

1993-94

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time

*(Employment, Education and Training)*

**EMPLOYMENT SERVICES (CONSEQUENTIAL  
AMENDMENTS) BILL 1994**

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## A BILL

FOR

**An Act to amend the statute law of the Commonwealth in consequence of the enactment of the *Employment Services Act 1994*, and for other purposes**

The Parliament of Australia enacts:

5

### PART 1—PRELIMINARY

#### Short title

1. This Act may be cited as the *Employment Services (Consequential Amendments) Act 1994*.

#### Commencement

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2.(1) This Part and Part 2 commence, or are taken to have commenced, on the day on which the *Employment Services Act 1994* receives the Royal Assent.

(2) The remaining provisions of this Act commence on the day on which the provisions referred to in subsection 2(2) of the *Employment Services Act 1994* commence.

## PART 2—AMENDMENT OF THE EMPLOYMENT, EDUCATION AND TRAINING ACT 1988

5

### Object of Part

3. The Commonwealth Employment Service, which is currently established under Part VI of the *Employment, Education and Training Act 1988*, is being re-established by the *Employment Services Act 1994*. The object of this Part is to repeal Part VI of the *Employment, Education and Training Act 1988*. 10

### Principal Act

4. In this Part, “Principal Act” means the *Employment, Education and Training Act 1988*<sup>1</sup>.

### Repeal of Part VI

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5. Part VI of the Principal Act is repealed.

### Disclosure of interests

6. Section 60 of the Principal Act is amended:

- (a) by adding at the end of paragraph (a) of the definition of “prescribed body” in subsection (4) “or”; 20
- (b) by omitting “or 50” from paragraph (c) of the definition of “prescribed body” in subsection (4);
- (c) by adding at the end of paragraphs (a) and (b) of the definition of “relevant authority” in subsection (4) “or”; 25
- (d) by omitting “committee; or” from paragraph (c) of the definition of “relevant authority” in subsection (4) and substituting “committee.”;
- (e) by omitting paragraph (d) of the definition of “relevant authority” in subsection (4).

### Transitional provision—Commonwealth Employment Service

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7. The Commonwealth Employment Service established under section 8 of the *Employment Services Act 1994* is taken, for all purposes, to be a continuation of the Commonwealth Employment Service established under section 48 of the Principal Act.

**Transitional provision—continuation of national committee**

*When section applies*

5     **8.(1)** This section applies to a committee (the “**old national committee**”) that was established under paragraph 50(1)(a) of the Principal Act and that was in existence immediately before the commencement of this section.

*Establishment of new national committee*

10     **(2)** The *Employment Services Act 1994* has effect as if the Minister had established a national committee (the “**new national committee**”) under subsection 11(1) of that Act immediately after the commencement of this section.

*Appointment of members of new national committee*

- 15     **(3)** The *Employment Services Act 1994* has effect as if:
- (a) the Minister had, by instrument (the “**notional instrument of appointment**”), appointed each member of the old national committee to the new national committee immediately after the commencement of this section; and
  - (b) the period of appointment specified in a particular member’s notional instrument of appointment were the period:
    - 20         (i) beginning immediately after the commencement of this section; and
    - (ii) ending at the end of the period specified in the member’s instrument of appointment to the old national committee.

**Transitional provision—continuation of other committees**

25     *When section applies*

**9.(1)** This section applies to a committee (the “**old area committee**”) that was established under paragraph 50(1)(b) or (c) of the Principal Act in relation to a specified area (however described) and that was in existence immediately before the commencement of this section.

30     *Establishment of new area committees*

**(2)** The *Employment Services Act 1994* has effect as if the Minister had established a committee for that area (the “**new area committee**”) under subsection 11(2) of that Act immediately after the commencement of this section.

