DISABILITY SERVICE REFORMS

Disability Services (Eligible Services) Approval 2004 and Disability Services (Eligibility — Wage Phase-in Services and Targeted Support Services) Standards 2004

REGULATION IMPACT STATEMENT

Business Services Assistance: Commonwealth Funded Disability Employment Services

1. Problem

1.1 The Problem: Continuity of Service for People with Disabilities

There is evidence that some business (supported employment) services, formerly called sheltered workshops, may need more time to achieve certification after the legislated date of 31 December 2004.

Many working people with disabilities are employed either in the open labour market or in a supported environment in business services. Business services are designed to assist those people with more significant disabilities for whom open employment is not an option (at least in the short term) and/or those who chose to work in a supported environment.

The Australian Government, through grants to eligible organisations, funds 244 Business Service organisations across Australia to provide supported employment for people with disabilities (includes providers of combined Supported/Open employment). As at 16 January, there are 426 supported outlets and 33 that offer a combination of open/supported employment. The majority of the Disability Employment Service providers are non-profit organisations that have skills in the disability sector enabling them to provide specialised assistance. While business services participate in a wide range of industries, the majority are involved in packaging, furniture production and service industries such as laundry, food preparation, gardening, landscaping and tree planting.

In the 1996/7 Budget the Australian Government committed to restructuring disability employment services to improve service quality and employment outcomes of individuals with significant disabilities.

Three themes underpin the disability reforms: quality assurance, disability employment assistance and improved case based funding arrangements. The outcomes being sought by the reforms are:

- consistent quality of service;
- informed choice for people with disabilities;
- a range of flexible service to meet the needs of people with disabilities;
- a viable disability based industry;
Case based funding will apply to all services and all new job seekers from 1 January 2005. Business services can start to move to case based funding from 1 July 2004 and have two years to complete the transition. A pricing review looking at costs of supporting employees in business services is near completion.

In 2002, a new legislated quality assurance (QA) system came into effect requiring all services to meet the 12 Standards and 26 KPIs set out in the Disability Standards Amendment (Improved Quality Assurance) Act 2002 as a condition for continued Commonwealth funding. Business services have until 31 December 2004 to demonstrate compliance with the Standards. Standard 9 (wages and employment conditions), and more specifically supporting Key Performance Indicator (KPI) 9.1, relate to the payment of pro rata award based wages for people with disabilities who are assessed by a transparent wage assessment tool as having less than full productive capacity.

There are a number of wage assessment tools that meet the criteria. Some organisations, previously excluded, are now able to access the Supported Wage System used by open employment services. In addition, the Australian Government Department of Family and Community Services (FaCS) commissioned the development of a wage assessment tool that provides an alternative for business services.

There is independent evidence that the business service wage assessment tool is a robust wage determination mechanism. Approximately 106 organisations are awaiting release of the wage tool before undertaking a quality assurance audit. This wage assessment tool has recently been released.

While the quality reforms have generally been received positively, both services and consumers have expressed concerns about whether some consumers may be displaced if business services have problems paying the pro rata award based wages as required by KPI 9.1. The Business Services Review Implementation Group (BSRIG), a joint departmental and sector group, has expressed similar concern.

In the absence of legislative change, there is no capacity to suspend the requirement that Standard 9 must be satisfied in order for services currently receiving transitional funding to continue receiving funding after 31 December 2004.
The Australian Government recognises the significant difficulties faced by many business services in implementing the reforms. The business service sector is largely industrially unregulated, with a large variation in wages and conditions and many business services paying nominal wages. The requirement to pay pro rata award based wages is a particular challenge for those business services whose financial and business viability is already tenuous. Consequently, the Government has developed a series of measures, in cooperation with ACROD (national industry association for disability services) and BSRIG, to improve the financial and business viability of business services so that they can implement reforms, including the payment of wages, and remain sustainable, viable enterprises in the longer term.

To support the reforms, the 2003 – 04 Budget committed more than $160 million to the disability employment service sector. One of the initiatives in this budget commitment is tailored assistance to improve the viability of business services in the lead up to quality assurance certification by December 2004. However, the return from this measure will take at least two to three years, hence the need for additional measures.

