



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

GOVERNMENT RESPONSE
TO
THE ADVISORY REPORT ON THE BILLS BY
THE HOUSE OF REPRESENTATIVES
STANDING COMMITTEE
ON LEGAL AND CONSTITUTIONAL AFFAIRS

Report date: 22 September 1994
Government Response date: 28 November 1995



Minister for Employment, Education and Training

Simon Crean, MP

23 NOV 1995

Mr Daryl Melham MP
Chair
House of Representatives Standing Committee on
Legal and Constitutional Affairs
Parliament House
CANBERRA ACT 2600

Dear Mr Melham

I refer to the Committee's advisory report on the Employment Services legislation which was tabled in the House of Representatives on 22 September 1994.

I am pleased to provide a copy of the Government's response to the Committee's report and advise that I have arranged for the report to be tabled in the House before the end of the present sittings.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simon Crean', with a long horizontal line extending to the right.

SIMON CREAN

**HOUSE OF REPRESENTATIVES STANDING
COMMITTEE ON LEGAL AND
CONSTITUTIONAL AFFAIRS ADVISORY
REPORT ON: THE EMPLOYMENT
SERVICES BILL 1994 AND THE
EMPLOYMENT SERVICES
(CONSEQUENTIAL AMENDMENTS) BILL
1994**

**RESPONSE ON BEHALF OF THE
GOVERNMENT**

(Presented by the Minister for Employment, Education and Training,
the Honourable Simon Crean MP)

**GOVERNMENT RESPONSE TO THE RECOMMENDATIONS OF THE
HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON LEGAL
AND CONSTITUTIONAL AFFAIRS ADVISORY REPORT ON THE
EMPLOYMENT SERVICES BILL 1994 AND THE EMPLOYMENT
SERVICES (CONSEQUENTIAL AMENDMENTS) BILL 1994**

(Presented by the Minister for Employment, Education and Training,
the Honourable Simon Crean MP)

As Minister, I was pleased to announce the referral of the proposed Employment Services legislation to the House of Representatives Standing Committee on Legal and Constitutional Affairs.

The Government appreciates the work of the Committee which was reflected in its report. It is pleased to note the Committee found that there was strong support for the legislation.

The Committee's report contained 28 recommendations in relation to the proposed legislation and I am happy to report the Government's substantial acceptance of all those recommendations except that, after detailed consideration in accordance with recommendation number 7, it has been decided that it would not be appropriate to introduce a statutory framework for labour market programs. The acceptance of those recommendations which required amendments to the legislation as introduced was evidenced by the Government amendments to the Bills as they passed through the Parliament. The *Employment Services Act 1994* and the *Employment Services (Consequential Amendments) Act 1994* received Royal Assent on 19 December 1994.

I set out below the Committee's recommendations and the Government's response. References to the "main Bill" relate to the Employment Services Bill 1994 and references to the "consequential amendments Bill" relate to the Employment Services (Consequential Amendments) Bill 1994.

Recommendation 1: The Committee recommends that the Bills be passed by the House after acceptance of this report.

The Government notes the Committee's recommendations. It believes that the terms of the responses set out below substantially meet all of the Committee's recommendations.

Recommendation 2: The Committee recommends that the definition of case management services in the Bill be adjusted to reflect more accurately the case manager's responsibility to assist jobseekers both to find and to maintain secure employment.

An amendment to the main Bill altered the basic definition of case management services from one which refers to finding employment to one which emphasises the role of the case manager to assist the job seeker to "obtain sustainable" employment. Further, the disallowable instrument on case management services, recently made by

the Employment Services Regulatory Authority (ESRA), includes in the range of case management services provision of:

- information;
- advice;
- counselling; and
- any service that is likely to ensure that a placement is effective

to a participant following placement in employment.

Recommendation 3: The Committee recommends that special attention should be given to the needs of people with disabilities and other disadvantaged groups, such as sole parents, in the formulation of the disallowable instrument specified in clause 21(3) of the Employment Services Bill (now section 25 of the Employment Services Act 1994).

The disallowable instrument relating to participation in case management provides for the following especially disadvantaged clients to be case managed:

- jobseekers registered as unemployed for less than 52 weeks who are assessed to be at 'high risk' of becoming long-term unemployed;
- sole parent registered jobseekers who are participating in the Jobs, Education and Training (JET) strategy; or
- registered jobseekers who are participating in the Disability Reform Package (DRP) strategy.

The instrument also facilitates participation in case management for persons who have previously been participants in the Community Development Employment Projects scheme.

The disallowable instrument relating to terminating events also provides for recognition of jobseekers who have been assessed by a Disability Reform Package Strategy panel to be capable of engaging in fewer hours of employment in each week or engaged in education or training at a level other than is specified for other case managed clients.

Recommendation 4: The Committee recommends that ESRA and DEET examine closely the payment for outcomes, particularly payment for placement into subsidised employment, to ensure that Commonwealth funds are being expended appropriately and that the Commonwealth is not paying twice for individual placement to be arranged.

