

Women's Refuges and Housing Program DRAFT Bill 2015

No. XXX, 2015

17 Sept 2015 draft

A Bill relating to financial assistance to the States, the Australian Capital Territory and the Northern Territory in connection with the jointly-funded program known as the Women's Refuges and Housing Program ("WRAHP"), and for related purposes

N.B This legislation may need an exemption under the Sex Discrimination Act

https://www.comlaw.gov.au/Details/C2015C00275/Html/Text#_Toc422815225

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Part 5—Regulations

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26 Regulations

**An Act relating to financial assistance to the States,
the Australian Capital Territory and the Northern
Territory in connection with the jointly-funded
program known as the Women’s Refuges and
Housing Program (“WRAHP”), and for related
purposes**

Preamble

This Preamble sets out considerations taken into account by the Parliament of Australia in enacting the law that follows.

The Parliament recognises the need to redress the effects of domestic and family violence against women and their children and to achieve a reduction in consequences of domestic and family violence.

Women and their children experiencing domestic and family violence are among the most powerless and endangered groups in society. Responses to their needs should aim to protect and empower them and maximise their safety and independence. These responses should be provided in a way that respects their dignity as individuals, enhances their self-esteem, is sensitive to their social and economic circumstances, and respects their cultural backgrounds and their beliefs.

Australia has acted to protect the rights of all of its citizens, including women and their children in crisis as a result of domestic and family violence, by recognising international standards for the protection of universal human rights and fundamental freedoms through:

- (a) the ratification of the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights; and
- (b) the ratification of the Conventions on the Elimination of all Forms of Racial Discrimination, on the Elimination of all Forms of Discrimination against Women and on the Rights of the Child; and
- (c) the acceptance of the Universal Declaration of Human Rights and of the Declaration on the Elimination of Violence Against Women; and
- (d) the enactment of legislation such as the *Human Rights and Equal Opportunity Commission Act 1986* and the *Workplace Gender Equality Act 2012*

Legislation relating to women and their children in crisis as a result of domestic and family violence should include a focus on the provision of appropriate support to meet the individual needs of the clients of the Women's Refuges and Housing Program ("WRAHP") and on their right to an equitable share of the community's resources.

It is essential then that the community has the opportunity to be involved in the development of policies relating to, or impacting on women and

Preamble

accompanying children experiencing domestic and family violence or in crisis as a result of domestic and family violence. Accordingly, the Parliament intends that, under the law that follows, the Minister should establish an advisory committee drawn from members of the community with:

- (a) relevant expertise in, or experience of domestic and family violence;
or
- (b) an understanding of the principal issues affecting women and their children in crisis as a result of experiencing domestic and family violence; or
- (c) other relevant expertise or experience.

The Parliament intends that the Commonwealth Government should work co-operatively with State and Territory governments to ensure that women and their children who are escaping domestic or at risk of domestic and family violence are given opportunities to redress their circumstances and that their universal human rights are not prejudiced by the manner in which services are provided to them.

The Parliament of Australia enacts:

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Part 1—Preliminary

1 Short title

This Bill may be cited as the Women’s Refuges and Housing Bill.

2 Commencement

This Bill commences on the day on which it receives the Royal Assent.

3 Definitions (*under development – comments welcome*)

In this Act:

CACWRAH means the Commonwealth Advisory Committee on Women’s Refuges and Housing established by section 20.

client means a person in receipt of services under WRAHP.

participating State means a State in respect of which a WRAHP agreement is in force.

Women escaping violence include:

women and accompanying children who are in crisis as a result of experiencing domestic and family violence including that at risk of injury or death.

WRAHP means the Women’s Refuges and Housing Program.

WRAHP agreement means an agreement of the kind mentioned in subsection 17(2), and includes such an agreement as varied and in force from time to time.

service provider means a person or body that provides services under WRAHP.

services includes, but is not limited to, accommodation.

State includes the Australian Capital Territory and the Northern Territory.

State Minister means:

- (a) in relation to a State other than the Northern Territory or the Australian Capital Territory—the Minister of the Crown of the State who is responsible for the administration of WRAHP in the State; or
- (b) in relation to the Northern Territory—the Minister of the Northern Territory who is responsible for the administration of WRAHP in the Northern Territory; or
- (c) in relation to the Australian Capital Territory—the Minister of the Australian Capital Territory who is responsible for the administration of WRAHP in the Australian Capital Territory.

4 Definition of *domestic and family violence*

The term violence against women means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.'