The award or agreement used by some organisations allows them to phase in pro rata wages. Twenty six percent of business services organisations (64 of the 244 supported and combined open/supported) are already certified and approximately twenty seven percent of people (about five thousand of a total of 18,464 individuals) supported by business services are clients of certified organisations.

There are two subgroups within the employment services that may not achieve certification by 1 January 2005;

1. Organisations unable to meet KPI 9.1 from 1 January 2005 unless arrangements are made to phase in pro rata full award wages.
2. Organisations with people currently in employment services, with no or low productivity, who would be better served by State/Territory services, but wish to remain with their current business service organisation and organisations providing non standard employment support.

As some business services have left their Quality Assurance (QA) audit date to the last half of 2004, there is not, as yet, a clear understanding of how many may not meet all of the requirements of Standard 9. The State/Territory Office network is contacting all services (50 supported and combined open/supported) with QA audit dates in the later part of this year, to seek their agreement to an earlier QA audit date. Every effort is being made to minimise the number of organisations that are unable to meet Standard 9.

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1 2003 Census, Consumers on the books (supported and dual open and supported services only, 11 December 03 data).
1.2 Need for Government Action

The Australian Government is committed to ensuring that people with disabilities who are currently employed by business services continue to receive services throughout the reform process. In addition, any attempt to close or transfer services is likely to meet hostile reactions from stakeholders and State and Territory governments.

Business services have the potential to achieve a range of outcomes.

- For people with disabilities, including:
  - employment;
  - job security;
  - skill development and acquisition including social skills, work behaviours and a strong work ethic; and
  - career opportunities for individual employees to achieve their employment aspirations and potential.

- For the economy, including:
  - quality products and services that customers demand and want;
  - commercial growth and business viability;
  - new ideas and products that contribute to the intellectual capital of the community; and
  - employment.

- For the community, including:
  - the creation of valued roles for people with disabilities;
  - the provision of stable and secure support for people with disabilities that assists in the maintenance of family structures;
  - increased independence of people with disabilities which results in less reliance on public funding for additional income support and support services; and
  - a positive contribution to the local community and the wider economy.

The Australian Government therefore proposes a business services assistance package to protect people with disabilities in business services throughout the reform process, while maintaining the momentum for continuous improvement in service delivery.

1.3 The Key Question

The key question that will be addressed by this regulation impact statement is:

“Does the proposed legislative option enable services to continue providing services for people with disabilities in an effective way, while encouraging continuous improvement in service delivery?”
2. Objectives

2.1 The Objectives of Government Action

To ensure that existing business services have the financial security to continue operations and provide service continuity for people with disabilities.

The business services assistance package aims to:

• encourage services to keep people in employment where that is their choice;
• maintain the momentum for services to meet quality assurance requirements;
• allow services sufficient time to meet quality requirements; and
• ensure that services have the financial security to continue to operate.

2.2 Regulation

The legislative basis for current government policy relating to people with disabilities is the Disability Services Act 1986 (the DSA), as amended, administered by the Minister for Family and Community Services. The Act represented a major step forward for people with disabilities, embodying their right to fully participate in all aspects of social and economic life, including employment.

Of particular relevance to the wages issue is the Disability Standards Amendment (Improved Quality Assurance) Act 2002 under which the 11 Standards and 101 Supporting Standards previously governing services funded under the DSA were changed. Two Standards were amalgamated and two additional Standards were promulgated to form the new quality assurance standards. One of the aims of this legislation was to acknowledge the range of circumstances faced by people with disabilities and the concomitant requirement for flexibility in government responses.

3. Options

The following options are available to enable the continuation of the provision of funding for business service organisations (supported and open/supported) that are not certified by 31 December 2004.

Option 1: Amend the DSA to extend the deadline for certification from 31 December to a future date.

Option 2: Amend the DSA to, firstly, exclude the relevant services from the definition of 'employment services' and, secondly, provide for those services to be funded under a separate authority.
Option 3: Approve two new classes of eligible services under section 9 of the DSA, thereby creating the potential for funding under section 10 of the DSA.

4. Impact analysis of each option

4.1 Impact on existing regulations and the roles of existing regulatory authorities

Option 1: Amend the DSA to extend the deadline for certification from 31 December to a future date. The amendments would have to be included in a portfolio bill to be passed before January 2005.

