

EXPLANATORY STATEMENT

Hearing Services Administration Act 1997

Hearing Services Program (Voucher) Amending Instrument 2020

Authority

Subsection 5(3) of the *Hearing Services Administration Act 1997* (Act) provides that the Minister may, by legislative instrument, determine that a specified person is an eligible person for the purposes of this Act.

Subsection 11(1) of the Act provides that the Minister may, by legislative instrument, formulate rules relating to vouchers.

Subsection 13(1) of the Act provides that the Minister may, by legislative instrument, determine that each eligible person included in a specified class of eligible persons is a ***participant in the voucher system*** for the purposes of the Act.

Subsection 17(1) of the Act provides that the Minister must, by legislative instrument, formulate rules of conduct relating to the provision of hearing services to voucher-holders.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that 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.

Purpose

The *Hearing Services Program (Voucher) Amending Instrument 2010* (Amending Instrument) amends the *Hearing Services Program (Voucher) Instrument 2019* (2019 Instrument). The amendments implement a revised framework that will operate between the National Disability and Insurance Scheme (NDIS) and the Hearing Services Program (HSP) following the cessation of in-kind arrangements between the two programs on 30 June 2020, and make other minor amendments.

The Amending Instrument preserves continuity of services for NDIS participants currently receiving hearing services delivered through the HSP, by:

- amending section 8 of the 2019 Instrument to repeal eligibility requirements for NDIS participants that will cease on 30 June 2020, and providing that voucher-holders who are eligible persons under the Act, and NDIS participants, may continue to receive hearing services through the HSP until they have services included in their NDIS plan which are substantially equivalent to available hearing services; and
- providing that voucher-holders who are only eligible under section 8 of the 2019 Instrument may continue to receive their hearing services through the HSP, until their voucher expires or until they have services included in their NDIS plan which are substantially equivalent to available hearing services.

To implement the revised framework, and preserve continuity of services for NDIS participants, it was necessary to amend the 2019 Instrument in two stages. The first stage of amendments commences 29 June 2020 and is set out in Schedule 1 of the

Amending Instrument. The second stage of amendments commences 1 July 2020 and is set out in Schedule 2 of the Amending Instrument.

In addition, the Amending Instrument makes minor technical amendments, including: to clarify the meaning of available hearing services, and to prevent contracted service providers from refusing to provide available hearing services on the grounds of a voucher-holder's NDIS participation.

Background

Through the HSP, eligible people can receive government funded hearing services including a fully subsidised hearing assessment, hearing rehabilitation and, if appropriate, hearing devices.

The transition of eligible people from the HSP to the NDIS has been progressing since 2013. It was originally intended that after 30 June 2020, all NDIS participants would exit the HSP and access their hearing services through the NDIS. Following consultation with stakeholders, final arrangements for the delivery of hearing services across both programs from 1 July 2020 have been agreed.

The Amending Instrument provides for the implementation of those arrangements.

Consultation

The Department of Health, together with the Department of Social Services and the National Disability Insurance Agency, consulted broadly about the delivery of hearing services following the cessation of in-kind arrangements. The consultation included:

- consumer advocacy groups for children and adults with hearing loss
- professional peak bodies and other professional associations representing audiologists and audiometrists, and
- the hearing health sector generally.

Consumer groups, professional peak bodies and associations and members of the hearing health sector generally supported the proposed service delivery arrangements.

The Department of Health also consulted with the Department of Social Services and the National Disability Insurance Agency.

Details of the Amending Instrument are set out in the Attachment.

The Amending Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Schedule 1 of the Amending Instrument commences 29 June 2020. Schedule 2 of the Amending Instrument commences 1 July 2020.

Details of the *Hearing Services Program (Voucher) Amending Instrument 2020*

1 Name

Section 1 provides that the name of the Instrument is the *Hearing Services Program (Voucher) Amending Instrument 2020* (Amending Instrument).

2 Commencement

Section 2 states that Schedule 1 of the Amending Instrument commences 29 June 2020 and Schedule 2 of the Amending Instrument commences 1 July 2020.

3 Authority

This section provides that the authority for making the Amending Instrument is subsection 5(3), subsection 11(1), section 13 and subsection 17(1) of the *Hearing Services Administration Act 1997*.

4 Schedules

Section 4 provides that each instrument that is specified in a Schedule to the Instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Instrument has effect according to its terms.

Schedule 1 – Amendments commencing 29 June 2020

Item 1 – Subsection 13(3)

Item 1 of Schedule 1 of the Amending Instrument omits “subsections (4) and (5)” from the *Hearing Services Program (Voucher) Instrument 2019* (the 2019 Instrument) and substitutes with “subsection (5)”. This amendment is consequential to the repeal of subsection 13(4) from the 2019 Instrument as referred in Item 2.

Item 2 – Subsection 13(4)

Item 2 of Schedule 1 of the Amending Instrument repeals subsection 13(4) from the 2019 Instrument. The repeal of this subsection means that a voucher of a voucher-holder who was an eligible person under section 8 of the 2019 Instrument (eligible because of NDIS) will not cease on 30 June 2020 as previously intended.

