

Disability Services (Transitional Provisions and Consequential Amendments) Act 1986

No. 130 of 1986

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Disability Services (Transitional Provisions and Consequential Amendments) Act 1986

No. 130 of 1986

An Act to enact certain transitional provisions and make certain amendments in consequence of the enactment of the *Disability Services Act 1986*, and for other purposes.

[Assented to 9 December 1986]

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

PART I-PRELIMINARY

Short title

1. This Act may be cited as the *Disability Services (Transitional Provisions and Consequential Amendments) Act 1986*.

Commencement

2. (1) This Act (other than Part II and section 15) shall come into operation on the day fixed by Proclamation for the purposes of sub-section 2 (1) of the *Disability Services Act 1986*.

(2) Part II and section 15 shall come into operation on the day fixed by Proclamation for the purposes of sub-section 2 (2) of the *Disability Services Act 1986*.

PART II-AMENDMENTS OF THE HANDICAPPED PERSONS ASSISTANCE ACT 1974

Principal Act

3. The *Handicapped Persons Assistance Act 1974* is in this Part referred to as the Principal Act.

Repeal of sections 3 to 7 (inclusive)

4. Sections 3 to 7 (inclusive) of the Principal Act are repealed.

Repeal of Parts II to VI (inclusive)

5. Parts II to VI (inclusive) of the Principal Act are repealed.

Interpretation

6. Section 22 of the Principal Act is amended

(a) by inserting before the definition of "benefit" the following definition:

-approved residential accommodation' has the same meaning that it had immediately before the commencement of Part II of the *Disability Services Act 1986*;" and

(b) by inserting after the definition of "benefit" the following definition:

-eligible organisation has the same meaning that it had immediately before the commencement of Part II of the *Disability Services Act 1986*;"

7. Section 27 of the Principal Act is repealed and the following section is substituted:

Interpretation

"27. In this Part

"eligible organization" has the same meaning that it had immediately before the commencement of Part II of the *Disability Services Act 1986*;

"normal employment", in relation to a person, means

(a) full-time employment of the person with an employer at rates of pay normally paid in respect of employment in the occupation concerned; or

(b) full-time engagement (other than as an employee) of the person in any employment, occupation or business that provides, or will provide, the person with an income at an annual rate not less than an amount per annum equal to the aggregate of the annual amount specified in paragraph 28 (1 A) (a) of the *Social Security Act 1947* and the amount specified in paragraph 28 (2) (a) of that Act;

"sheltered employment" has the same meaning that it had immediately before the commencement of Part II of the *Disability Services Act 1986*."

8. Section 29A of the Principal Act is repealed and the following section is substituted:

Interpretation

"29A. In this Part, "eligible organization", 'normal, employment' and "sheltered employment" have the same respective meanings as they have in Part VIII."

9. (1) Sections 30 to 32 (inclusive) of the Principal Act are repealed and the following section is substituted:

Payments not to be made under Act after 30 June 1992

"30. Notwithstanding anything contained in this Act, no payments shall be made under this Act after 30 June 1992."

(2) Agreements entered into under sub-section 31 (2) of the Principal Act continue in force as if section 31 of the Principal Act had not been repealed.

(3) Sub-section 31 (4) of the Principal Act continues to apply with respect to grants made under the Principal Act, and agreements entered into under sub-section 31 (2) of the Principal Act, as if section 31 of the Principal Act had not been repealed.

(4) Agreements entered into under sub-section 31A (1) or (2) of the Principal Act continue in force as if section 31A of the Principal Act had not been repealed.

(5) Section 31A of the Principal Act continues to apply with respect to grants made under section 10 of the Principal Act, and agreements entered into under sub-section 31A (2) of the Principal Act, as if that first-mentioned section had not been repealed.