35     *Appointment of members of new area committees*

- (3)** The *Employment Services Act 1994* has effect as if:

- (a) the Minister had, by instrument (the “**notional instrument of appointment**”), appointed each member of the old area committee to the new area committee immediately after the commencement of this section; and
- (b) the period of appointment specified in a particular member’s notional instrument of appointment were the period:
  - (i) beginning immediately after the commencement of this section; and
  - (ii) ending at the end of the period specified in the member’s instrument of appointment to the old area committee.

### PART 3—AMENDMENT OF THE FREEDOM OF INFORMATION ACT 1982

#### Object of Part

**10.** The object of this Part is to give members of the public rights of access to certain documents held by contracted case managers. 15

#### Principal Act

**11.** In this Part, “**Principal Act**” means the *Freedom of Information Act 1982*.

#### Interpretation

- 12.** Section 4 of the Principal Act is amended: 20
- (a) by adding at the end of paragraphs (a) and (b) of the definition of “prescribed authority” in subsection (1) “or”;
  - (b) by adding at the end of the definition of “prescribed authority” in subsection (1) the following word and paragraph:
    - “or (e) an eligible case manager;”;
  - (c) by omitting “and” from paragraph (a) of the definition of “principal officer” in subsection (1) and substituting “or”;
  - (d) by inserting “(other than an eligible case manager)” after “authority” (first occurring) in paragraph (b) of the definition of “principal officer” in subsection (1); 30
  - (e) by adding at the end of the definition of “principal officer” in subsection (1) the following word and paragraph:
    - “or (c) in relation to a prescribed authority that is an eligible case manager:
      - (i) if the eligible case manager is an individual—the individual; or 35
      - (ii) in any other case—the individual who has primary responsibility for the management of the eligible case manager;”;

(f) by adding at the end of paragraphs (a) and (b) of the definition of “responsible Minister” in subsection (1) “or”;

(g) by inserting after paragraph (c) of the definition of “responsible Minister” in subsection (1) the following paragraph:

5 “(ca) in relation to a prescribed authority that is an eligible case manager—the Minister administering the *Employment Services Act 1994*; or”;

(h) by inserting in subsection (1) the following definition:

10 “‘eligible case manager’ means an entity (within the meaning of the *Employment Services Act 1994*):

(a) that is, or has at any time been, a contracted case manager within the meaning of that Act; and

(b) that is not:

(i) a Department; or

15 (ii) covered by paragraph (a), (b), (c) or (d) of the definition of ‘prescribed authority’;”.

## Schedule 2

13. Schedule 2 to the Principal Act is amended by inserting in Division 1 of Part II the following item (in the appropriate alphabetical position):

20 “Eligible case managers, in relation to documents other than documents in respect of:

(a) the provision of case management services (within the meaning of the *Employment Services Act 1994*) to persons referred to eligible case managers under Part 4.3 of that Act; or

25 (b) the performance of functions conferred on eligible case managers under that Act”.

## PART 4—AMENDMENT OF THE OMBUDSMAN ACT 1976

### Objects of Part

14. The objects of this Part are:

30 (a) to empower the Ombudsman to investigate complaints about contracted case managers; and

(b) to empower the Ombudsman to refer complaints about contracted case managers to ESRA (the Employment Services Regulatory Authority).