United Nations Declaration on the Elimination of Violence against Women

(1) For the purpose of this Bill domestic violence refers to acts of violence that occur between people who have, or have had, an intimate relationship. The central element of domestic violence is an ongoing pattern of behaviour aimed at controlling a partner through fear, for example by using behaviour, which is violent and threatening. In most cases, the violent behaviour is part of a range of tactics to exercise power and control over women and their children, and can be both criminal and non- criminal.

Domestic violence includes physical, sexual, emotional and psychological abuse.

Physical violence can include slaps, shoves, hits, punches, pushes, being thrown down stairs or across the room, kicking, twisting of arms, choking, and being burnt or stabbed.

Sexual assault or sexual violence can include rape, sexual assault with implements, being forced to watch or engage in pornography, enforced prostitution, and being made to have sex with friends of the perpetrator.

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Psychological and emotional abuse can include a range of controlling behaviours such as control of finances, isolation from family and friends, continual humiliation, threats against children or being threatened with injury or death.

Family violence for the purpose of this Bill refers to violence between family members, as well as violence between intimate partners. It involves the same sorts of behaviours as described for domestic violence. As with domestic violence, the Bill recognises that although only some aspects of family violence are criminal offences, any behaviour that causes the victim to live in fear is unacceptable. The term, ‘family violence’ is the most widely used term to identify the experiences of Indigenous people, because it includes the broad range of marital and kinship relationships in which violence may occur.

The National Plan to Reduce Violence Against Women and their Children
2010-2022

5 Object

Funding of WRAHP

- (1) The object of this Act is to grant financial assistance to the States to administer a program, to be known as the Women’s Refuges and Housing Program (“**WRAHP**”).

Note: A description of the aims etc. of WRAHP is set out below.

Aim of WRAHP

- (2) The overall aim of WRAHP is to provide integrated support services, including crisis and transitional supported accommodation and support to remain safely at home, in order to help women and accompanying children who are in crisis as a result of experiencing domestic violence to achieve the maximum possible degree of safety, self-reliance and independence. Within this aim the goals are:
 - (a) to resolve crisis; and
 - (b) to re-establish capacity to live independently of WRAHP.

How the aim of WRAHP is to be achieved

- (3) The aim of WRAHP is to be achieved by:
- (a) providing 24 hour accessible front line, integrated, crisis support services and safe housing pathways and solutions, including supports and interventions that enable women the choice to return safely to their homes, by:
 - (b) Providing or arranging for the provision of integrated and specialised domestic violence services including safe and supported crisis and transitional accommodation ; and
 - (c) Assisting women and accompanying their children who are in crisis as a result of experiencing domestic and family to obtain long-term, safe living arrangements.

Services are said to be **provided under WRAHP** if the provision of the services is covered by paragraph (a) or (b).

Other key features of WRAHP

- (4) Other key features of WRAHP are as follows:
- (a) WRAHP is to be implemented principally through common-form agreements between the Commonwealth and the States;
 - (b) the parties to such agreements are to endeavour to work together in a co-operative relationship where the contributions of each party are valued equally;
 - (c) the parties to such agreements are to endeavour to work co-operatively with local government bodies and service providers in connection with the provision of services under WRAHP;
 - (d) WRAHP is to promote an image that emphasises human dignity and fosters an approach that irrespective of women and children's current circumstances they are entitled to opportunities that will enable them to participate safely and fully in community life;
 - (e) WRAHP is to encourage innovation in the provision of services to women and accompanying children who are in crisis as a result of experiencing domestic and family violence;

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- (f) WRAHP is to safeguard clients' rights and deal with clients' responsibilities through measures including, but not limited to:
 - (i) the development of grievance and appeals procedures;
and
 - (ii) the development of charters of clients' rights and responsibilities.

Part 2—WRAHP Agreements

Division 1—Form of WRAHP agreement

6 Form of WRAHP agreement

Minister may specify form of agreement

- (1) For the purposes of this Act, the Minister may, by legislative instrument, specify a form of agreement dealing with WRAHP.

Variation or revocation

- (2) If the form is varied or revoked, the variation or revocation does not affect the validity of a WRAHP agreement entered into before the variation or revocation took effect.

Disallowable instrument

- (3) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Division 2—Matters dealt with by form of WRAHP agreement

7 Responsibilities of service providers

A form of agreement specified in an instrument under section 6 must include provisions that are directed towards assisting service providers, over time, to fulfil the following responsibilities:

- (a) to help women and accompanying children who are in crisis as a result of experiencing domestic and family violence to resolve crisis, and to achieve greater independence, through the following:
 - (i) case management;
 - (ii) assessment and referral;
 - (iii) early intervention and prevention;
- (b) to further the integration into the community of women and accompanying children who are escaping domestic and family violence by increasing access to the following:
 - (i) employment;
 - (ii) education and training;
 - (iii) health services (including mental health services);
 - (iv) disability and rehabilitation services;
 - (v) children's support services;
 - (vi) income support;
 - (vii) legal services;
 - (viii) financial advice services;
 - (ix) other appropriate opportunities and resources;
- (c) to help women and accompanying children who are made homeless by domestic and family violence to obtain long-term, secure and affordable housing and accommodation by providing access to a range of options suitable to their needs, including the choice to remain or return to the home
- (d) to complement other services available to women and accompanying children who are escaping domestic and family violence.

