

## EXPLANATORY STATEMENT

Issued by the authority of the Minister for Health

*Hearing Services Administration Act 1997*

*Hearing Services Program (Voucher) Instrument 2019*

### Authority

Authority for this instrument is provided by the *Hearing Services Administration Act 1997* (the Act):

1. Subsection 5(3) provides that the Minister may determine eligible persons for the purposes of the Act.
2. Subsection 11(1) provides that the Minister may make rules relating to vouchers, i.e. rules around the issuing of a ‘voucher’ for hearing services to eligible persons and their use of that voucher to obtain services.
3. Section 13 provides for the Minister to determine that a class of eligible persons are ‘participants’ in the voucher system and as such make one or more specified hearing services available to those persons.
4. Subsection 15(1) requires the Minister to formulate a scheme for the accreditation of entities as contracted service providers.
5. Subsection 17(1) requires the Minister to formulate rules of conduct relating to the provision of hearing services to voucher-holders, with which contracted service providers must comply.

### Purpose

Under the Australian Government Hearing Services Program (the program) eligible people can receive government funded hearing services including a fully subsidised hearing assessment, hearing rehabilitation and, if appropriate, hearing devices.

The purpose of this instrument is to facilitate the administration of the voucher component of the program as established by the Act. The instrument determines classes of eligible persons additional to those described by the Act, the rules around obtaining and using a ‘voucher’ for government funded hearing services and specifies services and devices available to eligible persons.

The majority of voucher-holders in the program are eligible by virtue of being Pension Concession Card holders. The average age of a voucher-holder in 2017-18 was 78 years. These Australians are vulnerable consumers. The instrument prescribes a process for accrediting hearing service providers to be able to deliver government funded hearing services to voucher-holders including qualification requirements and standards that contracted service providers must adhere to when providing services to voucher-holders.

The instrument replaces the previous five instruments made under the Act:

- *Hearing Services (Eligible Persons) Determination 1997* (Eligible Persons Determination)
- *Hearing Services (Participants in the Voucher System) Determination 1997* (Participants Determination)
- *Hearing Services Providers Accreditation Scheme 1997* (Accreditation Scheme)
- *Hearing Services Voucher Rules 1997* (Voucher Rules)
- *Hearing Services Rules of Conduct 2012* (Rules of Conduct)

### Background

The sunseting dates for the previous five instruments made under the Act had been aligned to 1 October 2019 by declarations made by the Attorney-General. The declarations also required that a thematic review of those instruments be undertaken prior to the sunseting date.

A thematic review was conducted to determine whether the instruments were fit-for-purpose, and could be simplified or streamlined such that they are clearer and do not impose unnecessary regulatory burden. It was concluded that, while the instruments, individually and as a whole, broadly achieved their objectives, there were numerous provisions that were redundant, duplicative, confusing and/or outdated. The review recommended that all five instruments be repealed and remade as a single consolidated instrument.

### Documents Incorporated by Reference

Part 5 incorporates, by reference, a document called a ‘Wishes and Needs Tool’ issued by the National Acoustic Laboratories, as in effect on 1 July 2010. This document is publicly available on the program [website](http://www.hearingservices.gov.au), <www.hearingservices.gov.au>.

Various provisions incorporate, by reference, the schedule of service items and fees made by the Minister under section 41. This document is publicly available on the program [website](http://www.hearingservices.gov.au).

### Consultation

In May 2018, the Department of Health notified stakeholders that it was undertaking a thematic review of the Commonwealth’s hearing services legislation and that it was seeking their input. Details of the thematic review and how to provide input were published on the program [website](http://www.hearingservices.gov.au).

Following completion of the review, exposure drafts of the revised legislative instruments were made available for consultation on 16 April 2019 on the program [website](http://www.hearingservices.gov.au). Stakeholders were notified of the open consultation via a number of channels and were provided with the Thematic Review report, the *Hearing Services Program (Voucher) Instrument 2019* Exposure Draft, *Australian Hearing Services (Declared Hearing Services) Determination 2019* Exposure Draft, legislation translation guides and Exposure Draft Updates for Consideration.

