53 applies to:

- (a) a decision under the social security law in relation to which an application is made, on or after the commencement of this item, to the Secretary under section 129 of the *Social Security (Administration) Act 1999* for review of the decision; and
- (b) a decision under the social security law reviewed by the Secretary, on or after the commencement of this item, under section 126 of the *Social Security (Administration) Act 1999* without any application under section 129 of that Act for review of the decision having been made.

*[Minister's second reading speech made in—
House of Representatives on 7 December 2006
Senate on 27 February 2007]*

(197/06)

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