### 35 Principal Act

15. In this Part, “Principal Act” means the *Ombudsman Act 1976*<sup>3</sup>.

### Interpretation

**16.** Section 3 of the Principal Act is amended:

- (a) by omitting “and” from paragraph (a) of the definition of “officer” in subsection (1) and substituting “or”;
- (b) by inserting “(other than an eligible case manager)” after “authority” (first occurring) in paragraph (b) of the definition of “officer” in subsection (1); 5
- (c) by adding at the end of the definition of “officer” in subsection (1) the following word and paragraph:
  - “or (c) in relation to a prescribed authority that is an eligible case manager: 10
    - (i) if the eligible case manager is an individual—the individual; or
    - (ii) if the eligible case manager is a body corporate—a director, the secretary or an employee of the body corporate; or 15
    - (iii) if the eligible case manager is a partnership—a partner in, or an employee of, the partnership; or
    - (iv) if the eligible case manager is an unincorporated association—a member of the executive committee, or an employee, of the unincorporated association; or 20
    - (v) in any other case—an officer or employee of the eligible case manager;”;
- (d) by adding at the end of paragraphs (a), (b), (ba), (bb) and (c) of the definition of “prescribed authority” in subsection (1) “or”; 25
- (e) by adding at the end of the definition of “prescribed authority” in subsection (1) the following word and paragraph:
  - “or (e) an eligible case manager;”;
- (f) by omitting “and” from paragraph (a) of the definition of “principal officer” in subsection (1) and substituting “or”; 30
- (g) by inserting “(other than an eligible case manager)” after “authority” (first occurring) in paragraph (c) of the definition of “principal officer” in subsection (1);
- (h) by adding at the end of the definition of “principal officer” in subsection (1) the following word and paragraph: 35
  - “or (d) in relation to a prescribed authority that is an eligible case manager:



- 5
- (i) if the eligible case manager is an individual—the individual; or
  - (ii) in any other case—the individual primarily responsible for the management of the eligible case manager;”;
- 10
- (i) by adding at the end of paragraphs (a) and (c) of the definition of “responsible Minister” in subsection (1) “or”;
  - (j) by inserting after paragraph (d) of the definition of “responsible Minister” in subsection (1) the following paragraph:
    - 15 “(da) if a prescribed authority referred to in paragraph (e) of that definition is responsible for dealing with the matter—the Minister administering the *Employment Services Act 1994*; or”;
  - (k) by inserting in subsection (1) the following definition:
    - 20 “‘**eligible case manager**’ means an entity (within the meaning of the *Employment Services Act 1994*):
      - (a) that is, or has at any time been, a contracted case manager within the meaning of that Act; and
      - (b) that is not:
        - 25 (i) a Department; or
        - (ii) covered by paragraph (a), (b), (ba), (bb), (c) or (d) of the definition of ‘prescribed authority’;”.

### Functions of Ombudsman

17. Section 5 of the Principal Act is amended:

- 25
- (a) by adding at the end of paragraphs (2)(a), (aa), (b), (ba) and (c) “or”;
  - (b) by adding at the end of subsection (2) the following word and paragraph:
    - 30 “; or (h) action taken by an eligible case manager that is not connected with:
      - (i) the provision of case management services (within the meaning of the *Employment Services Act 1994*) to persons referred to the eligible case manager under Part 4.3 of that Act; or
      - 35 (ii) the performance of functions conferred on the eligible case manager under that Act.”.

### Discretion not to investigate certain complaints

18. Section 6 of the Principal Act is amended by inserting after subsection (4F) the following subsections:

“(4G) If, before the Ombudsman begins, or after the Ombudsman has begun, to investigate action taken by a Department or by a prescribed authority, being action that is the subject matter of a complaint, the Ombudsman forms the opinion that:

- (a) a complaint with respect to the action has been, or could have been, made by the complainant to ESRA under Part 4.7 of the *Employment Services Act 1994*; and 5
- (b) the action could be more conveniently or effectively dealt with by ESRA; 10

the Ombudsman may decide not to investigate the action, or not to investigate the action further, as the case may be, and, if the Ombudsman so decides, the Ombudsman must:

- (c) transfer the complaint to ESRA; and
- (d) forthwith give written notice to the complainant stating that the complaint has been so transferred; and 15
- (e) give to ESRA any information or documents that relate to the complaint and are in the possession, or under the control, of the Ombudsman.

“(4H) A complaint transferred under subsection (4G) is taken to be a complaint made to ESRA under Part 4.7 of the *Employment Services Act 1994*. 20

“(4I) In subsections (4G) and (4H):

‘ESRA’ means the Employment Services Regulatory Authority established under the *Employment Services Act 1994*.”.