A total of 18 submissions were received and considered in finalising this instrument.

This instrument commences on 1 October 2019.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

**Details of the *Hearing Services Program (Voucher) Instrument 2019***

**1 Name of Determination**

Section 1 provides how the instrument is to be cited, that is, as the *Hearing Services Program (Voucher) Instrument 2019*.

**2 Commencement**

Section 2 states that the instrument commences on 1 October 2019.

**3 Repeals**

Section 3 repeals the previous five instruments made under the Act.

**4 Authority**

This section provides that the authority for making this instrument is the Act; specifically:

- subsection 5(3), which allows the Minister, by legislative instrument, to determine that a specified person is an ‘eligible person’ for the purposes of the Act;
- subsection 11(1), which allows the Minister to formulate rules relating to vouchers for government funded hearing services;
- section 13, which allows the Minister to determine that an eligible person is a ‘participant in the voucher system’ for the purposes of the Act;
- subsection 15(1), which provides the power for the Minister to formulate a scheme for the accreditation of hearing service providers; and
- subsection 17(1), which provides the power for the Minister to formulate rules of conduct relating to the provision of hearing services to voucher-holders.

This instrument repeals five previous instruments and replaces them. Under subsection 33(3) of the *Acts Interpretation Act 1901* (Acts Interpretation Act), where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Accordingly, the provisions of the Act listed in section 3 above to make instruments are relied on, in conjunction with subsection 33(3) of the Acts Interpretation Act, to repeal and replace the five instruments.

**5 Definitions**

Section 5 provides a consolidated list of definitions including those set out in the Act.

**Part 2 – Additional Eligible Persons**

Part 2 replaces and simplifies the Eligible Persons Determination. The Eligible Persons Determination included a number of classes of eligible persons as transitional arrangements between the *Hearing Services Act 1991* and the current Act. These classes are no longer relevant and have been removed.

Similarly, the eligible persons described by subsection 4(4) of the Eligible Persons Determination have been removed. The previous provision was designed at a time when access to the program included a much shorter voucher period. The current three year “voucher period” means that even if a person loses eligibility for a voucher the day after their application for one is approved, they can still access services under the program for the duration of the voucher period.

## **6 Additional eligible persons**

Section 6 provides that Part 2 specifies persons who are additional eligible persons for the purposes of section 5 of the Act.

## **7 Dependants**

Section 7 sets out who is an eligible person by virtue of being a dependant of an eligible person.

## **8 NDIS participants up to 1 July 2020**

Section 8 continues eligibility for National Disability Insurance Scheme (NDIS) participants as originally established under the Eligible Persons Determination but clarifies that the provision ceases on 1 July 2020, when the current in-kind arrangements with the NDIS finish.

## **9 Department of Veterans’ Affairs clients**

Section 9 updates references to Department of Veterans’ Affairs (DVA) eligibility types described in the Act.

## **10 Disability Employment Services clients**

Section 10 extends eligibility to all Disability Employment Services clients. The Act only confers eligibility to persons referred to the program under Part III of the *Disability Services Act 1986* (DSA).

It is likely that many Disability Employment Services clients are eligible for the NDIS or otherwise eligible for the program. To ensure the eligibility this vulnerable cohort (if not receiving NDIS services), the provision is made to include Disability Employment Services clients under Part II of the DSA.

## **Part 3 – Voucher rules**

Part 3 supersedes the Voucher Rules and the Participants Determination. It clarifies the process to apply for a voucher, the concept of issuing a voucher electronically and the validity of a voucher.

The instrument removes the requirement for a medical certificate for the issuing of a voucher.

Voucher-holders are able to receive a range of services under the program even if a fitting of a device is not suitable or required. Stakeholders have noted that this requirement created an unnecessary barrier to access.

## **11 Voucher Rules**

Section 11 describes the authority under the Act under which this Part is made.

## **12 Applying for a voucher**

Section 12 prescribes that an application may be made to obtain a voucher and the circumstances in which it may be made.

## **13 Issuing a voucher**

Section 13 describes the circumstances under which the Minister may issue a voucher, when a voucher is considered issued and the conditions under which it is valid.