Repeal of Part X

10. Part X of the Principal Act is repealed.

PART III-AMENDMENTS OF THE SOCIAL SECURITY ACT 1947

Principal Act

11. The *Social Security Act 1947* in this Part is referred to as the Principal Act.

Interpretation

12. Section 6 of the Principal Act is amended

(a) .by omitting ", the value of any treatment, training or goods provided under this Act from paragraph (a) of the definition of "income" in sub-section (1);

(b) by inserting after paragraph (d) of the definition of "income" in sub-section (1) the following paragraph:

"(da) a payment under Part III of the *Disability Services Act 1986* or the value of any rehabilitation program (including any follow-up program) provided under that Part;" and

(c). by omitting from sub-section (1) the definition of "Secretary" and substituting the following definition:

"Secretary" means the Secretary to the Department.

Certain persons to be disregarded for certain purposes

13. Section 6A of the Principal Act is amended by omitting from paragraph (3) (b) % a mobility allowance or an allowance under section 135W' and substituting "or a mobility allowance".

Secrecy

14. Section 17 of the Principal Act is amended

(a) by inserting in sub-section (2) "or for the purposes of the administration of the *Disability Services Act 1986*" after "under this Act" (first occurring); and

(b) by inserting in sub-section (3) "or the *Disability Services Act 1986*" after "this Act" (first occurring).

Incentive allowance

15. Section 26 of the Principal Act is amended

(a) by inserting in paragraph (1) (b) "or is undertaking independent living training" after "adult training centre"; and

(b) by omitting from sub-section (2) the definitions of "activity therapy centre" and "adult training centre" and substituting the following definitions:

'activity therapy centre' means premises at which approved activity therapy is provided;

'adult training centre' means promises at which approved training is provided;

'approved activity therapy' and 'approved training' have the same respective meanings that those term had in the *Handicapped Persons Assistance Act 1974* immediately before the commencement of Part II of the *Disability Services Act 1986*;

'independent living training' means training to assist persons with disabilities to develop or maintain the personal skills and self-reliance necessary to enhance their independence, and self-reliance, in the community, being training, or training included in a class of training, approved, in writing, by the Secretary for the purposes of this definition;"

Persons eligible to receive allowance

16. Section 85 of the Principal Act is amended by omitting from sub-sub-paragraph (1) (a) (i) "section 135D or under".

Eligibility for mobility allowance

17. Section 133RB of the Principal Act is amended by omitting from sub-sub-paragraph (1) (b) (i) (B) "under Part VIW' and substituting "as part of a rehabilitation program or follow-up program under Part III of the *Disability Services Act 1986*".

Heading to Part VIII

18. The heading to Part VIII of the Principal Act is omitted and the following heading is substituted:

"PART VIII-REHABILITATION ALLOWANCE".

Interpretation by omitting the

19. Section 134 of the Principal Act is amended by omitting the definitions of "trainee", "training" , "training allowance", "treatment", "vocation" and "vocational training".

Repeal of sections 135 and 135A

20. (1) Sections 135 and 135A of the Principal Act are repealed.

(2) Where a person was, immediately before the commencement of this section, receiving, or, by virtue of a determination under sub-section 135A (1) of the Principal Act, eligible to receive, treatment or training, or both, under Part V111 of the Principal Act (otherwise than by virtue of sub-section

135Q (5) of the Principal Act), the Secretary to the Department of Community Services shall, upon the commencement of this section, be deemed to have validly approved, under sub-section 20 (1) of the *Disability Services Act 1986*, the provision of a rehabilitation program for the person (together with any follow-up program that the Secretary directs, in writing, should be provided for the person), being a rehabilitation program consisting of the part of the treatment or training, or both, as the case may be, remaining uncompleted.

(3) Where a person was, immediately before the commencement of this section, receiving treatment under Part VIII of the Principal Act by virtue of sub-section 135Q (5) of the Principal Act, the Secretary to the Department of Community Services shall, upon the commencement of this section, be deemed to have validly approved, under sub-section 20 (1) of the *Disability Services Act 1986*, the provision of a follow-up program for the person, being a follow-up program consisting of the part of the treatment remaining uncompleted.