## PART 5—AMENDMENT OF THE PRIVACY ACT 1988 25

### Object of Part

19. The object of this Part is to require contracted case managers to comply with the provisions of the *Privacy Act 1988* in providing case management services.

### Principal Act 30

20. In this Part, “Principal Act” means the *Privacy Act 1988*⁴.

### Interpretation

21. Section 6 of the Principal Act is amended:

- (a) by omitting “and” (last occurring) from paragraph (g) of the definition of “agency” in subsection (1); 35
- (b) by adding at the end of paragraphs (a), (b), (c), (d), (e), (f) and (g) of the definition of “agency” in subsection (1) “or”;

(c) by adding at the end of the definition of “agency” in subsection (1) the following word and paragraph:

“or (i) an eligible case manager;”;

(d) by inserting in subsection (1) the following definition:

5 “‘eligible case manager’ means an entity (within the meaning of the *Employment Services Act 1994*):

(a) that is, or has at any time been, a contracted case manager within the meaning of that Act; and

10 (b) that is not covered by paragraph (a), (b), (c), (d), (e), (f), (g) or (h) of the definition of ‘agency’;”.

### Acts and practices of agencies etc.

22. Section 7 of the Principal Act is amended:

(a) by inserting in paragraphs (1)(a), (c), (d) and (e) “(other than an eligible case manager)” after “agency” (first occurring);

15 (b) by adding “or” at the end of paragraphs (1)(a), (b), (c) and (e);

(c) by inserting after paragraph (1)(c) the following paragraph:

“(ca) an act done, or a practice engaged in, as the case may be, by an eligible case manager in connection with:

20 (i) the provision of case management services (within the meaning of the *Employment Services Act 1994*) to persons referred to the eligible case manager under Part 4.3 of that Act; or

(ii) the performance of functions conferred on the eligible case manager under that Act; or”;

25 (d) by inserting after paragraph (1)(e) the following paragraphs:

“(ea) an act done, or a practice engaged in, as the case may be, by a Minister in relation to the affairs of an eligible case manager, being affairs in connection with:

30 (i) the provision of case management services (within the meaning of the *Employment Services Act 1994*) to persons referred to the eligible case manager under Part 4.3 of that Act; or

(ii) the performance of functions conferred on the eligible case manager under that Act; or

35 (eb) an act done, or a practice engaged in, as the case may be, by a Minister in relation to a record that is in the Minister’s possession in his or her capacity as a Minister and relates to the affairs of an eligible case manager, being affairs in connection with:

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- (i) the provision of case management services (within the meaning of the *Employment Services Act 1994*) to persons referred to the eligible case manager under Part 4.3 of that Act; or
- (ii) the performance of functions conferred on the eligible case manager under that Act;” 5

**Principal executive of agency**

23. Section 37 of the Principal Act is amended by inserting in the table the following items:

- |    |  |  |
|----|--|--|
| “6 | An eligible case manager that is an individual     | The individual   |
| 7  | An eligible case manager that is not an individual | The individual primarily responsible for the management of the eligible case manager”. |

**Registration of determination**

24. Section 54 of the Principal Act is amended by adding at the end the following subsection: 10

“(5) In this section: ‘agency’ does not include an eligible case manager.”.

**Application of Division**

25. Section 57 of the Principal Act is amended by adding at the end the following subsection: 15

“(2) In this section: ‘agency’ does not include an eligible case manager.”.

**PART 6—AMENDMENT OF THE SOCIAL SECURITY ACT 1991**

*Division 1—Principal Act*

**Principal Act**

26. In this Part, “Principal Act” means the *Social Security Act 1991*. 20

*Division 2—Secrecy*

**Object of Division**

27. The object of this Division is to allow the Secretary to the Department of Social Security to disclose information to contracted case managers for the purposes of the *Employment Services Act 1994*. 25

**Secretary's certificate**

28. Section 1314 of the Principal Act is amended by inserting after paragraph (1)(b) the following paragraph:

5       “(ba) disclose any such information to a contracted case manager within the meaning of the *Employment Services Act 1994* for the purposes of that Act; or”.