## **14 Effect of issuing a voucher**

Section 14 clarifies that a voucher-holder may only receive available services under a valid voucher.

## **15 A voucher-holder is a participant in the voucher system**

Section 15 provides that an eligible person who has been issued a voucher becomes a participant in the voucher system.

## **Part 4 – Accreditation scheme**

Part 4 replaces the Accreditation Scheme. It clarifies that accreditation is only in force while the accredited entity has entered into an agreement under section 20 of the Act. It also changes the previous position that accreditation was not transferable, to allow transfer in certain circumstances.

## **16 Accreditation scheme**

Section 16 describes the authority under the Act under which this Part is made.

## **17 Application for accreditation**

Section 17 prescribes that an application may be made for accreditation and the circumstances in which it may be made.

## **18 Australian Hearing Services**

Section 18 provides that Australian Hearing Services is automatically recognised as an accredited entity.

## **19 Decisions by the Minister**

Section 19 provides for the Minister to decide to accredit or refuse to accredit an entity. The Minister may revoke or vary a condition of accreditation or impose a further condition of accreditation.

This section also allows the Minister to cancel the accreditation if the service provider has contravened the Act, the instrument, its service provider contract or the schedule of service items and fees.

## **20 Breaches to be reported**

Section 20 requires a contracted service provider to inform the Department of any material breach or suspected material breach of the Act, this instrument or the service provider contract.

## **21 Accreditation only effective while an agreement under section 20 of the Act is in force**

Section 21 establishes that an entity's accreditation is only effective if they are a contracted service provider and that accreditation is automatically cancelled if the entity is no longer contracted with the department.

## **22 Minister may approve the transfer of accreditation**

Section 22 recognises that a change to an accredited entity's corporate structure does not necessarily change its ability to deliver hearing services. This section provides for accredited entities to apply to the Minister to transfer their accreditation and gives the Minister the authority to approve a transfer if it is in the best interests of voucher-holders.

## **23 Register**

Section 23 prescribes that the Department of Health must keep a public register of contracted service provider details. The intent of this provision is to allow people to locate contracted service providers in their locality. To put this into practice the program website has a "Locate a provider" function.

## **Part 5 – Rules of conduct**

Part 5 replaces many of the provisions in the Rules of Conduct and describes the obligations, expectations and standards required of contracted service providers in relation to their general conduct. As a consequence, it is important that service providers properly inform eligible persons of the hearing services available to them and assist them with information about the program. While some of the provisions in Part 5 are contained in the contract and the schedule of service items and fees issued to contracted service providers, the provisions are also in this instrument to reflect their importance and to be clear about the standards expected of contracted service providers.

## **24 Rules of conduct**

Section 24 describes the authority in the Act under which this Part is made.

## **25 Obligation to provide information to potential voucher-holders and voucher-holders**

Section 25 requires contracted service providers to, before they provide services to a person, tell them about the program and check their eligibility with the client's consent.

For eligible persons, contracted service providers must tell them about the services that may be available to them free of charge under the program.

## **26 Records**

Section 26 describes the obligations of contracted service providers to keep appropriate records for voucher-holders. Under section 26(4), contracted service providers must maintain the signed Wishes and Needs Tool and evidence supporting the fitting for any voucher-holder who meets the additional requirement in paragraph 47(2)(b). These documents contain personal information about the voucher-holder. The Department of Health is required to collect this information for a range of purposes, including to satisfy the Department's record-keeping obligations, to ensure the continuity of care for voucher-holders, to promote the proper use and management

of public resources, to ensure that services are delivered in accordance with the program standards, and to support the program's audit and compliance activities.

Under the program, there are a range of safeguards in place to protect the personal information of voucher-holders. Under the service provider contract, providers are required to comply with the *Privacy Act 1988*, including the Australian Privacy Principles and the notifiable data breach scheme. The Department of Health will provide additional guidance to providers about their privacy obligations, which is contained in contracted service provider notices, program standards and factsheets. Compliance with privacy obligations will be monitored through the program's audit and compliance activities to ensure that contracted service providers comply with the *Privacy Act 1998*, particularly in relation to the handling of personal information under section 26(4).