21. Section 135B of the Principal Act is repealed and the following section is substituted:

Persons eligible to be paid rehabilitation allowance, etc.

135B. (1) A person (other than an unmarried person who has not attained 16 years of age or a person who has attained 65 years of age) who

(a) is

(i). undertaking a rehabilitation program under Part III of the *Disability Services Act 1986*; or

(ii). undertaking a follow-up program under that Part, being a follow-up program, or a follow-up program included in a class of such programs, in relation to which the Secretary has directed, in writing, that this paragraph apply; and

(b) is qualified or eligible to receive a pension, benefit or allowance, is eligible to receive a rehabilitation allowance.

"(2) A person receiving a rehabilitation allowance is not entitled to receive a pension, benefit or allowance."

Rate of rehabilitation allowance

22. Section 135BA of the Principal Act is amended by omitting from subparagraphs (1) (b) (i) and (ii) ", in the opinion of the Secretary,".

Repeal of sections 135C to 135L (Inclusive)

23. Sections 135C to 135L (inclusive) of the Principal Act are repealed.

Repeal of sections 135Q 135R and 135S

24. (1) Sections 135Q, 135R and 135S of the Principal Act are repealed.

(2) Subject to sub-section (3), section 23 of the *Disability Services Act 1986* applies in relation to treatment or training, or both, received by a person under Part VIII of the Principal Act as if it were a rehabilitation program or follow-up program provided for the person under Part III of the *Disability Services Act 1986*.

(3) For the purposes of the application of section 23 of the *Disability services Act 1986* (in this sub-section referred to as the "new Act") to treatment and training referred to in sub-section (2) of this section

(a) the following paragraph shall be taken to be inserted before paragraph (a) of the definition of "cost" in sub-section 23 (1) of the new Act:

"(aa) the cost of providing, maintaining and replacing, under section 135K of the *Social Security Act 1947*, any articles used by the person;"

(b). the reference in paragraph (a) of the definition of "cost" in subsection 23 (1) of the new Act to any allowances paid to the person under section 24 shall be taken to be a reference to any allowances paid to the person under section 135D of the *Social Security Act 1947*;

(c). any notice served on a person under sub-section 135R (IA) of the *Social Security Act 1947* shall, upon the commencement of this section, be deemed to have been served on the person under subsection 23 (2) of the new Act; and

(d). any notice served on a person under sub-section 135R (2) of the *Social Security Act 1947* shall, upon the commencement of this section, be deemed to have been served on the person under subsection 23 (5) of the new Act.

(4) Any arrangement that, immediately before the commencement of this section, was in force under section 135s of the Principal Act has effect after that commencement as if it had been made under section 25 of the *Disability Services Act 1986*.

Payment and calculation of instalments of certain pensions, &c.

25. Section 13STBA of the Principal Act is amended by omitting from sub-section (1) ", 133JA Or 135W' and substituting "or 133JA".

Power to obtain information, &c.

26. Section 13STF of the Principal Act is amended by omitting from sub-section (1) "to the Secretary under section 135R, or".

Cancellation, suspension or variation of pension, &c.

27. Section 13STS of the Principal Act is amended by omitting from paragraph (IA) (a) "(other than under section 135D),-".

Appropriation

28. Section 136 of the Principal Act is amended by omitting ", and any payments made in pursuance of paragraph 135 (2) (b) or section 135c, 135K or 135L,".

