

EXPLANATORY STATEMENT

Issued by the Minister for Families and Social Services

Disability Services Act 1986

Disability Services (Eligible Service Standards) Determination 2020

Purpose

The *Disability Services (Eligible Service Standards) Determination 2020* (the Determination) determines eligibility standards for the purposes of paragraph 5A(1)(a) of the *Disability Services Act 1986* ('the Act'), to be observed in the provision of an eligible service referred to in Part II of the Act.

Background

The *Disability Services Standards (Eligible Service Standards) (FAHCSIA) Determination 2010* (the 2010 Determination), was made to determine eligibility standards under paragraph 5A(1)(a) of the Act that must be observed when providing an eligible service referred to in Part II of the Act. Eligible organisations who are the recipients of a grant under section 10 of the Act are required to meet these eligibility standards. The 2010 Determination will automatically be repealed on 1 October 2020 under the sunset provisions of the *Legislation Act 2003*.

The standards in the 2010 Determination continue to be appropriate after 1 October 2020, to ensure funded organisations continue to provide quality services for an eligible service to people with disability. As the 2010 Determination will automatically sunset, the Determination revokes the 2010 Determination and substantively replicates the standards, to ensure their continued application to eligible services provided under the Act and provide continuity of business in the disability sector.

Minor changes

In drafting the Determination there have been some minor technical changes made to the form of determination to reflect current legislative drafting requirements. These include incorporating the preferred form of reference to 'people with disability'.

Commencement

The Determination commences on the day after it is registered on the Federal Register of Legislation.

Consultation

Consultation was undertaken with selected peak external service providers who are subject to the 2010 Determination, and with the Attorney-General's Department. Consultation occurred over the period 1 January 2020 to 30 May 2020 and confirmed the standards specified in the 2010 Determination continue to be appropriate for the continued standards of provision of services to people with disability.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required for the Determination (OBPR Reference 42504). Because the Determination substantively replicates the standards in the 2010 Determination, it will have minimal impact on business activity and will have no, or minimal, compliance costs or competition impact.

Explanation of the provisions

Section 1 provides that the name of the instrument is the *Disability Services (Eligible Service Standards) Determination 2020*.

Section 2 provides that the Determination commences on the day after it is registered on the Federal Register of Legislation.

Section 3 provides that the authority for making the Determination is paragraph 5A(1)(a) of the *Disability Services Act 1986*.

Section 4 provides definitions of terms used in the Determination.

The note provides that a number of expressions used in the Determination are defined in the Act. For example, 'service' is defined in section 7 of the Act, for the purposes of the definition of an 'eligible service' also in section 7.

Section 5 provides that the instrument specified in Schedule 1 to this instrument is repealed as set out in that Schedule.

Schedule 1 provides for the repeal of the *Disability Services Standards (Eligible Service Standards)(FAHCSIA) Determination 2020*. 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, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal any such instrument.

Section 6 provides that for the purpose of paragraph 5A(1)(a) of the Act, Schedule 2 to the Determination sets out the eligibility standards.

Schedule 2 sets out eight eligibility standards.

Standard 1 – Service Access

This standard provides that each consumer seeking a service has access to a service on the basis of relative need. The standard addresses the agency's entry and exit policies and procedures, the way in which the agency manages its waiting lists for each service, and the agency's onwards and specific-support referral mechanisms.

Standard 2 – Individual Needs

This standard provides that each person with disability receives a service that is planned, reliable and meets their needs in the least restrictive way. The standard addresses the

agency's policies and procedures for identifying, meeting and reviewing the individual needs and goals of each consumer. The standard recognises that the needs of a particular consumer may be best met by another agency or by generic community services, and that service providers need to be sensitive to the age, gender and the cultural, linguistic and religious background of each person with disability.