Schedule 2 – Amendments commencing 1 July 2020

Item 1 – Subsection 5(1)

Item 1 of Schedule 2 of the Amending Instrument inserts new definitions into subsection 5(1) of the 2019 Instrument as follows:

- ‘available hearing services’ means the hearing services set out in Division 6.2 in Part 6 of the 2019 Instrument
- ‘NDIS participant’ means a participant within the meaning of the *National Disability Insurance Scheme Act 2013*, and
- ‘NDIS plan’ means an NDIS participant’s plan within the meaning of the *National Disability Insurance Scheme Act 2013*.

Including these definitions is necessary due to the repeal of section 8 from the 2019 Instrument, and to clarify the meaning of ‘available hearing services’ previously

defined in Notes to the definition of ‘hearing services’ and section 14 of the 2019 Instrument.

Item 2 – Section 8 (heading)

Item 2 of Schedule 2 of the Amending Instrument repeals the current heading in Section 8 and substitutes a new heading ‘*Disability Services Act 1993 (WA) participants*’, to accurately reflect the category of additional eligible persons set out in the section.

Item 3 – Section 8

Item 3 of Schedule 2 of the Amending Instrument repeals section 8 and substitutes a new section 8, which provides that a person is an eligible person if the person has reached the age of 21 years, and is a participant within the meaning of the *Disability Services Act 1993 (WA)* and has been referred to the Minister in connection with the funding or provision of supports under the participant’s plan under section 26I of that Act.

The purpose of repealing section 8 is to ensure that NDIS participants are no longer a separate category of additional eligible persons. The purpose of the substituted section 8 is to preserve ‘*Disability Services Act 1993 (WA) participants*’ as a separate category of additional eligible persons, in recognition that the full transition to the NDIS is not yet finalised in Western Australia. It is intended that once *Disability Services Act 1993 (WA)* participants become NDIS participants the existing provisions relating to NDIS participants will apply.

Item 4 – Subsection 13(3)

Item 4 of Schedule 2 of the Amending Instrument omits “subsection (5)” and substitutes “subsections (5) and (6)”. This amendment is consequential to the repeal and replacement of subsection 13(6) of the 2019 Instrument referred in Item 5 below.

Item 5 – Subsection 13(6)

Item 5 of Schedule 2 of the Amending Instrument repeals subsection 13(6) and substitutes a new subsection 13(6), which provides that if a voucher-holder is an NDIS participant and supports substantially equivalent to the available hearing services are included as part of their NDIS plan, the voucher ceases on the day that the NDIS participant has the supports included as part of their NDIS plan.

New subsection 13(6): removes any reference to ‘30 June 2020’, so it is clear the subsection applies to all voucher-holders who are NDIS participants (regardless of the date they became an NDIS participant); removes a typographical error; replaces ‘hearing needs’ with the defined term ‘available hearing services’; and makes it clear that supports ‘substantially equivalent’ to available hearing services will trigger the application of the subsection.

Item 6 – Subsection 13(7)

Item 6 of Schedule 2 of the Amending Instrument repeals subsection 13(7) as it is considered redundant.

Item 7 – Subsection 34(2)

Item 7 of Schedule 2 of the Amending Instrument repeals subsection 34(2) and substitutes it with a new subsection 34(2). This prohibits contracted service providers from refusing to provide available hearing services to a voucher-holder on the grounds that the voucher-holder will not enter into an arrangement for a partially subsidised device, or that the voucher-holder is an NDIS participant. This amendment

will ensure that NDIS participants who are also voucher-holders will not be refused available hearing services on the grounds of the voucher-holder's NDIS participation.

Item 8 – Section 54

Item 8 of Schedule 2 of the Amending Instrument amends section 54 to accommodate a situation where indexation does not occur for a financial year, by omitting 'will' and substituting 'may'.

Statement of Compatibility with Human Rights

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

Hearing Services Program (Voucher) Amending Instrument 2020

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) Amending Instrument 2020* (Amending Instrument) is to amend various provisions of the *Hearing Services Program (Voucher) Instrument 2019* (2019 Instrument) to implement the revised framework that will operate between the National Disability and Insurance Scheme (NDIS) and the Hearing Services Program (HSP) following the cessation of in-kind arrangements between the two programs on 30 June 2020.

The Instrument preserves continuity of services for NDIS participants who are currently receiving hearing services delivered through the HSP, by:

- amending section 8 of the 2019 Instrument to repeal eligibility requirements for NDIS participants that will cease on 30 June 2020, and providing that voucher-holders who are eligible persons under the Act and NDIS participants may continue to receive hearing services through the HSP until they have services included in their NDIS plan which are substantially equivalent to available hearing services; and
- providing that voucher-holders who are only eligible under section 8 of the 2019 Instrument may continue to receive their hearing services through the HSP, until their voucher expires or until they have services included in their NDIS plan which are substantially equivalent to available hearing services.

Human rights implications

This legislative instrument engages the following rights:

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

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. 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.

Conclusion

This disallowable legislative instrument is compatible with human rights because it promotes the protection of human rights.

The Hon Greg Hunt
Minister for Health