PART IV-AMENDMENTS OF THE COMPENSATION (COMMONWEALTH GOVERNMENT EMPLOYEES) ACT 1971

Principal Act

29. The *Compensation (Commonwealth Government Employees) Act 1971* is in this Part referred to as the Principal Act.

Interpretation

30. Section 5 of the Principal Act is amended

(a). by omitting from paragraph (h) of the definition of "medical treatment" in sub-section (1) .or 11 (last occurring); and

(b). by inserting after paragraph (j) of the definition of "medical treatment" in sub-section (1) the following word and paragraph:

or (k) medical treatment provided as part of a rehabilitation program or follow-up Program under Part III of the *Disability Services Act 1986*;"

Provision of rehabilitation programs

31. Section 38 of the Principal Act is amended

(a). by omitting from sub-section (1) "vocational training for the employee in accordance with Part VIII of the *Social Security Act 1947*" and substituting "a rehabilitation program (including any follow-up program) for the employee under Part Ill of the *Disability Services Act 1986*"; and

(b). by omitting sub-sections (2) and (3) and substituting the following sub-section:

"(2) Where a person is undertaking a rehabilitation program (including a follow-up program) under Part Ill of the *Disability Services Act 1986* pursuant to arrangements made under sub-section (1) of this section, the person is not entitled to receive, during a period commencing on a day that is a pension pay-day for the purposes of the *Social Security Act 1947* and ending on the day immediately preceding the day that is the next pension pay-day for the purposes of that Act, an amount under Part VIII of the last mentioned Act (in this sub-section referred to as the 'Social Security amount') except to the extent that

(a). in a case where the person also receives, during that period, an amount under section 24 of the *Disability Services Act 1986* (in this paragraph referred to as the 'Disability Services amount')-the Social Security amount exceeds the sum of the Disability Services amount and the amount of compensation payable to the person under sub-section (5) of this section during that period; or

(b). in any other case-the Social Security amount exceeds the amount of compensation payable to the person under subsection (5) of this section during that period."

PART V-AMENDMENTS OF THE DEFENCE (RE-ESTABLISHMENT) ACT 1965

Principal Act

32. The *Defence (Re-establishment) Act 1965* is in this Part referred to as the Principal Act.

Interpretation

33. Section 46A of the Principal Act is amended by inserting before the definition of "Secretary" the following definition:

-Disability Services Act' means *Disability Services Act 1986*;"

Application of Part 111 of Disability Services Act

34. Section 47 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

"(1) Part III of the Disability Services Act (other than section 24) applies in relation to a disabled person and, in a case where the person is not a person in the target group for the purposes of that Part, that Part applies as if the disabled person were a person in the target group."

Payments during rehabilitation programs

35. Section 48 of the Principal Act is amended

(a). by omitting from sub-section (1) "receiving treatment or training or treatment and training under Part VIII of the Social Security Act" and substituting "undertaking a rehabilitation program under Part III of the Disability Services Act";

(b). by omitting from sub-section (2) "supplementary assistance or";

(c). by omitting from sub-section (2) "and the rate of any allowance by way of supplementary assistance that would be payable under that Part of that Act to that other person",

(d). by omitting from sub-section (3) "receiving training (whether or not he is also receiving treatment)" and substituting "undertaking a rehabilitation program under Part III of the Disability Services Act (being a rehabilitation program that consists of, or includes, employment or vocational training) or any follow-up program under that Part to such a rehabilitation program (being a follow-up program in relation to which the Secretary has directed, in writing, that this section applies)".

(c). by omitting from paragraph (3) (a) "section 135D of the *Social Security Act*" and substituting "section 24 of the *Disability Services Act*";

(f). by omitting from paragraph "receiving training" and substituting "undertaking the program";

(g). by omitting from paragraph (3) (b) "subsection 135D (5) of the *Social Security Act* and substituting "sub-section 24 (4) of that Act;

(h) by omitting from sub-section (4) "supplementary assistance, supplementary allowance or"; and

(j) by omitting from sub-section (4) "(including any allowance by way of supplementary assistance)".

Interpretation

36. Section 49A of the Principal Act is amended by inserting before the definition of "Secretary" in sub-section (1) the following definition:

-Disability Services Act' means *Disability Services Act 1986*;".

