

EXPLANATORY STATEMENT

Issued by authority of the Minister for Government Services

Australian Hearing Services Act 1991

Australian Hearing Services Regulations 2019

Subsection 77(1) of the Act provides that the Governor-General may make regulations, not inconsistent with that Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act. Paragraph 77(2)(a) of the Act further provides that the matters that may be prescribed under subsection (1) include, but are not limited to prescribing terms and conditions under which hearing services are provided by the Authority (Australian Hearing Services) otherwise than in accordance with an agreement entered into by the Authority.

Subsection 62(1) of the Act provides that the Regulations may provide for charges to be payable to the Authority for the provision of hearing services by the Authority otherwise than in accordance with an agreement entered into by the Authority, or the provision of any other services by the Authority under the Act, including making available the services of acoustic laboratories controlled by the Authority.

Subsection 63(1) of the Act provides that the Authority must not, except with the Minister's written approval, enter into a contract under which the Authority is to pay or receive an amount exceeding \$1,000,000, or such higher amount as is prescribed for the purposes of this section.

The purpose of the *Australian Hearing Services Regulations 2019* (the 'Regulations') is to remake, improve and update the *Australian Hearing Services Regulations 1992* prior to their 'sunsetting'. The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, are automatically repealed according to the progressive timetable set out in section 50 of that Act. Legislative instruments made in 1992 that were registered on the Federal Register of Legislation on 1 January 2005, such as the *Australian Hearing Services Regulations 1992*, were supposed to be automatically repealed on 1 October 2018. The *Australian Hearing Services Regulations 1992* automatic repeal was deferred by the Attorney-General until 1 October 2019 following a decision by the Minister for Health to review all legislative instruments under the Hearing Services Program.

Legislative instruments generally cease to have effect after a specific date unless further legislative action is taken to extend their operation, such as remaking the instrument. The Regulations remake, improve and update the *Australian Hearing Services Regulations 1992*, by repealing redundant provisions, lessening the regulatory burden on individuals, and updating the language of the provisions and, to an extent, the costs and thresholds for the Authority.

The key changes are:

- Removing the requirement for an application for a replacement device to be supported by a statutory declaration to remove unnecessary regulatory burdens for clients. An application form with declaration is sufficient.
- The inclusion of a provision enabling charges to be automatically indexed annually by the Consumer Price Index (CPI) to remove the ongoing need to update the Regulations.
- Removing redundant provisions, such as itemised services and their specified charges, where the service is no longer used.
- Increasing the threshold amount (for the purposes of subsection 63(1) of the Act) for which the Authority needs to seek approval from the Minister before entering into a contract from \$1,000,000 to \$5,000,000 to reflect contemporary contractual costs.
- Making language and formatting changes to reflect contextual changes and align the proposed Regulations with current drafting practices.

Further details of the Regulations are set out in Attachment A.

The Act does not specify any conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Services Australia undertook consultation with the Department of Health and Australian Hearing Services. Services Australia also undertook consultation with the Australian Bureau of Statistics for the purposes of the indexation clause. Broader consultation was considered unnecessary as the proposed Regulations would be of a minor machinery nature and would not substantially alter existing arrangements.

The Regulations commence on 1 October 2019.

Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights
(Parliamentary Scrutiny) Act 2011*

Australian Hearing Services Regulations 2019

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Regulations remake, improve and update the *Australian Hearing Services Regulations 1992* by repealing redundant provisions, lessening the regulatory burden on individuals and services providers, and updating the language of the provisions and, to an extent, the costs and thresholds for the Authority.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The overarching purpose of the hearing services legislation is to improve accessibility of hearing services for most vulnerable people by providing access to hearing services and assistive hearing technology for eligible people. This supports Article 12 of the International Convention on Economic, Social and Cultural Rights regarding the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

ATTACHMENT A

Details of the *Australian Hearing Services Regulations 2019*

This Attachment sets out further details of the Regulations. All references are to the Regulations unless otherwise stated. References to a ‘corresponding provision’ are to the corresponding provision in the *Australian Hearing Services Regulations 1992*, as identified by the finding table at Attachment B.

Changes of a minor or machinery nature, such as the increased use of definitions, changes to section titles and references to ‘section’ rather than ‘regulation’ in accordance with modern drafting practices, are generally not specifically identified in this Attachment. Where the Regulations make changes that require further explanation, these are identified and explained in this Attachment.