My Department and ESRA are aware that providers of brokered program services could also be accredited as contracted case managers. The Government recognises the need to develop policy guidelines which ensure a clear identification of the nature of payments made to such organisations for their respective responsibilities as training and work experience providers and those responsibilities associated with case management activity.

Under the scale of fees for contracted case management, ESRA is paying a lower fee for subsidised outcomes. Contracted case management organisations which place case managed jobseekers into positions within the organisation are not paid an outcome fee (eg Group Training Companies).

The scope for contracted case management organisations to place case managed jobseekers into their own labour market or other training programs is limited by the need for CES approval for LMP entry. ESRA will monitor fair access.

Recommendation 5: The Committee recommends that ESRA's measurement of outcomes take into consideration:

- (a) the difficulty of obtaining outcomes in rural and remote areas; and*
- (b) the need to maintain service in these areas, regardless of their cost-effectiveness.*

ESRA is aware that finding lasting job outcomes may be a particular problem in rural and remote localities and considers that location and the disadvantage of distance should be an issue considered in the evaluation of provider performance.

Recommendation 6: The Committee recommends that the Employment Services Bill be amended to include more information on the purpose of the Area Consultative Committees and an indication of their composition.

Amendments to the main Bill included provisions which state the purpose of Area Committees of the CES and the nature of their composition.

Recommendation 7: The Committee recommends that the Government give detailed consideration to the introduction of a statutory framework for DEET's labour market programs.

Detailed consideration has been given to options for the development of a statutory framework for labour market programs, including through discussions between my Department and others. The present circumstances are such that the Government does not consider it necessary to introduce a statutory framework.

The Government does not accept the Committee's comment that administrative review of decisions in relation to labour market programs is not readily available. Where a client is required to participate in a labour market program, many of these decisions will impact upon eligibility for allowances under the *Social Security Act 1991* and will be reviewable by way of mechanisms provided for in that Act. The guidelines for the conduct of labour market programs also provide for a detailed system of internal review which is available to jobseekers and employers who are affected by decisions relating to program benefits and delivery.

Recommendation 8: The Committee recommends that case managers should not be able to refuse clients and that case loads should involve a mix of clients, where possible, unless the case manager is a "specialist" under clause 44(1) of the Bill.

The legislation provides for the jobseeker's preferences for a case manager to be given the highest priority in the CES decision to refer jobseekers to case managers. In the normal course of events, this would be expected to deliver a cross-section of clients to case managers within a particular client group the case manager is accredited to assist. Even for a "specialist" case manager, this would mean referrals of jobseekers with various abilities, needs and/or barriers to employment and, therefore, of varying difficulty to assist. Case managers will be expected (under subsection 36(1) of the *Employment Services Act 1994*) to accept all clients referred by the CES within the case managers' accreditation classification. Further, the rules of conduct (under section 62 of the *Employment Services Act 1994*), which are obligatory for contracted case managers (CCMs), require CCMs to make appropriate efforts to assist all of their case managed jobseekers, not only those who appear to be most attractive to employers.

Recommendation 9: The Committee recommends that ESRA monitor closely the development of specialist case managers to ensure that all jobseekers are adequately catered for, particularly those groups where cultural considerations may need special attention.

ESRA is monitoring the needs of jobseekers requiring specialist case managers to ensure those needs are being met. ESRA will monitor and evaluate the results of all case managers including specialist case managers.

Recommendation 10: The Committee recommends that labour market program funds should not be used as an incentive for minimising jobseeker access to labour market programs.

ESRA has decided not to pursue the payment of a bonus fee based on savings from labour market program expenditure.

A two tiered payment structure is in place comprising an initial fee and an outcome fee, the latter paid after achievement of a defined successful outcome.

Recommendation 11: The Committee recommends that it is essential that sufficient notice be given before income support payments are deferred due to breach of obligations.

The Government notes the Committee's recommendations and the suggestion that administrative arrangements in place before 12 July 1994 provide sufficient notice.

The passage of amendments to the *Social Security Act 1991* in the *Employment Services (Consequential Amendments) Act 1994* has provided for a return to the administrative arrangements that existed before 12 July 1994. The Government believes these arrangements allow for sufficient notice to be given before payments are deferred.

Recommendation 12: The Committee recommends that the accreditation scheme created by clause 39 of the Employment Services Bill (now section 49 of the Employment Services Act 1994) include a determination of an appropriate ratio of participants to case managers and that this ratio be used to determine an upper limit to referrals and participants for any individual case management organisation.

The Committee also recommends that ESRA monitor its ability to control contracted case managers and report any problems in this area to the Minister.

An amendment to the main Bill, moved by the Government, allowed for limits to be placed on the number of referrals that may be made to case managers. Such limits are in place.

The main Bill included as part of ESRA's functions the monitoring of the case management system and the making of reports to the Minister. The Government believes that these arrangements are sufficient in respect of the monitoring role of ESRA that was noted by the Committee.

Recommendation 13: The Committee recommends that the application of the codes of practice be included in the accreditation scheme and that DEET investigate the possibility of removing from the Employment Services Bill the potential for codes of practice to be advisory only.

