

EXPLANATORY STATEMENT

Australian Hearing Services Act 1991

Australian Hearing Services (Declared Hearing Services) Determination 2019

Authority

Authority for this instrument is provided by section 8 of the *Australian Hearing Services Act 1991*.

Purpose

The *Australian Hearing Services Act 1991* (the Act) establishes Australian Hearing Services with the function, among others, of providing declared hearing services to young Australians, referred Comcare clients, referred Commonwealth employees and designated persons. Declared hearing services to young Australians and designated persons are delivered by Australian Hearing Services under the Community Services Obligation (CSO) component of the Hearing Services Program (the program), funded by the Commonwealth.

Subsections 8(4) to 8(8) inclusive of the Act empower the Minister to determine designated persons for the purposes of 8(1)(ad) of the Act, and to declare the hearing service(s) that will be provided to classes of eligible persons. This is the purpose of the *Australian Hearing Services (Declared Hearing Services) Determination 2019*.

Background

The *Declared Hearing Services Determination 1997* will sunset on 1 October 2019 in accordance with a declaration made by the Attorney-General. Following a review of the Determination to determine whether it was fit-for-purpose, it was concluded that, while it was, it should be repealed and remade to update and simplify provisions.

Documents Incorporated by Reference

The instrument incorporates, by reference, the Australian Statistical Geography Standard, July 2011 edition, published by the Australian Bureau of Statistics. In 2019, this was publicly available at <www.abs.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 was published on the program website, <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. 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.

18 submissions were received and considered in remaking 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 (Declared Hearing Services) Determination 2019*

1 Name of Determination

Section 1 provides how this instrument is to be cited, that is, as the *Australian Hearing Services (Declared Hearing Services) Determination 2019*.

2 Commencement

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

3 Authority

Section 4 cites the provisions of the *Australian Hearing Services Act 1991* under which the instrument is made.

4 Definitions

Section 4 defines terms which are used throughout this instrument. In comparison to the previous version of this instrument (the *Declared Hearing Services Determination 1997*), section 4 has been updated to:

- include definitions of ASGS, CDP (to replace RJCP), and Modified Monash Model (MMM) area 6 and 7;
- replace the previously defined term ‘complex client’ with ‘***eligible for specialist hearing services***’ and to include in that definition the definitions of profound hearing loss and severe communication impairment;
- Clarify that ‘***young NDIS participant***’ is time limited to 1 July 2020 to coincide with transition of this cohort to the NDIS; and
- make minor technical updates.

5 Repeals

Section 5 repeals the *Declared Hearing Services Determination 1997*. That instrument sunsets on 1 October 2019 and is replaced by this instrument.

6 Declared hearing services

Section 6 describes the classes of persons and the hearing services they are entitled to receive. This section replaces sections 4 to 11, much of the detail in section 12 and Schedules 1 and 2 of the *Declared Hearing Services Determination 1997*. The classes of persons and their declared hearing services have not changed with only updates made to:

- Renumber the classes of persons sequentially, noting that the *Declared Hearing Services Determination 1997* provided for seven distinct classes numbered 1-5, 7 and 8.
- The determination of ‘remote’ eligible clients with the replacement of Schedule 2 – remote area postcodes of the *Declared Hearing Services Determination 1997* with eligibility for those eligible for specialist hearing services needing to reside in and receive hearing services in a place geographically within Modified Monash Model area 6 or Modified Monash

Model area 7 as defined at section 4 (noting that transitional provisions are made at section 9).

7 Designated persons

Section 8(1) of the *Australian Hearing Services Act 1991* only specifically provides authority to provide declared hearing services to young Australians, referred Comcare clients and referred Commonwealth employees. However, paragraph 8(1)(ad) provides authority to provide declared hearing services to ‘designated persons’.

Section 7 replaces section 12 of the *Declared Hearing Services Determination 1997* and determines the classes of persons referred to in section 6 who are not specifically referred to in the Act as ‘designated persons’.

8 Certain services subject to payment of any applicable charges

Section 8 replaces section 12 of the *Declared Hearing Services Determination 1997* and provides for the payment of charges by certain classes of eligible persons for certain declared hearing services in accordance with the *Australian Hearing Services Regulations 2019* (or any replacement for those regulations).

9 Transitional

Section 9 provides continuity of eligibility for those persons previously eligible under remote area provisions who may now not be in an MMM area 6 or 7.

Statement of Compatibility with Human Rights

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

Australian Hearing Services (Declared Hearing Services) Determination 2019

This 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 *Australian Hearing Services Act 1991* gives Australian Hearing Services the function of providing declared hearing services to young Australians, referred Comcare clients, referred Commonwealth employees and ‘designated persons’. A Determination, made under that Act, specified designated persons and declared specified hearing services that could be available through the program.

The purpose of the *Australian Hearing Services (Declared Hearing Services) Determination 2019* is to repeal and replace that previous Determination and to specify designated persons and hearing services for the Act. It thereby provides persons who are eligible for the voucher component of the program with access to the declared hearing services detailed in this instrument.

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.

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 including those who live in remote areas. This instrument engages the human rights and freedoms recognised in the seven core international human rights treaties that Australia has ratified because it determines classes of persons eligible to receive hearing services. 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.

This instrument promotes Article 12 by providing access to hearing services and assistive hearing technology for eligible people and supporting research on strategies to prevent hearing loss or lessen its impact.

Rights of people with disabilities

This instrument advances the rights of people with disability by facilitating access to government-funded hearing services for certain classes of people, who would not otherwise have access to subsidised hearing services.

Conclusion

The Legislative Instrument is compatible with human rights because it advances the protection of human rights.

The Hon Greg Hunt

Minister for Health