## **27 Access to information**

Section 27 confirms an obligation that arises under the Australian Privacy Principles to give a voucher-holder access to their personal information held by a contracted service provider, and such access must be free of charge.

## **28 Requirement to disclose device supply arrangements**

Serious concerns regarding the use of commissions and sales incentives within the hearing industry have been raised by the Australian Competition and Consumer Commission (ACCC) and the Standing Committee on Health, Aged Care and Sport's 'Still waiting to be heard...' Report on the Inquiry into the Hearing Health and Wellbeing of Australia. Inappropriate provision of devices may lead to clients being sold devices they do not need and clients being pressured into expensive devices where fully subsidised devices will meet their needs. During the consultation process there was a call to ban commissions for hearing aid sales. Section 28 requires that a contracted service provider must inform a voucher-holder of device supply arrangements in accordance with the guidance published on the program website.

The Department of Health will provide additional guidance through provider education, including the program website, factsheet, and program standards. This approach will allow the development of guidance in discussion with the hearing sector.

## **29 Power to require information**

Section 29 authorises the Minister to, by written notice, require a contracted service provider to supply documentation (or a certified copy thereof) relating to the provision of hearing services to voucher-holders for the purposes of monitoring compliance with the legislative and contractual requirements of the program. Compliance focuses on reducing risk of inappropriate service delivery, financial loss to the Commonwealth and to clients, and negative impact on program integrity.

## **30 Obligation to inform service provider personnel**

There are approximately 280 contracted service providers with over 2,700 hearing practitioners delivering services to voucher-holders. Section 30 is designed to ensure that contracted service providers make their hearing practitioners aware of all the obligations, expectations and standards required of them as described in the Act, this instrument, the service provider contract and the schedule of service items and fees.



### **31 Limit on subcontracting**

Section 31 specifies that contracted service providers are no longer able to subcontract the delivery of clinical services in most instances. The instrument provides for subcontracting of locum qualified practitioners and where allowed by the schedule of service items and fees. Under that provision, there has been growing evidence of contracted service providers failing to ensure subcontractors delivered services in accordance with legislative and contractual requirements. It has also become evident that some subcontractors were using these arrangements to bypass getting accreditation in their own right. If a subcontractor wishes to continue to deliver services to program clients, they will need to seek their own accreditation.

### **32 False or misleading representations**

Section 32 broadens the previous provision about misleading advertising to cover false or misleading representations generally and aims to improve informed choice of clients and protect their consumer rights.

### **33 Complaints**

Section 33 establishes requirements of contracted service providers for dealing with complaints.

### **34 Hearing services not to be refused to voucher-holders**

A contracted service provider is required to provide hearing services to a voucher-holder in accordance with certain conditions such as those set out in the schedule of service items and fees. Section 34 includes the condition of having reasonable grounds for refusing to provide services and providing an opportunity for the voucher-holder to respond to and rectify the reason for refusal. Refusal of service to a voucher-holder because he or she has lodged a complaint about the contracted service provider would not be considered reasonable grounds. Refusal of services to a voucher-holder who physically threatened contracted service provider personnel would be considered reasonable grounds.

Section 34 also goes to contracted service providers not discriminating against a voucher-holder because they are a voucher-holder, and not a private fee paying client or they do not want to purchase a partially subsidised device.

### **35 Voucher-holders relocating between contracted service providers**

Voucher-holders may attend the contracted service provider of their choice and may change contracted service provider at any time. Section 35 specifies the requirements for the relocation of a voucher-holder between contracted service providers, including the transfer of a voucher-holder's records.

### **36 Notification of closure or transfer of business**

Section 36 requires a contracted service provider to notify their voucher-holders if they intend to close or transfer any part of their business. The notification affords the voucher-holder the opportunity to choose to relocate to an alternative contracted service provider and ensure the appropriate management of their client records.

