

## **EXPLANATORY STATEMENT**

### **Disability Services (Eligible Services) Approval 2004**

#### **Summary**

This instrument is made under section 9 of the *Disability Services Act 1986* (the DSA).

The purpose of this instrument is to approve two additional classes of services for the purposes of the definition of eligible services in section 7 of the DSA.

This instrument commences on the date of notification in the *Gazette*.

#### **Background**

The Australian Government recognises the valuable service currently provided by existing supported employment services already receiving funding under the DSA. Supported employment services have become essential links to paid work for thousands of people with disabilities around the country. Supported employment services have a dual focus, with many offering their workers not just employment but a range of additional supports, social networks and improved access to community facilities.

Reforms initiated by the Australian Government in the 1996-97 Budget consist of two main planks:

1. case based funding to replace block funding and address historic inequities; and
2. an internationally accredited quality assurance system.

Both reform measures have been developed in close consultation with the disability services sector. As the reforms have progressed, it has become evident that there are two subgroups of employment services that will not meet Quality Assurance Standard 9 (Employment Conditions) of the *Disability Services (Disability Employment and Rehabilitation Program) Standards 2002* (employment standards). That Standard requires those services to pay pro rata wages based on an award, order or industrial agreement. This means that services in these two subgroups will not be able to obtain a certificate of compliance by 1 January 2005. Under current arrangements, the absence of a certificate will mean that from 1 January 2005, these services will not be able to be funded under the DSA.

There are two sub-groups of employment services challenged by Standard 9:

- supported employment services that expect to meet Standard 9 of the employment standards, but need to be given more time to pay pro rata wages based on an award, order or industrial agreement as required (to be known as wage phase-in services);

- supported employment services that are providing non-standard employment support and/or that assist people with no or very low productivity who could benefit from flexible non-employment activities, including vocational support and training (to be known as targeted support services).

The Australian Government has made a commitment to support the ongoing viability and sustainability of supported employment services throughout the reform process so that they can meet the needs of people with disabilities. Consequently, it is essential that services in both subgroups continue to be funded after 1 January 2005. This instrument provides for arrangements which allow both of these subgroups to continue to receive funding after this date.

From October to November 2003, extensive consultations about safety net arrangements were held around Australia involving people with disabilities in supported employment services, their families and carers, advocates, service providers, relevant peak bodies and the general public.

Common themes from these consultations were the need to:

- encourage services to keep people in employment where that is their choice;
- maintain the momentum for services to meet Quality Assurance Standards;
- allow services sufficient time to meet Quality Assurance Standards; and
- ensure that services have the financial security to continue to operate.

Under section 9 of the DSA, the Minister may approve additional classes of services as 'eligible services'. The effect of that approval is that an organisation that provides relevant services can seek a grant of financial assistance under section 10 of the DSA. Acting on the consultations described above, this instrument approves two new classes of eligible services:

- wage phase-in services; and
- targeted support services.

## **Explanation of the Provisions**

### *Name of instrument*

Section 1 states the name of this instrument.

### *Commencement*

Section 2 states that the Approval commences on *Gazetta*.

## *Definitions*

Section 3 defines certain terms used in this instrument.

### *Wage phase-in services*

Pursuant to section 8 of the *Disability Services (Administration of Part II of the Act) Guidelines 2002* (the Guidelines), section 4 provides a definition/description of wage phase-in services.

Wage phase-in services are those that either (or both):

- assist persons with disabilities to increase their independence, productivity or integration in work settings; or
- provide paid employment, preparation for paid employment and/or vocational training.

At a time before the commencement of this Approval, the State or eligible organisation that will be responsible for providing the wage phase-in service must have been receiving a transitional grant in respect of providing supported employment services. This requirement reflects the intention of arrangements to support the clients of existing supported employment services only.

Further, wage phase-in services are those services in relation to which the Minister is satisfied that the relevant service provider is not capable of paying people with disabilities in supported employment a pro rata wage based on an award, order or industrial agreement. This requirement reflects the fact that if the service provider is capable of paying such wages, the services would be more correctly described as 'employment services' and funding more appropriately considered under Division 2A of Part II of the DSA.

It will be necessary for service providers to have developed a plan that reflects the provider's commitment to progress towards paying persons with disabilities a pro rata wage based on an award, order or industrial agreement. The plan will be developed in consultation with the Department of Family and Community Services, or a person nominated by the Department, such as an independent consultant. The plan will need to include an agreed timeframe (ending prior to four years after the Instruments commence) within which the service provider will have progressed to making such pro rata wage payments. The Minister will also need to be satisfied that the service provider will meet the commitment within the agreed timeframe.

### *Targeted support services*

Section 8 of the Guidelines requires that, where the Minister approves an additional class of services, the Minister must set out a definition or description (or both) of the additional class of service. Section 5 of this Approval provides a definition/description of targeted support services.

Targeted support services are those that provide either (or both):

- structured training and support to assist people with disabilities towards social and community participation;
- opportunities to assist in the development of skills or retraining for paid employment.

Further, at a time before the commencement of this Approval, the State or eligible organisation that will be responsible for providing the services must have been receiving a transitional grant (grant of financial assistance under section 12AB of the DSA) in respect of providing supported employment services. This requirement reflects the intention of the arrangements to support the clients of existing supported employment services only.

The Minister must be satisfied that the services should be treated as targeted support services. Where the Minister is satisfied that the services would be more appropriately characterised as another type of eligible service (for example, wage phase-in services), the services will not be treated as a targeted support service. The rationale behind this approach is that the Australian Government believes that people, including people with disabilities, should be provided with the opportunity to maximise their potential for economic participation. If a service has the potential to ultimately pay pro rata wages based on an award, order or industrial agreement, that service would be more appropriately treated as a wage phase-in service.

#### *Delegation*

Section 6 of the Approval provides for the Minister to be able to delegate any of the powers or functions created under the Approval.

#### *Approval ceases to have effect*

Section 7 provides that the Approval ceases to have effect four years after the instruments commence, that is four years after date of notification in the *Gazette*.