

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

Disability Services Act 1986

Disability Services (Rehabilitation Services) Guidelines 2017

Purpose

The purpose of the *Disability Services (Rehabilitation Services) Guidelines 2017* (the Guidelines) is to promote fair, open, consistent and accountable decision-making in relation to decisions made under Part III of the *Disability Services Act 1986* (the Act). The Guidelines repeal and replace the *Disability Services (Rehabilitation Services) Guidelines 2007* which are due to sunset on 1 October 2017.

Background

Under section 5 of the Act, the Minister must by legislative instrument, formulate principles and objectives to be furthered and guidelines to be complied with in the administration of this Act.

The Guidelines govern the implementation of Part III of the Act which relates to the provision of rehabilitation services provided by the Commonwealth through the Disability Management Service (DMS). DMS provides rehabilitation programs for individuals who form the target group under the Act which includes job seekers with disability, injury or health condition who need assistance to find a job and occasional support to keep a job.

These Guidelines repeal and replace the *Disability Services (Rehabilitation Services) Guidelines 2007* and reflect the current administration of vocational rehabilitation services under DMS.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to revoke such instrument.

Commencement

The Guidelines commence on the day determined under subsections 5(3) and (4) of the Act. Those subsections contain special commencement provisions for instruments made under section 5. A notice of motion to amend the Guidelines may be moved in either House of Parliament within 15 sitting days after the Guidelines are tabled. If such a notice is given, the Guidelines will take effect on the day the Guidelines are approved by each House, irrespective of whether the Guidelines are amended by the Parliament. If no notice of motion to amend the Guidelines is given within 15 sitting days after the Guidelines are tabled, then the Guidelines come into effect the day after that 15th sitting day.

Consultation

The Department of Social Services released a discussion paper on Disability Employment Services Reform in December 2016 canvassing a wide range of issues including DMS and invited submissions from the public. Through this process the Department received submissions from 108 individuals and organisations including the Disability Council NSW, Disability Employment Australia, and the Commonwealth Ombudsman. In making these Guidelines, the purpose of both DMS and DES have been considered and juxtaposed against the feedback received through the consultation process to ensure that these Guidelines remain fit for purpose and achieve the aims of the Act.

Regulation Impact Statement (RIS)

The Guidelines are not regulatory in nature, will not impact on business activity and will have no, or minimal compliance costs or competition impact.

Explanation of the provisions

Part 1

Section 1 states the name of the Guidelines being the *Disability Services (Rehabilitation Services) Guidelines 2017*.

Section 2 states the Guidelines commence on the day determined under subsections 5(3) and (4) of the Act.

Section 3 confirms that the instrument is made under the authority of subsection 5(1) of the Act, which states that the Minister must, by legislative instrument, formulate principles and objectives to be furthered and guidelines to be complied with in the administration of this Act.

Section 4 contains the interpretation provisions.

Section 5 confirms that the *Disability Services (Rehabilitation Services) Guidelines 2007* are revoked.

Section 6 states the purpose of the Guidelines, in particular the purposes of the Guidelines are to promote fair and accountable decision making and promote efficient and effective administration of Part III of the Act.

Section 7 provides for what the Minister must consider before determining rehabilitation program standards under paragraph 5A(1)(c) of the Act or approving key performance indicators for those standards under subsection 5A(2) of the Act. In particular, the Minister must ensure that the views of people with a disability, the families and advocates of people with a disability and other appropriately interested persons are considered through consultation.

Part 2

Section 8 states when a person is taken to be holding a current certificate of compliance. This is when the accredited certification body has, under subsection

6E(3) of the Act, notified the Secretary the certificate has been given and the Secretary has not been notified that the certificate has been revoked. The 'Note' to section 6 provides that for the purposes of the Guidelines, 'person' is taken to include a provider of rehabilitation programs who provides services on behalf of the Department under a contract made between the provider and the Commonwealth for the provision of rehabilitation services under Part III of the Act.

Section 9 states the factors to which the Secretary must have regard when taking measures or entering arrangements for the provision of rehabilitation services under subsection 20(1) of the Act. The factors listed are not intended to be an exhaustive list of considerations to which the Secretary may have regard when entering into arrangements for the provision of rehabilitation services but all factors must be considered by the Secretary prior to entering an arrangement with a service provider.

In particular, the Secretary must consider the ability of the provider to effectively and efficiently provide high quality and value for money vocational rehabilitation services and the extent to which the vocational rehabilitation services offered by the provider will achieve the purposes of the Act. The Secretary must also consider the experience of the provider in providing vocational rehabilitation services, the skills, experience and professional qualifications of the provider's employees and evidence of the provider's successful past performance in providing rehabilitation services or similar services.

