

## EXPLANATORY STATEMENT

*Australian Hearing Services Act 1992*

### ***Australian Hearing Services (Declared Hearing Services) Amendment Determination 2020***

#### Authority

The *Australian Hearing Services (Declared Hearing Services) Amendment Determination 2020* (Determination) is made under section 8 of the *Australian Hearing Services Act 1991* (Act) which sets out the functions of Australian Hearing Services and provides that the Minister may, by writing, determine that a specified person is a designated person.

#### Purpose

The Determination amends the *Hearing Services (Declared Hearing Services) Determination 2019* (2019 Determination) to implement the revised framework that will operate between the National Disability 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 Determination assures continuity of services, particularly early intervention services for young NDIS participants who are currently receiving hearing services delivered through the HSP. Although ‘young NDIS participant’ has been removed, ‘young Australian’, which remains in the 2019 Determination, captures the same population. The references to ‘young NDIS participant’ were only necessary to support transition out of the HSP by 1 July 2020, which is no longer occurring.

#### Background

Under the Community Service Obligation component of the HSP, eligible people – including young Australians aged 0-26 – can access a range of hearing services. Subsections 8(4) to 8(8) inclusive of the Act empower the Minister to determine designated persons, and to declare a specified hearing service is a declared hearing service that will be provided to classes of eligible persons.

The transition of eligible people from the HSP to the NDIS has been progressing since 2013. When the transition process commenced, it was 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, including consumer advocacy organisations and current HSP and NDIS participants and their families, final arrangements for the delivery of hearing services across both programs from 1 July 2020 were agreed.

This Determination makes amendments that facilitate 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 Determination are set out in the Attachment.

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

This Determination commences on 1 July 2020.

**Details of the *Australian Hearing Services (Declared Hearing Services) Amendment Determination 2020***

**1 Name**

Section 1 provides that the name of the Determination is the *Australian Hearing Services (Declared Hearing Services) Amendment Determination 2020*.

**2 Commencement**

Section 2 states that the Determination commences on 1 July 2020.

**3 Authority**

This section provides that the authority for making this Determination is section 8 of the *Australian Hearing Services Act 1991*.

**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**

**Item 1 – Subsection 4(1) (definition of NDIS)**

Item 1 of Schedule 1 of the Determination repeals the definition of NDIS from the *Australian Hearing Services (Declared Hearing Services) Determination 2019* (2019 Determination). This is consequential to Items 2 and 3 below.

**Item 2 – Subsection 4(1) (definition of parent)**

Item 2 of Schedule 1 of the Determination omits ‘young NDIS participant’ from the definition of ‘parent’ from the 2019 Determination. This is consequential to Item 3 below. This item substitutes ‘young *Disability Services Act 1993* (WA) participant’ in recognition that the full transition to the NDIS is not yet finalised in West Australia.

**Item 3 – Subsection 4(1) (definition of young NDIS participant)**

Item 3 of Schedule 1 of the Determination repeals the definition of ‘young NDIS participant’ from the 2019 Determination. This definition is being repealed to remove young NDIS participants as designated persons. The definition ‘young Australian’, which remains in the 2019 Determination, captures the same population.

**Item 4 – Subsection 4(1)**

Item 4 of Schedule 1 of the Determination inserts a definition for ‘young *Disability Services Act 1993* (WA) participant’ into the 2019 Determination. This means a person who is under 26 years of age, is a participant within the meaning of the *Disability Services Act 1993* (WA) and has been referred to Australian Hearing Services in connection with the funding or provision of supports under the participant’s plan under section 26I of that Act. This in effect specifies ‘young *Disability Services Act 1993* (WA) participants’ as designated persons, in recognition that the full transition to the NDIS in West Australia has not yet finalised.

**Item 5 – Section 6 (table item dealing with class 1, column headed “Persons to receive the hearing services”)**

Item 5 of Schedule 1 of the Determination omits ‘young NDIS participant’ and substitutes ‘young *Disability Services Act 1993* (WA) participant’. This removes young NDIS participants from Class 1, but retains young *Disability Services Act 1993* (WA) participants in recognition that the full transition to the NDIS has not yet finalised in West Australia.

**Item 6 - Section 6 (table item dealing with class 5, column headed “Persons to receive the hearing services”)**

Item 6 of Schedule 1 of the Determination omits ‘young NDIS participant’ and substitutes ‘young *Disability Services Act 1993* (WA) participant’ to the same effect as Items 4 and 5 above.

**Item 7 – Section 6 (table item dealing with class 5, column headed “Declared hearing services”)**

Item 7 of Schedule 1 of the Determination omits ‘young NDIS participant’ and substitutes ‘young *Disability Services Act 1993* (WA) participant’ to the same effect as Items 4, 5 and 6 above.

**Item 8 – After section 9**

Item 8 of Schedule 1 of the Determination inserts a transitional provision in the 2019 Determination, which has the effect of extending a young NDIS participant’s membership of class 5 for 5 years from when they turn 26, if they were a member of Class 5 on 30 June 2020 by virtue of being a young NDIS participant.

**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) Amendment  
Determination 2020***

This disallowable 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 (Declared Hearing Services) Amendment Determination 2020* (Determination) is made under section 8 of the Act which sets out the functions of Australian Hearing Services and provides that the Minister may, by writing, determine that a specified person is a designated person.

Under the Community Service Obligation component of the Hearing Services Program (HSP), eligible people – including young people aged 0-26 – can access a range of hearing services. Subsections 8(4) to 8(8) inclusive of the Act empower the Minister to determine designated persons, and to declare a specified hearing service is a declared hearing service that will be provided to classes of eligible persons.

The Determination amends the *Hearing Services (Declared Hearing Services) Determination 2019* (2019 Determination) to implement the revised framework that will operate between the National Disability Insurance Scheme (NDIS) and the HSP following the cessation of in-kind arrangements between the two programs on 30 June 2020.

The Determination assures continuity of services, particularly early intervention services for young NDIS participants who are currently receiving hearing services through the HSP. Although ‘young NDIS participant’ has been removed, ‘young Australian’, which remains in the 2019 Determination, captures the same population. The references to ‘young NDIS participant’ were only necessary to support transition out of the HSP by 1 July 2020, which is no longer occurring.

**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 including those who live in remote areas. 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 disallowable legislative instrument is compatible with human rights because it promotes the protection of human rights.

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