## **Part 6 - Services**

Part 6 covers the service related provisions of the Accreditation Scheme and the Participants Determination. It formally links types of services previously described by that Determination to a schedule of service items and fees and outlines additional requirement of providers who sell voucher-holders partially subsidised devices, and the circumstances under which replacement hearing devices may be provided.

### **37 Qualified practitioner number**

The Department of Health may allocate each qualified practitioner a unique number. A transitional provision has been included at section 55 so that qualified practitioner numbers allocated under the Rules of Conduct can continue to be used.

### **38 Responsibilities of contracted service providers**

Section 38 states that a contracted service provider is responsible for services provided to voucher-holders by its service provider personnel. It specifies when a contracted service provider may authorise or allow a person to provide hearing services to a voucher-holder as a qualified practitioner, act as a supervisor, or submit a person's qualified practitioner number on claims for payment.

### **39 Professional standards**

The hearing services industry has matured since the inception of the voucher system with practitioner professional bodies best placed to set and monitor practitioner qualifications, standards and continuing professional development requirements that are responsive to the needs of the hearing services industry and consumers.

Section 39 confirms that a contracted service provider must, in relation to the provision of hearing services to a voucher-holder, comply with applicable professional standards as set by the practitioner professional bodies, including referral where appropriate.

### **40 Minister authorised to obtain and disclose certain information**

Section 40 permits the Minister to disclose and collect information about any qualified or provisional practitioners when investigating and monitoring compliance with the Act, this instrument or the service provider contract.

### **41 Schedule of service items and fees**

Section 41 consolidates provisions previously in the Participants Determination and provides for a schedule of service items and fees specifying services available to voucher-holders and the conditions that must be met in order for a voucher-holder to receive them and for a contracted service provider to claim a payment for providing them. This section allows the Minister to approve a schedule of service items and fees.

Section 41 also requires contracted service providers to provide follow-up support to a voucher-holder free of charge for a period of 12 months following the fitting of a hearing device.

### **42 Hearing services**

Section 42 works in conjunction with section 41 but clarifies that a voucher-holder must have a clinical need for an available service as assessed by a contracted service provider. Section 42 also defines 'available' for the purposes of section 49, Delivery of private services.

#### **43 Approval of additional hearing services**

All voucher-holders are, within the voucher period, generally entitled to a suite of services at the frequency outlined in the schedule of service items and fees. Where a service has already been used on a voucher, section 43 allows the Minister to approve additional services to be made available to a voucher-holder in certain circumstances.

#### **44 Approved hearing devices**

Section 44 requires that hearing devices must be approved by the Minister as meeting certain specifications for fitting at no-cost to voucher-holders (fully subsidised) or as a device for which voucher-holders can be asked to make a payment to the contracted service provider (partially subsidised). These approved devices are listed on the Fully Subsidised Device Schedule and the Partially Subsidised Device Schedule available from the program [website](#).

This section also allows the Minister to approve devices that are not listed in either the fully or partially subsidised schedules.

Section 44 also provides the authority for the Minister to revoke any device approval at any time.

#### **45 Choice of hearing device**

A contracted service provider who determines that a voucher-holder requires a hearing device must provide the voucher-holder with a choice from a range of types and styles of approved hearing devices which are available to the voucher-holder free of charge under the voucher system and are appropriate to meet the voucher-holder's audiological needs.

A telecoil detects electronic signals representing sounds and converts them to sound signals in the ear. This process reduces interference from unwanted background noise and is used, for example, in theatres and with telephones and public address systems.

If a contracted service provider determines that a voucher-holder would benefit from a telecoil, this section requires the contracted service provider to provide a device which is or can be fitted with a telecoil and, if necessary, provide the telecoil at no cost to the voucher-holder or the Commonwealth, unless the voucher-holder makes an informed decision that he or she does not need a telecoil. The contracted service provider must keep written evidence of the informed decision in its records.

#### **46 Supply of devices**

Voucher-holders who require a hearing device are able to be fitted with a device that will meet their hearing rehabilitation needs free of charge. There are also a range of hearing devices for which a voucher-holder may be required to pay a charge. These are known as partially subsidised devices and have additional features above and beyond those generally required to meet a voucher-holder's audiological needs.