ATTACHMENT A

Details of the proposed *Australian Hearing Services Regulations 2019*

Part 1 - Preliminary

Section 1 – Name of Regulation

This section provides that the title of the proposed Regulations is the *Australian Hearing Services Regulations 2019*.

Section 2 – Commencement

This section provides that the proposed Regulations commence on 1 October 2019.

Section 3 – Authority

This section provides that the proposed Regulations are made under the *Australian Hearing Services Act 1991*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Regulations has effect according to its terms.

Section 5 – Definitions

This section contains defined terms used in the Regulations. Several definitions have been removed as no longer necessary, or incorporated into this section from the text of other sections of the *Australian Hearing Services Regulations 1992*.

The definition of ‘chargeable day’ is incorporated into this section. Other definitions, ‘acoustic laboratory’, ‘hearing aid services charge’, and ‘person’ are no longer needed as they are either defined in the Part of the Regulations in which they are used, or they are referred to in terms of the full definition (as used in the *Australian Hearing Services Regulations 1992*) in the relevant part of the Regulations.

The definition of ‘audiological compensation package’ is no longer needed after updating the table of ‘charges for certain services’ to remove redundant items.

Part 2 – Charges for services provided to the Authority

Division 1 - Preliminary

Section 6 – Purpose and application of this Part

This section provides that this Part is made for the purposes of subsection 62(1) and 77(2)(a) of the *Australian Hearing Services Act 1991*.

This section also provides who the Part applies to. It applies to a person other than a person who is a voucher-holder.

Sections 7 – Liability to pay charge

This section essentially replicates the corresponding provision in the *Australian Hearing Services Regulations 1992*.

Section 8 – Meaning of chargeable day

This section essentially replicates the definition of chargeable day from the corresponding provision (section 5) of the *Australian Hearing Services Regulations 1992*.

Division 2 - Charges

Section 9 – Hearing aid service charge

This section essentially replicates the corresponding provision (section 4) of the *Australian Hearing Services Regulations 1992*. This section makes some minor changes by specifying the charge for later financial years to be the amount specified indexed according to section 13 of the Regulations.

Section 10 – Hearing aid service may be refused if charge is not paid

This section replicates the corresponding provision (section 4) in the *Australian Hearing Services Regulations 1992*.

Section 11 –Hearing device replacement charge

This section replicates the corresponding provision (section 4A) in the *Australian Hearing Services Regulations 1992*. This section also makes some minor changes by specifying the charge for later financial years to be the amount specified indexed according to section 13 of the proposed Regulations.

Section 12 – Charges for other services

This section replicates the corresponding provision (section 6 and the Schedule) in the *Australian Hearing Services Regulations 1992*. This section also makes some minor changes to remove references to redundant itemised services and their specified charges, where the service is no longer used.

Section 13 – Indexation of charges

This section introduces a new standard indexation provision providing for annual automatic adjustment of charges referred to in dollar amounts by CPI to remove the ongoing need to update the Regulations.

Part 3 - Contracts

Sections 14 – Amounts requiring Minister’s approval

This section increases the threshold amount, for the purposes of subsection 63(1) of the *Australian Hearing Services Act 1991*, for which the Authority needs to seek approval from the Minister before entering into a contract from \$1,000,000 to \$5,000,000 to reflect contemporary contractual costs.

Schedule 1 - Repeals

Section 1 – Repeals

This section provides for the repeal of the *Australian Hearing Services Regulations 1992* that are due to sunset on 1 October 2019 and which are remade by these Regulations.

ATTACHMENT B

FINDING TABLE

As a result of some of the changes described above, it became necessary to renumber provisions of the Regulations. This Explanatory Statement includes a finding table to assist in identifying which provision in the Regulations corresponds to a provision in the old law that has been rewritten or consolidated, and vice versa.

References to the old law are to the *Australian Hearing Services Regulations 1992* unless otherwise specified. References to the new law are to the *Australian Hearing Services Regulations 2019* unless otherwise specified. Also, in the finding table, ‘no equivalent’ means that the provision has no equivalent.

Finding table – old law to new law

<i>Old law</i>	<i>New law</i>
<i>Australian Hearing Services Regulations 1992</i>	<i>Australian Hearing Services Regulations 2019</i>
1	1
2	2
No equivalent	3
No equivalent	4
3	5
No equivalent	6
4	9 and 10
4A	11
5	8
6	12
7	7
No equivalent	13
No equivalent	14
No equivalent	Schedule 1