The Secretary must consider the ability of the provider to provide services that will enable people with an injury, disability or other health condition to achieve sustainable employment to maximise use of their capabilities and that will promote the capabilities of the target group. Also, the Secretary must consider the ability of the provider to provide services that promote the capabilities of the target group, leading to improved employment opportunities for them, and have a demonstrated commitment to continuous improvement in the provision of employment services to the target group.

The Secretary must also consider the accessibility by people with disabilities to the provider's premises and any other factor the Secretary considers relevant.

Section 10 specifies the considerations to which the Secretary must have regard if an arrangement for the provision of rehabilitation services is entered into with a service provider who does not hold a certificate of compliance as required by subsection 19(3) of the Act.

Subsection 19(3) provides for the circumstances in which the Secretary may enter an arrangement for the provision of rehabilitation programs with a provider who does not hold a current certificate of compliance. The Secretary may do so if the arrangement for the provision of rehabilitation services is for a period of less than 12 months or the Secretary is satisfied the provider is likely to hold such a certificate at the end of the period 12 months after the day on which the arrangement commences.

Section 10 of the Guidelines provides that when entering arrangements with a provider who does not hold a certificate of compliance, the significant consideration is that the Secretary must be satisfied that the provider intends to obtain a certificate

of compliance within 12 months of commencing providing rehabilitation services under the arrangement.

Additionally, the Secretary must consider the matters listed in section 9 and must assess the capacity of the provider to comply with the disability services standards during the period which the provider does not hold a certificate of compliance.

Part 3

Section 11 provides that an officer of the Department, as defined in section 3 of the Guidelines, must upon request, provide a member of the public a copy of the guidelines, the principles and objectives formulated under section 5 of the Act, the rehabilitation program standards and the key performance indicators approved by the Minister. This provision is to assist facilitating information that relates to the administration of Part III of the Act to members of the public.

Statement of Compatibility with Human Rights

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

The *Disability Services (Rehabilitation Services) Guidelines 2017* (the Guidelines), made under subsection 5(1) of the *Disability Services Act 1986* (the Act), are 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 Guidelines

The Guidelines repeal and replace the *Disability Services (Rehabilitation Services) Guidelines 2007* which sunset on 1 October 2017. The purpose of the Guidelines is to promote fair, open, consistent and accountable decision-making in relation to decisions made under Part III of the *Disability Services Act 1986* (the Act).

Part III of the Act relates to the provision of rehabilitation services provided by the Commonwealth through the Disability Management Service which provides rehabilitation programs for individuals who form the target group under the Act which includes job seekers with disability, injury or health condition who need assistance to find a job and occasional support to keep a job.

Human rights implications

The Guidelines promote the human rights of people with disability as their purpose is to provide direction in the administration of the Act, the objects of which include

assisting persons with disabilities to receive services necessary to enable them to work towards full participation as members of the community.

Promotion of the Convention on Rights of Persons with Disabilities

The Australian Government's commitment to international human rights relevant to the issue of rights of persons with disability is set out in the United Nations *Convention on Rights of Persons with Disabilities (CRPD)*. There is a general obligation under the CRPD to provide reasonable accommodation, which ensures that people with disability can enjoy their rights on an equal basis with others. Article 2 of the CRPD considers reasonable accommodation to mean providing necessary and appropriate modifications and adjustments, which do not impose a disproportionate or undue burden, where needed in a particular place.

The Guidelines promote rights under the CRPD as people with disability will be able to access rehabilitation services, specifically:

- Article 26, in addressing habitation and rehabilitation encourages signatories to take effective appropriate measures to enable people with disability to attain and maintain maximum independence.
- Article 27, which addresses work and employment, promotes reasonable accommodation being provided to people with disability in the workplace; assistance in finding, obtaining and returning to employment; and promotion of the employment of persons with disabilities in the private sector.

The Guidelines also promote additional human rights principles set out in the CRPD and seek to address:

- Respect for the inherent dignity, independence of persons and individual autonomy, including the freedom to make one's own choices;
- Non-discrimination;
- Full and effective participation and inclusion in society;
- Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- Equality of opportunity, and
- Accessibility.

As such, the Guidelines promotes the human rights of persons with disabilities, as set out in the CRPD.

Conclusion

The Guidelines supports and promotes the rights of persons with disability under the CRPD and is compatible with human rights.

The Hon Christian Porter MP, Minister for Social Services