Section 46 sets out requirements that a contracted service provider must meet when offering a device to a voucher-holder, including:

- not encouraging a voucher-holder to select such a device where a device available free of charge would reasonably meet their hearing rehabilitation needs;
- not supplying a device to a voucher-holder unless the voucher-holder has signed and dated a quote in accordance with the conditions set out in the schedule of service items in respect of the provision of a device; and
- retaining a signed copy of the quote in the contracted service provider's records including a record of the reason the voucher-holder selected the partially subsidised device.

The ACCC raised concerns about misleading and deceptive information regarding the delivery of hearing services and devices. Actions have been taken by the ACCC against several hearing providers regarding breaches of consumer law. Expanding the requirement for device quotes to include fully subsidised devices will ensure that program clients have the information regarding costs, warranty, returns and maintenance to support informed choices for clients.

#### **47 Additional requirements where minimum hearing loss threshold not met**

Section 5, Definitions defines *minimum hearing loss threshold* to mean hearing loss averaging greater than 23 decibels when tested at 0.5, 1 and 2 kilohertz.

Section 47 outlines the additional requirements for a voucher-holder to be fitted with a hearing device where their hearing loss in the ear to be fitted does not meet the minimum hearing loss threshold.

#### **48 Replacement hearing devices**

Section 48 authorises the Minister to approve a replacement hearing device if satisfied that the device has been lost and is unlikely to be found, or that it has been damaged beyond repair. The approval for a contracted service provider to use the voucher to replace a device is subject to any conditions set out in the schedule of service items and fees. Note also a voucher-holder may be required to pay a charge for a replacement device as provided for at section 53.

#### **49 Delivery of private services or devices**

Part 7 regulates the fees contracted service providers can charge for hearing services available to voucher-holders in the voucher system. Section 49 allows for a contracted service provider to charge a voucher-holder for a service that is not available to them under their voucher and for which the voucher-holder pays for directly, i.e. a private service.

#### **50 Specialist Hearing Services**

Previously referred to as “Complex clients”, some voucher-holders may be eligible to receive specialist services from Australian Hearing Services under the Community Service Obligations (CSO) component of the program. Section 5 defines specialist hearing services as services to treat:

- a) a hearing loss where the average hearing threshold level for 0.5, 1 and 2 kilohertz in the person’s better ear is greater than, or equal to, 80 decibels; or

- b) hearing loss and communication difficulty that:
  - a. prevents the person from communicating effectively in his or her daily environment; or
  - b. is caused or aggravated by significant physical, intellectual, mental, emotional or social disability.

Section 50 requires that if a contracted service provider knows or reasonably believes that a person is a voucher-holder and meets the requirements to receive specialist hearing services, it must notify the Department of Health that a voucher-holder is requesting such services. The contracted service provider must explain to the person the specialist services available to them from Australian Hearing Services and allow them at least 10 business days to decide whether they wish to receive specialist services from Australian Hearing Services.

The contracted service provider must not provide further hearing services to that person unless the person informs the contracted service provider that he or she has decided not to receive specialist services from Australian Hearing Services.

Contracted service providers are required to keep a copy of the notice to the program and evidence of the advice from the voucher-holder in their records.

Australian Hearing Services is the government hearing services provider that delivers specialist hearing services available under the CSO component of the program. Australian Hearing Services may also be a contracted service provider subject to the rules. Accordingly, Australian Hearing Services only needs to notify the Department of Health if a voucher-holder requests specialist services.

## **Part 7 – Fees and charges**

Part 7 covers the fees and charges related provisions of the Accreditation Scheme and the Participants Determination. Changes have been made to the device replacement and maintenance co-payment to remove ambiguity and inequality in the fees paid by voucher-holders. Co-payments will be per device and will be indexed.

### **51 Contracted service providers may accept and charge certain fees only**

Section 51 establishes that contracted service providers must not request or accept a fee or any other payment from a voucher-holder for a service provided to the voucher-holder under the voucher system other than in accordance with this instrument and the conditions set out in the schedule of service items and fees.