Standard 3 – Decision Making and Choice

This standard provides that each person with disability has the opportunity to make decisions and choices about the service received. The standard covers the written policies and procedures of the agency and address the manner in which decisions are made in respect of services and individual consumers. They seek to maximise opportunities for consumer participation in decision making and ensure that each person with disability receives the support they need to make informed decisions and choices.

Standard 4 – Privacy, Dignity and Confidentiality

This standard provides that each consumer has the same level of privacy, dignity and confidentiality as is expected by the rest of the community. The standard addresses protection of the dignity, privacy and confidentiality of consumers through policies and procedures about the handling of personal information and in relation to personal activities.

Standard 5 – Participation and Integration

This standard provides that each person with disability has the opportunity to participate in the life of the community by encouraging the use by consumers of general community facilities and services, and the establishment and maintenance by consumers of ties and involvements in the community.

Standard 6 – Valued Status

This standard provides, and is intended to ensure that services play an active role in promoting the valued status of people with disability through policies and procedures of the service which promote the skills and capacities of consumers and provides them the opportunity to develop life-styles valued in the community.

Standard 7 – Complaints and Disputes

This standard provides that each consumer has access to fair procedures for dealing with complaints and disputes about services, including support of advocates where requested, and for the speedy resolution of those complaints and disputes.

Standard 8 – Service Management

This standard provides, and is intended to ensure that each consumer receives services that are efficiently and effectively managed through effective service management, such as:

- the protection of the legal and human rights of people with disability are upheld within the service;
- the provision of a safe physical environment for its consumers;
- the involvement of consumers in the planning, management and evaluation of the service they receive;
- the internal evaluation of the service by the service provider against its objectives and these standards;
- the provision of services to people with disability from appropriately skilled and competent staff;

- the application of a policy of affirmative action with regard to employing people with disability; and
- the development of a policy and procedures for handling complaints and disputes raised about the service by staff and others (consumers – including people with disability).

Statement of Compatibility with Human Rights

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

Disability Services (Eligible Service Standards) Determination 2020

The *Disability Services (Eligible Services Standards) Determination 2020* (the Determination) 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 Determination is made by the Minister for Families and Social Services, under paragraph 5A(1)(a) of the *Disability Services Act 1986* (the Act) and replaces the *Disability Services Standards (Eligible Services Standards) (FAHCSIA) Determination 2010*.

The standards contained in the *Disability Services Standards (Eligible Services Standards) (FAHCSIA) Determination 2010* (the 2010 Determination) were first established in 1993 after extensive community consultation and were developed to assist funded organisations improve the standard of service they provided for an eligible service under Part II of the Act, to a person with disability.

The 2010 Determination substantively replicated the 1993 standards, with the primary focus of providing people with disability the services which best meet their needs and aspirations, and ensuring that the quality of services were subject to safeguards.

The 2010 Determination is subject to sunset requirements under the *Legislation Act 2003*, and is due to sunset on 1 October 2020. The standards in the 2010 Determination continue to be appropriate after 1 October 2020, to ensure funded organisations continue to provide quality services for an eligible service to people with disability. As the 2010 Determination will automatically sunset, the Determination revokes the 2010 Determination and substantively replicates the standards, to ensure their continued application to eligible services provided under the Act and provide continuity of business in the disability sector.

The eight standards that apply to eligible services are:

Standard 1 – Service Access

The purpose of this standard is to ensure that each consumer seeking a service has access to a service on the basis of relative need.

Standard 2 – Individual Needs

The purpose of this standard is to ensure that each person with disability receives a service that is planned, reliable and meets their needs in the least restrictive way.

Standard 3 – Decision Making and Choice

The purpose of this standard is to ensure that each person with disability has the opportunity to make informed decisions and choices about the services they receive.

Standard 4 – Privacy, Dignity and Confidentiality

The purpose of this standard is to ensure that each consumer, including a person with disability, has the same level of privacy, dignity and confidentiality as is expected by the rest of the community.