The deadline of December 2004 by which employment services have to meet employment standards is embedded in the DSA. Amendments may be made to the DSA to change the deadline to a future date. This could address the situation of services that are expected to meet the standards, with more time. In relation to employment services requiring alternate service arrangements, it would be a short-term solution (if these services should be permanently extracted from the employment services category, option 2 or 3 would suit them better).

- Association of Competitive Employment (ACE) and National Council on Intellectual Disability (NCID) support the current legislative timetable. However, ACROD believe that the current legislative deadline is unrealistic.

- Delaying the legislative deadline would slow momentum for change and potentially reward poor performance. Although wages are the main concern, phasing of wage increases is possible through Option 3 and some industrial awards.

- Importantly, changing the legislative deadline will not stop the industrial regulation of the sector that is currently underway. There is momentum in the industrial relations area to ensure that people with disabilities working in business services have access to ‘fair wages’.

- The new December 2004 deadline was agreed on by all key stakeholders, and reviewed and accepted in Parliament. It was acknowledged that some services would find it difficult to meet QA Standard 9, but thought achievable, given that movement to award based wages was first set in Standards in 1992.

Option 2: Amend the DSA to, firstly, exclude the relevant services from the definition of ‘employment services’ and, secondly, provide for those services to be funded under a separate authority. Amendments under this option would have to be included in a portfolio bill to be passed before 1 January 2005.
The relevant services are ‘employment services’ as defined in section 7 of the DSA. Grants for employment services are available only under sections 12AB/12AD under the condition that the services meet ‘employment standards’. The DSA could be amended to exclude the relevant services from the definition of ‘employment services’ and introduce a new section authorising the making of grants to new services on the conditions that are designed specifically for these services, as part of a safety net package.

- Introducing a portfolio bill at this late stage to exclude the relevant services from the definition of ‘employment services’ would be a lengthy process, which would require bipartisan support. Consistent with best practice in developing legislation, consultation on proposed legislation must occur with relevant parties within government and, where appropriate, with interested parties outside government.

- It could be argued that this is a retrograde step that defeats the purpose of recent quality assurance reforms.

**Option 3:** Approve two new classes of eligible services under section 9 of the DSA, thereby creating the potential for funding under section 10 of the DSA. The approval is in the form of a disallowable instrument (which comes into effect as soon as it is drafted, signed by the Minister and gazetted, but it has to be tabled in the Parliament and it is subject to a disallowance period of a minimum of fifteen days).

- It is possible to fund new services under section 10 of the DSA that authorises grants for ‘eligible services’. For this, the Minister’s approval of a new class of eligible services would be required.

- The Approval would need to be preceded by consultations with “people with disability, families, advocates, service providers and interested others” as stipulated by Part 2, section 6 of the *Disability Services (Administration of Part 11 of the Act) Guidelines 2002* (the Guidelines).

- If the new services were to become eligible services, it would be necessary to consider the matters specified in section 7 of the Guidelines (the proposed class would have to be sufficiently flexible to be responsive to the needs of a wide range of people in the target group, the services in the proposed class would have to be cost effective and the provisions of the CSTDA applicable to approving additional classes would have to be complied with). The consideration of these matters is mandatory.

- Furthermore, it would be necessary to examine whether the existing eligibility standards would be appropriate for the new services, and if not, the appropriate standards for those services would have to be determined. Amendments of eligibility standards are done in the form of a disallowable instrument. The amendments would require prior consultation with “people with disability, families, advocates, service providers and interested others” as stipulated by section 37 of the Guidelines.
• The policy intention behind continuing to fund services under conditions that do not require them to comply with the employment standards is to give them time (eg up to four years) to improve their business so that they can comply with the standards. The approval of that subgroup as a class of eligible services for a fixed period would assist in making the point that this period serves as an extension of the transitional period that would have otherwise ended on 1 January 2005.

• The two new eligible services, **wage phase-in services** and **targeted support services** would provide:

  1. *More time for business services to pay pro rata award wages and meet Standard 9.*
     Wage phase-in services would develop a plan in consultation with the Department to phase in wages over an agreed limited time period of up to four years.

