

[DRAFT]

1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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(DR BRAITHWAITE)

## A BILL

FOR

### **An Act to amend *Disability Services Act 1986***

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

#### **Short title etc.**

5     **1.** (1) This Act may be cited as the *Disability Services Amendment Act 1989*.

**(2)** In this Act, “**Principal Act**” means the *Disability Services Act 1986*.<sup>1</sup>

**Commencement**

2. This Act commences on the day on which it receives the Royal Assent.

3. After section 3 of the Principal Act the following section is inserted:

**Application of Act to persons with special disability**

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“3A. (1) This section applies to persons included in the target group for the purposes of Part II who have a disability that:

- (a) is attributable to, or primarily attributable to, an intellectual impairment;
- (b) is permanent or likely to be permanent; and
- (c) results in:
  - (i) a substantially reduced capacity of the person for communication or learning; and
  - (ii) the need for ongoing support services.

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“(2) The objects of this Act set out in section 3 shall be read and applied, in relation to a person to whom this section applies, subject to, and in accordance with, the succeeding provisions of this section, and Part II shall be administered accordingly.

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“(3) The needs and aspirations of a person to whom this section applies shall be ascertained by reference to:

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- (a) those determined by that person;
- (b) those determined by that person’s parents, relatives, guardian or advocate, whosoever exercises responsibility for that person’s care; and
- (c) those determined by a medical practitioner who specialises in the kind of disability from which the person suffers and has made an assessment of the person’s needs and aspirations or, alternatively, a Commonwealth Medical Officer.

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“(4) A person to whom this section applies shall be treated as a person who, by the nature of his or her impairment, may be disadvantaged in connection with the making of reasoned judgments and decisions.

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“(5) Any determinations under Part II of this Act with respect to:

- (a) the maximum potential as a member of the community of a person to whom this section applies; or
- (b) the degree of outcomes and positive outcomes achievable by such a person;

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shall be made having full regard to the person’s intellectual impairment.

“(6) Without limiting the generality of subsection (2) of this section, references in section 3 to:

- (a) integration of persons with disabilities in the community;

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- (b) achievement of positive outcomes; and
- (c) promotion in the community of a positive image;

5 shall, in their application to a person to whom this section applies, be construed and applied by reference to, and in accordance with, the provisions of this section.

“(7) The provisions of this Act relating to accommodation support services shall not, in their application to persons to whom this section applies, be taken to prevent the provision of any such services by reason of the size or location of, or the number or residents in, any particular residential accommodation.

10 “(8) Notwithstanding any other provisions of this Act, the accommodation support services available to persons to whom this section applies shall include every kind of residential accommodation services in respect of which financial assistance was payable under any Act immediately before the commencement of Part II of this Act.

15 “(9) Where the provisions of this section are inconsistent with any other provisions of this Act in their application to persons to whom this section applies, the provisions of this section shall prevail and the other provisions, to the extent of the inconsistency, shall be inapplicable in relation to those persons.”

20 **4. (1)** Section 5 of the Principal Act is repealed and the following section is substituted:

**Principles, objectives and guidelines**

25 “5. (1) The Minister may, by instrument in writing, formulate principles and objectives to be furthered, and guidelines to be complied with, in the administration of this Act.

“(2) The Minister shall cause a copy of an instrument under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the making of the instrument.

30 “(3) If an instrument under subsection (1) is not laid before each House of the Parliament in accordance with the provisions of subsection (2), it shall be void.

35 “(4) The principles, objectives or guidelines contained in an instrument under subsection (1) have no force or effect unless and until each House of the Parliament has agreed to a motion of which due notice has been given approving those principles, objectives or guidelines and the resolutions of both Houses are in force at the same time.

40 “(5) A House of the Parliament may agree to a motion approving the principles, objectives or guidelines contained in an instrument under subsection (1) subject to amendments specified in the motion and, if a House does so, those principles, objectives or guidelines as so amended shall have force and effect (as if made by the Minister as so amended) if, but only if, while that

resolution is in force, there is in force a resolution of the other House of the Parliament approving the principles, objectives or guidelines contained in the instrument subject to amendments specified in the resolution that are the same as the amendments specified in the motion of the first-mentioned House of the Parliament.

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“(6) A House of the Parliament may agree to a motion of which due notice has been given revoking a resolution approving (either with or without amendments) the principles, objectives or guidelines contained in an instrument under subsection (1) but not after those principles, objectives or guidelines, or those principles, objectives or guidelines as so amended, as the case may be, have become of force and effect.

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“(7) An instrument under subsection (1) shall not be taken to be statutory rules within the meaning of the *Statutory Rules Publication Act 1903*, but subsections 5 (3) to (3C) (inclusive) of that Act apply to such an instrument as they apply to statutory rules.

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“(8) For the purposes of the application of subsection 5 (3B) of the *Statutory Rules Publication Act 1903* in accordance with subsection (7) of this section, the reference in the first-mentioned subsection to the Minister of State for Sport, Recreation and Tourism shall be read as a reference to the Minister administering this Act.

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“(9) Section 5 of the *Evidence Act 1905* applies to an instrument under subsection (1) of this section as that first-mentioned section applies to an order made by a Minister.”.

(2) Any principles, objectives and guidelines formulated by the Minister under section 5 of the Principal Act and in force immediately before the commencement of this Act continue in force after the commencement of this Act but cease to be in force:

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(a) upon the first principles, objectives or guidelines made by the Minister after the commencement of this Act becoming of force and effect, whether with or without amendments; or

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(b) upon the expiration of 5 months after the commencement of this Act;

whichever first occurs.