Amendments to the main Bill, moved by the Government, provided for ESRA to formulate rules of conduct for the provision of case management services which would be conditions of accreditation in all cases. The disallowable instrument entitled "Employment Services (Rule of Conduct) Determination No 1 of 1995" was made by the Chief Executive Officer of ESRA on 25 January 1995. ESRA is also able to issue Codes of Practice under the Act, which are advisory in character, and Provider Guidelines, with which compliance is mandatory, either as conditions of accreditation or as terms of a case manager's contract with ESRA.

Recommendation 14: The Committee recommends that the legislation should be amended to provide for the Commonwealth Ombudsman to be able to advise ESRA directly about complaints where they will be relevant to ESRA's functions.

The natural justice safeguards under the Ombudsman Act 1976 which apply to reports to ministers and the Government should apply to such reports to ESRA.

Amendments to the consequential amendments Bill, moved by the Government, provided for the Ombudsman to be able to advise ESRA directly about matters

relevant to ESRA's functions. Before providing information to ESRA, the Ombudsman must give the same opportunity for a person to comment on an adverse opinion as is required in the case of the provision of reports to a Minister.

Recommendation 15: The Committee recommends that ESRA, in consultation with the Attorney-General, the Commonwealth Ombudsman, the Privacy Commissioner and other appropriate organisations, develop and implement an education and training strategy for case managers to ensure that they are aware of their legal obligations when delivering case management services.

Recommendation 16: The Committee recommends that resources be made available for:

- (a) the extension of the administrative law package to the activities of case managers; and*
- (b) conducting an intensive education and training strategy for case managers.*

Both recommendations 15 and 16 relate to education strategies for case managers in regard to privacy and other areas of administrative law. ESRA has provided all contracted case managers with training in their legal obligations to protect the privacy of jobseekers and others. A good deal of attention is also given to this matter in ESRA's Provider Guidelines. ESRA is also working to provide consolidated advice to jobseekers on their rights and responsibilities by way of an information strategy that will be developed in conjunction with the Privacy Commissioner, the Ombudsman and the Attorney-General's Department.

The disallowable instrument made by ESRA which relates to the use of case management documents provides that the CES is to give information about the use of documents containing personal information to participants in the case management system.

Recommendation 17 : The Committee recommends that the Government consider whether the Employment Services Bill, once enacted, should be included in Schedule 2 to the Legislative Instruments Bill.

The Government has arranged for the *Employment Services Act 1994* to be included in Schedule 2 to the Legislative Instruments Bill.

Recommendation 18: The Committee recommends that in general, substantive matters should be included in primary legislation so that the content of the scheme is clear. The inclusion of such matters in disallowable instruments should be the exception rather than the rule.

The Government notes the Committee's comments. The Government points out that there are special circumstances in this case to support the use of disallowable instruments.

The use of disallowable instruments provides for flexibility in the delivery of case management services while allowing for proper Parliamentary scrutiny. It allows for the detailed operational aspects of the system to be developed in consultation with key players and for the ready ability to change in the light of experience. The Government notes that the Committee understood and accepted that many of the details of the system need to be responsive to change.

In reviewing the operation of the disallowable instruments, the Government intends to identify those matters which, in the light of experience, should be included in the primary legislation.

A copy of each of the disallowable instruments made under the *Employment Services Act 1994* is included in the Appendix.

Recommendations 19, 21 through 26 and 28 variously recommend that the contents of disallowable instruments be reviewed after twelve months.

The Government accepts these recommendations. Further, the Government intends that all the instruments issued by the Minister and ESRA will be reviewed after twelve months of operation. Matters that, in the light of experience, should be included in the primary legislation will be identified as well as other improvements to the operation of the case management system.

The review of the disallowable instruments will involve case managers and participants in the system as well as interest groups.

Recommendation 20: The Committee recommends that drafts of the disallowable instruments arising from the Employment Services Bill be circulated before passage of the Bill through the Parliament is completed.

The Government has been committed to an open and consultative process in developing the disallowable instruments. In this regard the Government welcomed the Committee's recommendation.

Drafts of disallowable instruments that would be required under the legislation were tabled by the Government in the House of Representatives on 20 October 1994. The draft instruments were open for public consultation until 21 November 1994.

The Government has also extended an invitation to the Opposition to have consultations on the instruments.

The final form of the disallowable instruments reflects the valuable contributions received as a result of the consultative process.

Recommendation 27: The Committee recommends that the Government carefully consider issues of equality of access to information on job vacancies for contracted case managers and the provision of information technology services to those case managers.

The disallowable instrument on the Departmental Information Technology Assistance Scheme (DITAS) sets the parameters for the provision of IT support to case managers (both Employment Assistance Australia (EAA) and contracted case managers). My Department acknowledges that contracted case managers and EAA must be able to access information and IT systems in a manner that is equitable and imposes no relative cost disadvantage on any case manager. The type of assistance provided to contracted case managers will be consistent with that available to EAA.

The Government has provided funding for the development by the Department of the new Integrated Employment System (IES) that is necessary to support *Working Nation's* employment, education and training initiatives. Case managers' access to departmental IT support is being considered as part of IES development. Consideration of case management requirements through this process is consistent with the Committee's recommendation.