***Division 3—Insertion of Notes referring readers of the Principal Act to relevant provisions of the Employment Services Act 1994***

**Object of Division**

10       29. The object of this Division is to insert Notes into the Principal Act referring readers to relevant provisions of the *Employment Services Act 1994*.

**Insertion of Notes**

15       30.(1) Sections 543 and 627 of the Principal Act are amended by adding at the end the following Note:

“Note: The operation of this section is modified for participants in the case management system by sections 24 and 36 of the *Employment Services Act 1994*.”.

(2) Subsection 513(1) of the Principal Act is amended by adding at the end the following Note:

20       “Note 14: The operation of this section is modified for participants in the case management system by section 35 of the *Employment Services Act 1994*.”.

(3) Subsection 593(1) of the Principal Act is amended by adding at the end the following Note:

25       “Note 18: The operation of this section is modified for participants in the case management system by section 35 of the *Employment Services Act 1994*.”.

(4) Sections 516, 522, 542A, 542B, 595, 608, 613, 625 and 626 of the Principal Act are amended by adding at the end the following Note:

“Note: The operation of this section is modified for participants in the case management system by section 35 of the *Employment Services Act 1994*.”.

30       (5) Section 595A of the Principal Act is amended by adding at the end of Note 1 “or a Case Management Activity Agreement”.

(6) Section 601 of the Principal Act is amended:

(a) by omitting “Note” (last occurring) and substituting “Note 1”;

(b) by adding at the end the following Note:

35       “Note 2: The operation of this section is modified for participants in the case management system by section 35 of the *Employment Services Act 1994*.”.

**NOTES**

*Employment, Education and Training Act 1988*

1. No. 80, 1988, as amended. For previous amendments, see Nos. 1, 2, 13, 170 and 179, 1989; Nos. 47, 122 and 131, 1991; and No. 5, 1993.

*Freedom of Information Act 1982*

2. No. 3, 1982, as amended. For previous amendments, see Nos. 7 and 81, 1983; No. 63, 1984; No. 187, 1985; Nos. 102 and 111, 1986; Nos. 6, 87, 109, 119, 121, 126, 127 and 129, 1988; Nos. 66 and 150, 1989; Nos. 26, 75, 77 and 118, 1990; Nos. 99, 137, 149 and 180, 1991; Nos. 118, 143, 165, 196 and 219, 1992; and Nos. 33 and 64, 1994.

*Ombudsman Act 1976*

3. No. 181, 1976, as amended. For previous amendments, see No. 63, 1978; Nos. 107 and 155, 1979; No. 61, 1981; No. 61, 1983; No. 63, 1984 (as amended by No. 193, 1985); No. 65, 1985; No. 168, 1986; Nos. 109 and 199, 1988; No. 63, 1989; Nos. 99, 122 and 199, 1991; No. 94, 1992; and No. 33, 1994.

*Privacy Act 1988*

4. No. 199, 1988, as amended. For previous amendments, see Nos. 11, 75 and 115, 1990; Nos. 20, 28, 122, 136 and 194, 1991; Nos. 143 and 165, 1992; No. 28, 1993; and No. 13, 1994.

*Social Security Act 1991*

5. No. 46, 1991, as amended. For previous amendments, see Nos. 68, 69, 70, 73, 74, 115, 116, 141, 175, 194 and 208, 1991; Nos. 12, 69, 81, 94, 118, 133, 134, 138, 228, 229, 230, 233 and 241, 1992; Nos. 25, 36, 61, 120 and 121, 1993; and Nos. 55, 63 and 68, 1994.





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