## Interpretation

5. Section 7 of the Principal Act is amended:

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(a) by inserting after the definition of “advocacy services” the following definition:

“**‘attendant care services’** means services by way of the provision of care to a disabled person by another person who is capable of providing adequate care to the disabled person;”;

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(b) by inserting after the definition of “service” the following definition: “**‘staff training services’** means services to assist the staffs, including voluntary workers, of eligible organisations in the skills needed to assist persons with disabilities;” and

(c) by adding at the end the following definition;

“**vocational training services**’ means services to assist persons:

(a) with a disability that is attributable to, or primarily attributable to, an intellectual impairment; and

(b) who are unlikely, without special training, to obtain or retain paid employment that is supported by any supported employment service;

to develop and maintain vocational skills necessary for them to obtain and retain paid employment.”.

#### 10 **Approval of services**

6. Section 9 of the Principal Act is amended:

(a) by inserting after paragraph (2) (b) the following paragraph:

“(ba) attendant care services;”;

(b) by adding at the end of subsection (2) the following paragraphs:

“; (k) staff training services;

(l) vocational training services.”.

#### **Financial assistance for eligible services**

7. Section 10 of the Principal Act is amended:

(a) by adding at the end of paragraph (4) (c) “, being terms and conditions with respect to matters specified in paragraphs (5) (a) to (h) (inclusive).”;

(b) by omitting from subsection (5) all words preceding paragraph (a) and substituting “The terms and conditions that may be specified under paragraph (4) (c) are terms and conditions with respect to all or any of :”;

(c) by inserting after “fulfilment of” in paragraph (5) (g) “any specified”; and

(d) by inserting after subsection (5) the following subsection:

“(5A) The Minister, in determining terms and conditions with respect to a matter set out in paragraph (5) (c) shall, if, or to the extent (if any) to which, the grant relates to the provision of an eligible service for persons to whom section 3A applies, comply with the provisions of subsection 3A (5)”.

#### **Review of outcomes of financial assistance for eligible services**

8. Section 11 of the Principal Act is amended by omitting “the terms” and substituting “any terms”.

#### **Financial assistance for research and development activities**

9. Section 12 of the Principal Act is amended:

- (a) by adding at the end of paragraph (4) (c) “, being terms and conditions with respect to matters specified in paragraphs (5) (a) to (h) (inclusive).”;
- (b) by omitting from subsection (5) all words preceding paragraph (a) and substituting “The terms and conditions that may be specified under paragraph (4) (c) are terms and conditions with respect to all or any of: “; and 5
- (c) by inserting, after “fulfilment of”, in paragraph (5) (f) “any specified”.

**Financial assistance for prescribed services** 10

**10.** Section 13 of the Principal Act is amended:

- (a) by adding at the end of paragraph (3) (c) “, being terms and conditions with respect to matters specified in paragraphs (4) (a) to (h) (inclusive).”;
- (b) by omitting from subsection (4) all words preceding paragraph (a) and substituting “The terms and conditions that may be specified under paragraph (3) (c) are terms and conditions with respect to all or any of: ”; 15
- (c) by inserting after “fulfilment of” in paragraph (4) (g) “any specified”;
- (d) by inserting after subsection (4) the following subsection: 20
  - “(4A) The Minister, in determining terms and conditions with respect to a matter set out in paragraph (3) (c), shall, if, or to the extent (if any) to which, the grant relates to the provision of a prescribed service for persons to whom section 3A applies, comply with the provisions of subsection 3A (5)”;
- (e) by omitting “1992” from subsection (5) and substituting “1995”. 25

**Financial assistance for upgrading of prescribed services**

**11.** Section 14 of the Principal Act is amended:

- (a) by adding at the end of paragraph (4) (c) “, being terms and conditions with respect to matters specified in paragraphs (5) (a) to (g) (inclusive). ”; 30
- (b) by omitting from subsection (5) all words preceding paragraph (a) and substituting “The terms and conditions that may be specified under paragraph (4) (c) are terms and conditions with respect to all or any of:”; 35
- (c) by inserting after “fulfilment of” in paragraph (5) (f) “any specified”; and
- (d) by omitting from subsection (6) “1992” and substituting “1995”.

12. After section 16 of the Principal Act the following section is inserted in Division 4 of Part II:

**Reviews of decisions under Part**

5 “16A. (1) In subsection (2), ‘reviewable decision’ means a decision (within the meaning of the *Administrative Appeals Tribunal Act 1975*) made:

(a) by the Minister, or a delegate of the Minister, under section 10, 12, 13 or 14; or

10 (b) by an officer of the Department in, or the connection with, the administration of this Part in relation to a member, or members, of the target group or the making of a grant of financial assistance under this Part, including, but without limiting the generality of the foregoing, the terms and conditions on which such a grant may be made.

15 “(2) Applications may be made to the Administrative Appeals Tribunal for review of reviewable decisions.

“ (3) Decision of kinds referred to in paragraph (b) of the definition of ‘reviewable decision’ in subsection (1) are decisions to which the *Administrative Decisions (Judicial Review) Act 1977* applies.”.

20 **Approvals etc. to be tabled in the Parliament and disallowable**

13. Section 31 of the Principal Act is amended by omitting paragraph (1) (a).

**Approvals etc. to be in writing**

25 14. Section 32 of the Principal Act is amended by omitting “principle, objective, guideline”.

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**NOTE**

30 1. No. 129, 1986 as amended. For previous amendments, see Nos. 80 and 99, 1988.



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