8 Key matters to be dealt with in form of agreement

A form of agreement specified in an instrument under section 6 must deal with the following matters:

- (a) implementing case management;
- (b) developing assessment and referral mechanisms;
- (c) introducing early intervention and outreach;
- (d) enhancing the skill levels of the service provider work force compatible with core competencies;
- (e) strengthening the links between service sectors;
- (f) the efficiency and effectiveness of program management (including both Commonwealth and State planning, administration and advisory mechanisms);
- (g) establishing the means by which the civil, political, economic and social rights of women and accompanying children who are escaping domestic and family violence may be preserved and protected by service providers;
- (h) ensuring that outcomes and/or targets in relation to women and accompanying children who are escaping domestic and family violence are taken into account in the granting of financial assistance for the provision of services under WRAHP;
- (i) establishing accreditation, reporting and accountability arrangements;
- (j) establishing networks of support between service providers.

9 Services dealt with by form of agreement

Services may vary in type and duration

- (1) A form of agreement specified in an instrument under section 6 may provide that services under WRAHP are to be of a varying duration, type and level according to the needs of individuals.

Examples of service activities

- (2) The following are examples of service activities that may be dealt with by the form of agreement:
 - (a) case management;
 - (b) assessment and referral;

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- (c) supported accommodation;
- (d) brokerage;
- (e) early intervention;
- (f) outreach;
- (g) mediation,
- (h) counselling;
- (i) advocacy.
- (j) Access to legal protection, advice and representation

For this purpose, service activity means a particular type or kind of assistance to address the specific needs of individuals.

10 Services not to be dealt with under WRAHP

No duplication of services

- (1) Except with the joint written consent of the Minister and the State Minister of each participating State, a form of agreement specified in an instrument under section 6 must provide that WRAHP will not replace or duplicate a service that is already provided by, or is the responsibility of, any other government, program or organisation.

Gazettal of consent

- (2) If consent is given under this section, the Minister must cause a copy of the consent to be published in the *Gazette*. The notice could be published on a website or the notice could be specified as a “Registrable Instrument” under the Legislation Act 2003

11 National WRAHP Co-ordination and Development Committee

Establishment

- (1) A form of agreement specified in an instrument under section 6 must provide for the establishment of a committee, to be known as the **National WRAHP Co-ordination and Development Committee**.

Representation on Committee

- (2) The form of agreement must provide that the Commonwealth and each participating State is to be represented on the National WRAHP Co-ordination and Development Committee.

12 National data collection system and national research program

Data collection system and research program

- (1) A form of agreement specified in an instrument under section 6 must provide for the development of:
 - (a) a national data collection system; and
 - (b) a national research program; for the following purposes:
 - (c) informing the development of policies relating to women and accompanying children who are escaping domestic and family violence;
 - (d) improving the management of WRAHP;
 - (e) measuring outcomes in WRAHP.

Privacy

- (2) The form of agreement must include provisions directed towards ensuring that the national data collection system and the national research program safeguard the privacy of clients' personal information.

Interpretation

- (3) For the purposes of this section:
 - (a) ***personal information*** has the same meaning as in the *Privacy Act 1988*; and
 - (b) the meaning of "privacy" is to be determined having regard to the principles set out in that Act.

13 Services may be general or specific

Services

- (1) A form of agreement specified in an instrument under section 6 may deal with:

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- (a) services provided by women for women and accompanying children who are escaping domestic and family violence; or
- (b) services provided to meet the special needs of women and accompanying children who are escaping domestic and family violence and who belong to any of the following groups:
 - (i) women;
 - (ii) women and accompanying children;
 - (iii) independent young women above the school-leaving age for the State concerned;
 - (iv) Aboriginal and Torres Strait Islander women;
 - (v) women from culturally and linguistically diverse backgrounds;
 - (vi) women with disabilities;
 - (vii) single women ;
 - (viii) Lesbian, gay, transgender bisexual, intersexed women
 - (ix) any other group specified in writing by the Minister and the State Minister of each participating State.

Gazettal of specified group

- (2) If a group is specified under subparagraph (1) (b) (ix), the Minister must cause a copy of the specification to be published in the *Gazette*.