  2. *More options for business service consumers with no or limited productivity.*
     Consumers of targeted support services would be able to elect to stay in their current business service or to receive more training/reskilling to improve their level of productivity or to participate in activities that develop social and community skills. Without this option, individuals with no or limited productivity could be displaced.

4.2 Assessment of Options

**Option 1:** Amend the DSA to extend the deadline for certification from 31 December to a future date.

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<th>Benefits</th>
<th>Costs</th>
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<tr>
<td><strong>Consumers</strong></td>
<td>People with disabilities would continue to have access to their employment service.</td>
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<td>Extending the deadline does not provide an option for people with disabilities who are low productive, and would prefer access to non-employment activities.</td>
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<td>People with disabilities who have low productivity could be displaced. This would place an additional burden on accommodation services, families and carers.</td>
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<td>If a place is available with a State Day Care Service, then there is a cost to the individual.</td>
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<tr>
<td>Benefits</td>
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<td><strong>Business (i.e. service providers)</strong></td>
<td>Delays momentum for reform. Costs for organisations that have complied varies, depending on the level of wages they were paying employees prior to the reforms. The award or agreement used by some organisations allows them to phase in pro rata wages. IRC could still require services to increase wages. Services could then become unviable. No extra cost to meet standards apart from the time involved in undertaking the external audits and self-assessment process.</td>
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<td><strong>Government</strong></td>
<td>Minimal additional administrative requirements. Delays incentive for service providers to perform above the regulated minimum.</td>
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**Option 2:** Amend the DSA to, firstly, exclude the relevant services from the definition of 'employment services' and, secondly, provide for those services to be funded under a separate authority.

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<td><strong>Consumers</strong></td>
<td>Delays momentum for reform. Lengthy process requiring further consultation and bipartisan support. Meanwhile, people with disabilities who have low productivity could be displaced. Additional burden placed on accommodation services, families and carers.</td>
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<tr>
<td><strong>Business (i.e. service providers)</strong></td>
<td>Minimal additional administrative requirements. Provides disincentive for uncertified business services to maintain progress towards meeting QA standards while new eligible services are established. Increased anxiety in the sector as to whether the new services would be able to receive funding and maintain viability after the legislative deadline. No cost apart from the time involved in undertaking the external audits and self-assessment process.</td>
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<td><strong>Government</strong></td>
<td>Funding for non-employment participants in targeted support services to increase—average price from $7200 to $9000 (includes funds for transfer to State/Territory services). Case management provides assistance and information about the reforms for family/worker at a cost of $6 million.</td>
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<td>Opportunity to establish service that provides targeted and needs based further education and training, or other meaningful day activity.</td>
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**Option 3:** Approve two new classes of eligible services under section 9 of the DSA, thereby creating the potential for funding under section 10 of the DSA.

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<td>Minimal additional administrative requirements.</td>
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<td>More time for business services to pay full pro-rata award wages. Services will develop a plan in consultation with the Department to phase in wages over an agreed limited time period. Enables recognition of provision of non-employment activities.</td>
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<tr>
<td><strong>Government</strong></td>
<td>Numbers in the wage phase-in stream will be small as a number of services can phase in pro rata wages through awards or enterprise bargaining. Increased funding for non-employment participants in targeted support services — average price increase from $7200 to $9000 (includes funds for transfer to State/Territory services). Case management provides assistance and information about the reforms for family/worker at a cost of $6 million.</td>
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<tr>
<td>Maintains accuracy and reliability of the audit results. Requires a single quality assurance system to apply to business services and to the two new eligible services. Creates two new eligible services that allows the Government to focus on individual outcomes rather than process. Provides opportunity to establish service that provides targeted and needs based further education and training, or other meaningful day activity.</td>
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5. Consultation on the Safety Net for Disability Service Reforms

5.1 Perspectives of Stakeholders

The Australian Government is committed to ensuring people with disabilities enjoy the same rights as other Australians. It funds a number of peak disability bodies and consults regularly with them to ensure the needs of people with disabilities, their families and carers are met.

The National Disability Advisory Council was established on 3 December 1996 to provide independent policy advice to the Australian Government, through the Minister for Family and Community Services, on policy issues affecting people with disabilities and their families and carers. Council consists of 15 members from around Australia, 9 are people with disabilities, 3 are carers and 3 are disability service providers.