This section requires contracted service providers to have procedures in place to inform a voucher-holder in writing of any fees that are expected in respect of that voucher-holder's services and establishes that a contracted service provider must refund amounts charged to voucher-holders that are contrary to the Act, this instrument, the service provider contract or the schedule of service items and fees.

### **52 Charges for partially subsidised devices**

A contracted service provider may charge a voucher-holder the price agreed between the voucher-holder and the contracted service provider for a partially subsidised device and the price for the additional maintenance and repairs of the device. In both

cases, the price agreed must be in accordance with the quote signed by the voucher-holder. The Commonwealth contributes to the cost of the top-up device to the value that would have been paid had the voucher-holder selected a suitable fully subsidised device.

In accordance with section 51, a contracted service provider must refund to a voucher-holder all charges incurred by the voucher-holder in connection with a partially subsidised device if the contracted service provider fails to comply with this section.

### **53 Charges for device replacement and maintenance**

Section 53 states that contracted service providers may charge voucher-holders for replacement devices and maintenance as specified in the schedule of service items and fees. This section clarifies that a charge for a replacement device may be levied per device.

### **54 Indexation of fees**

Section 54 allows for the indexation of the GST exclusive amount for fees and charges required from voucher-holders to be adjusted on the first day of each financial year, in accordance with the indexation rules set out in the schedule of service items and fees.

### **55 Transitional arrangements**

Section 55 makes provision for entities accredited and QP numbers issued under the previous legislation.

## **Statement of Compatibility with Human Rights**

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

### ***Hearing Services Program (Voucher) Instrument 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 purpose of the *Hearing Services Program (Voucher) Instrument 2019* is to repeal and replace five previous instruments made under the *Hearing Services Administration Act 1997*. This instrument determines classes of eligible persons additional to those described by that Act, the rules around obtaining and using a ‘voucher’ for government funded hearing services and specifies what services and devices are available to eligible persons.

### **Human rights implications**

This legislative instrument engages the following rights:

- right to the enjoyment of the highest attainable standard of physical and mental health;
- the rights of persons with disabilities;
- the right to freedom of association.

#### *Right to the enjoyment of the highest attainable standard of physical and mental health*

The overarching purpose of the hearing services legislation is to improve accessibility of hearing services for vulnerable Australians. This instrument engages the human rights and freedoms recognised in the seven core international human rights treaties that Australia has ratified. It determines additional persons eligible to receive hearing services and the hearing services that are available to all eligible persons. This instrument promotes the right in Article 12 of the International Covenant on Economic, Social and Cultural Rights of everyone to the enjoyment of the highest attainable standard of physical and mental health as it facilitates the provision of Government-subsidised hearing services to persons who require them.

#### *Rights of persons with disabilities*

This instrument promotes the right in Article 25 of the Convention on the Rights of Persons with Disabilities for persons with disabilities to the enjoyment of the highest attainable standard of health, as it facilitates the provision of Government-subsidised hearing services to persons living with hearing impairment.

#### *Right to freedom of association*

Article 22 of the International Covenant on Civil and Political Rights provides a right to freedom of association that protects the right of all persons to group together voluntarily for a common goal and to form and join an association. This right may be limited under article 22(2) for reasons of protecting national security, public safety, order, health, morals or the rights and freedoms of others.

The instrument engages the right to freedom of association in that it requires practitioners providing clinical hearing services to voucher-holders to be in an approved membership category of a practitioner professional body.

Practitioner professional bodies are not unions and do not advocate on behalf of their members in relation to work conditions. Rather they set minimum qualification requirements, clinical competencies, continuing professional development requirements, and promote ethical conduct. The requirement for a practitioner to be in an approved membership category of a practitioner professional body seeks to protect public health and safety by ensuring that practitioners have the necessary qualifications and experience to provide clinical services to voucher-holders.

The requirement in the instrument for practitioners providing clinical services to voucher-holders to be in an approved membership category of a practitioner professional body is reasonable, necessary and proportionate to ensure the protection of public health and safety.

## **Conclusion**

The Legislative Instrument is compatible with human rights because it advances the protection of human rights and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**The Hon Greg Hunt**  
**Minister for Health**