14 Evaluation

A form of agreement specified in an instrument under section 6 must contain provisions directed towards ensuring that the program performance of WRAHP is evaluated at regular intervals. The intervals must not be longer than 5 years.

15 Outcomes

Agreement may deal with outcomes

- (1) A form of agreement specified in an instrument under section 6 may deal with outcomes determined by the Minister under subsection (2) of this section.

Minister may determine outcomes

- (2) The Minister may, by writing, determine outcomes for the purposes of WRAHP agreements. A determination has effect accordingly.

Minister to obtain the consent of State Ministers

- (3) Before making a determination under subsection (2), the Minister must obtain the written consent of the State Minister of each participating State.

Disallowable instrument

- (4) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

16 Division not to limit generality of section 6

This Division does not, by implication, limit the generality of section 6.

Division 3—WRAHP agreements

17 WRAHP agreements

When section applies

- (1) This section applies if an instrument (the *disallowable instrument*) is in force under section 6.

Original WRAHP agreement

- (2) The Commonwealth may enter into an agreement with a State substantially in accordance with the form set out in the disallowable instrument. The agreement is to be known as a **WRAHP agreement**.

Variation of WRAHP agreement—further agreement

- (3) The Commonwealth may enter into a further agreement made under and varying a WRAHP agreement. The varied WRAHP agreement must be substantially in accordance with the form set out in the disallowable instrument.

Part 3—Grants under WRAHP Agreements

18 Grants of financial assistance

When section applies

- (1) This section applies if a WRAHP agreement is in force between the Commonwealth and a State.

Minister may authorise payments

- (2) The Minister may authorise payments (including advances) to be made to the State, by way of financial assistance, in accordance with the WRAHP agreement.

Payments to be under an appropriation

- (3) Payments under this section are to be made out of money appropriated by the Parliament for the purposes of this Act.

19 Repayment of grants

An amount repayable by a State to the Commonwealth under a WRAHP agreement is a debt due by the State to the Commonwealth.

Part 4—Commonwealth Advisory Committee on Women's Refuges and Housing

20 Commonwealth Advisory Committee on Women's Refuges and Housing

Establishment

- (1) The Minister may establish a committee, to be known as the **Commonwealth Advisory Committee on Women's Refuges and Housing** ("CACWRAH") with the majority of members being women.

Qualifications of members

- (2) Before appointing a person as a member of CACWRAH, the Minister must have regard to:
 - (a) the person's expertise in, or experience of, domestic and family violence; or
 - (b) the person's understanding of the principal issues affecting people who are escaping domestic and family violence; or
 - (c) such other expertise or experience of the person as the Minister considers relevant;
 - (d) the person's criminal record check including disclosure of any Domestic Violence Orders .

21 Function of CACWRAH

Function

- (1) The function of CACWRAH is to advise the Minister about matters referred to it by the Minister.

Matters that may be referred

- (2) Each matter referred to CACWRAH must be:

- (a) a matter that relates to the operation of this Act or a WRAHP agreement; or
- (b) a matter that relates to women and accompanying children who are escaping domestic and family violence and is relevant to the powers of the Parliament or of the Commonwealth Government.

22 Remuneration and allowances

Remuneration Tribunal to determine remuneration

- (1) A member of CACWRAH is to be paid such remuneration (if any) as is determined by the Remuneration Tribunal.

Minister to determine remuneration if no Remuneration Tribunal determination

- (2) If no determination of that remuneration by the Remuneration Tribunal is in operation, a member of CACWRAH is to be paid such remuneration as is determined, in writing, by the Minister.

Minister to determine allowances

- (3) A member of CACWRAH is to be paid such allowances as the Minister determines in writing.

Disallowable instrument

- (4) A determination under subsection (2) or (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Section has effect subject to the Remuneration Tribunal Act 1973

- (5) This section has effect subject to the *Remuneration Tribunal Act 1973*.

23 Disclosure of interests at meetings

Member to disclose interests

- (1) A member of CACWRAH who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by

Section 24

CACWRAH must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of CACWRAH.

Disclosure to be recorded in minutes

- (2) A disclosure under subsection (1) must be recorded in the minutes of the meeting.

24 Member's appointment to be terminated for non-disclosure of interests

Termination of appointment

- (1) The Minister must terminate the appointment of a member of CACWRAH if the member fails, without reasonable excuse, to comply with section 23.

Subsection (1) not to limit Minister's power to terminate

- (2) Subsection (1) does not, by implication, limit the Minister's power to terminate the appointment of a member of CACWRAH.

25 Resignation

A member of CACWRAH may resign from CACWRAH by writing signed by the member and sent to the Minister.

Part 5—Regulations

26 Regulations

The Governor-General may make regulations prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.