In addition, a new funded peak, the Australian Federation of Disability Organisations, was recently established. The Australian Federation of Disability Organisations is the national secretariat for the disability sector in Australia and the national voice to represent the views and interests of people with a disability.

ACROD also receives peak body funding as the national organisation representing disability employment service providers. FaCS commissioned Waywick Management Services to conduct Business Skills Workshops for business service organisations from June 2003. Two hundred and three representatives from one hundred and thirty two business services in every State and Territory attended twenty-eight one day long workshops held around Australia over a period of fifteen weeks to discuss issues facing their services. Typically participants were managers or closely associated with the business service.

Key issues impacting on the ability of business services to meet Standard 9.1 included:

- the impact of wage increases;
- the ability to increase turnover;
- entering into new areas of business activity;
- quality of management;
- boards and the selection of CEOs; and
- board’s willingness to support changes.

Workshop evaluations also identified that some individual business services are doing well. They may have developed a niche market, set up alternative distribution arrangements, or focus on quality assurance.
In October and November 2003, Australian Healthcare Associates on behalf of FaCS, consulted with people with disabilities, their carers and families, service providers and the public about proposed arrangements. In total, more than 1000 people attended the 20 public consultation sessions and 21 sessions for employees with disabilities, their families and carers, held across Australia.

The feedback gathered at the sessions and through the written submissions informs options for the Australian Government's package for business services. The package will ensure that people with disabilities are supported as business services adjust to the disability employment assistance reforms.

Themes that emerged from the consultations include:

- Consumers currently in business services generally want to stay at their current service and in employment activities.
- The options for individuals need to retain a vocational focus, stability, social support and hours of service currently offered by business services.
- Many families and consumers would welcome more flexible alternatives, which could overcome some of the barriers between Commonwealth and State/Territory funded services, such as combining employment and non-employment services for people.
- Services are anxious about what their funding levels will be under case based funding and what their wage costs will be under the wages tool.
- Some organisations would need more time, beyond the December 2004 legislative deadline, to meet the QA requirements and achieve certification.
- There is concern that if the package is limited to current consumers there will be no service options for new entrants such as school leavers in areas where other services are not available.
- In almost 50 locations the business service is the sole provider of disability services.
- Services suffer from a lack of appropriately skilled staff.

6. Conclusion and recommended option

The Australian Government recognises the valuable service currently provided by a number of existing organisations which already receive funding under the DSA but which would not be able to continue to receive that funding on the same basis after 31 December 2004. Access to a separate source of funding is therefore required.
Options one and two require an amendment to the DSA, and would require a portfolio bill to be passed before 1 January 2005. The process of getting a Commonwealth Act to the statute books is lengthy and requires a number of steps to be completed either simultaneously or sequentially. While the cost to the Government to support either of these options might be less than that required to approve two new eligible services, there is a risk that a number of business services unable to meet all the requirements of Standard 9 could close and individuals be displaced, during preparation of the portfolio bill.

Option three, approving two new eligible services, is considered the most appropriate as it maintains momentum for reform and provides more flexible options for individuals and their business services with regard to Standard 9. The two new eligible services would be required to develop and demonstrate outcomes consistent with the quality assurance framework.

**Key elements of support for Option 3** are that it provides:

- Strong incentives for services that are certified so that the momentum of reform is supported.
- A new service, wage phase-in service, which will accommodate organisations that do not meet Disability Service Standard 9.1 for a period of up to four years.
- A new service type, targeted support service, for individuals engaged in non-employment activities. This service will be required to meet all of the new Quality Assurance Standards except Standard 9 (wages).
- Intensive assessment, planning and support for organisations, outlets and individuals.

Creating two additional 'eligible' service types, the wage phase-in service and the targeted support service, maintains momentum for services to meet quality assurance requirements and ensures that services have the financial security to continue to operate.

**Implementation and Review**

The instruments commence on the date of notification in the Gazette.

Implementation of the new services can affect administrative and compliance costs. Therefore, to minimise impact, organisations will be provided with additional resources including costs associated with the provision of appropriate facilities and skills training for staff to provide non-employment activities.

FaCS plans to undertake a post implementation review of the new eligible services within two years of their introduction. It will be designed to assess the impact of the package, the capacity of disability employment services to fund certification costs and compliance with standards.