37. Section 49B of the Principal Act is repealed and the following sect is substituted:

Application of Part III of the Disability Services Act

"49B. Part III of the Disability Services Act (other than section 24) applies in relation to a disabled person and, in a case where the person is not a person in the target group for the purposes of that Part, that Part applies as if the disabled person were a person in the target group.---

Payments during rehabilitation programs

38. Section 49C of the Principal Act is amended

(a) by omitting from sub-section (1) "receiving treatment or training or treatment and training under Part VIII of the Social Security Act" and substituting "undertaking a rehabilitation program under Part III of the Disability Services Act";

(b) by omitting from sub-section (2) "supplementary assistance or";

(c) by omitting from sub-section (2) "and the rate of any allowance by way of supplementary assistance that would be payable under that Part to that other person";

(d) by omitting from sub-section (3) "receiving training (whether or not he is also receiving treatment)" and substituting "undertaking a rehabilitation program under Part III of the Disability Services Act (being a rehabilitation program that

consists of, or includes, employment or vocational training), or any follow-up program under that Part to such a rehabilitation program (being a follow-up program in relation to which the Secretary has directed, in writing, that this section applies) ";

(e) by omitting from paragraph (3) (a) "section 135D of the Social Security Act and substituting "section 24 of the Disability Services Act";

(f) by omitting from paragraph (3) (b) "receiving training" and substituting "undertaking the program";

(g) by omitting from paragraph (3) (b) "sub-section 135D (5) of the Social Security Act and substituting "sub-section 24 (4) of that Act;

(h) by omitting from sub-section (5) "supplementary assistance, supplementary allowance or"; and

(i) by omitting from sub-section (5) "(including any allowance by way of supplementary assistance)".

PART VI-AMENDMENTS OF THE RE-ESTABLISHMENT AND EMPLOYMENT ACT 1945

Principal Act

39. The *Re-establishment and Employment Act 1945* is in this Part referred to as the Principal Act.

Extension of Part III of the Disability Services Act to certain members of the Forces

40. Section 150 of the Principal Act is amended by omitting sub-sections (1) and (2) and substituting the following sub-section:

"(1) The operation of Part III of the *Disability Services Act 1986* extends to disabled persons as defined by sub-section (3) of this section in the same way as it applies to persons in the target group for the purposes of that Part."

Rehabilitation allowance during rehabilitation programs

41. Section 151 of the Principal Act is amended

(a) by omitting "receiving treatment under Part VIII of the *Social Security Act 1947*" and substituting "undertaking a rehabilitation program under Part III of the *Disability Services Act 1986* (being a rehabilitation program that consists of, or includes, employment or vocational training), or any follow-up program under

that Part to such a rehabilitation program (being a follow-up program in relation to which the Secretary has directed, in writing, that this section applies)"; and

(b) by inserting in paragraph (a) "under Part VIII of the *Social Security Act 1947*" after "allowance".

PART VII-AMENDMENTS OF THE VETERANS' ENTITLEMENTS ACT 1986

Principal Act

42. The *Veterans' Entitlements Act 1986* is in this Part referred to as the Principal Act.

Interpretation

43. Section 35 of the Principal Act is amended

(a) by omitting ", the value of any treatment, training or goods provided under that Act," from paragraph (a) of the definition of "income" in sub-section (1); and

(b) by inserting after paragraph (d) of the definition of "income" in sub-section (1) the following paragraph:

"(da) a payment under Part III of the *Disability Services Act 1986* or the value of any rehabilitation program (including any follow-up program) provided under that Part;"

Special temporary allowance

44. Section 65 of the Principal Act is amended by omitting---"135B (3)" from the definition of "pensioner" in sub-section (1) and substituting '135B GY'.

PART VIII-AMENDMENTS OF THE VETERANS' ENTITLEMENTS (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) ACT 1986

Principal Act

45. The *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986* is in this Part referred to as the Principal Act.

Child of a person

46. Section 23 of the Principal Act is amended

(a) by omitting from paragraph (1) (b) '135B (2)'; and

(b) by omitting from paragraph (3) (b) '135B (3)' and substituting '135B (2)'.