Standard 5 – Participation and Integration

The purpose of this standard is to ensure that each person with disability has the opportunity to participate in the life of the community through the use by consumers of general community facilities and services, and the establishment and maintenance of ties and involvement in the community.

Standard 6 – Valued Status

The purpose of this standard is to ensure that services play an active role in promoting the valued status of people with disability by enhancing the skills and capacities of consumers and providing the opportunity to develop life-styles valued in the community.

Standard 7 – Complaints and Disputes

The purpose of this standard is to ensure that each consumer has access to fair procedures for dealing with complaints and disputes about services, including the support of advocates where requested, and for their speedy resolution.

Standard 8 – Service Management

The purpose of this standard is to ensure that each consumer receives services that are efficiently and effectively managed, and contains standards that address the following areas of service management.

Human rights implications

Objectives

The Determination sets out standards to be observed by organisations, which deliver eligible services under Part II of the *Disability Services Act 1986* to people with disability, intended to implement, at least in part, Australia's obligations as a signatory to the Convention on the Rights of Persons with Disabilities (CRPD) and the International Convention on Civil and Political Rights (ICCPR).

In particular:

CRPD Article 9 – Accessibility

Article 9 of the CRPD requires appropriate measures that enable persons with disabilities to live independently and participate fully in all aspects of life. Such appropriate measures ensure persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply, inter alia:

- (a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;

(b) Information, communications and other services, including electronic services and emergency services.

The standards in the Determination support Article 9 of the CRPD, for example: Standard 5 in Schedule 2 to the Determination is intended to ensure that each person with disability has the opportunity to participate in the life of the community by promoting accessibility. The standard addresses policy and procedures of the service providing an *eligible service* under Part II of the Act, to encourage the use by consumers (including people with disability) of general community facilities and services, and the establishment and maintenance by consumers of ties and involvement in the community. The definition of *eligible service* in section 7 of the Act includes (amongst others): information services, print disability services and recreation services. The Determination accordingly supports the obligations under Article 9 of the CRPD to make accessible facilities, services and information to people with disability on an equal basis to people without disability.

CRPD Article 19 – Living independently and being included in the community

Article 19 of the CRPD recognises the equal right of all persons with disabilities to live in the community, with choices equal to others, and that signatories to the CRPD will take of effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- (a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- (b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
- (c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

The standards in the Determination support Article 19 of the CRPD. For example: Standard 2 requires agencies support each consumer's efforts to gain access to general community facilities and services and/or to other specialist agencies and/or services. Standard 5 requires that each person with disability is supported and encouraged to participate and be involved in the life of the community.

The definition of *eligible service* in section 7 of the Act includes (amongst others) independent living training services and respite care services. The Determination accordingly supports the obligations under Article 19 of the CRPD to supporting people with disability to live independently and be included in the community.

CRPD Article 21 – Freedom of expression and opinion, and access to information

Article 21 of the CRPD provides that all appropriate measures will be taken to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, including by:

- (a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- (b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communications, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
- (c) Urging private entities that provide services to the general public, including through the internet, to provide information and services in accessible and usable formats for persons with disabilities;
- (d) Encouraging the mass media, including providers of information through the internet, to make their services accessible to persons with disabilities;
- (e) Recognizing and promoting the use of sign languages.

The standards support Article 21 of the CRPD. Standard 1 requires agencies to target its information activities to be accessible by all identifiable groups within the target population. Standards 2, 3, 4 and 7 require agencies to ensure policies and procedures on a range of matters are made available to consumers in appropriate formats. The standards use the term ‘least restrictive way’ which is defined in the Determination as meaning the provision of services which are appropriate to people's needs, while allowing them as much freedom of choice, independence and opportunity as possible.

The standards also use the term ‘integration’ defined in the Determination as having two important components - physical and social. Physical integration means ensuring that people with a disability have access to the same places, and in the same manner as other people. It also means that they receive services in the community. Social integration means that people with a disability are able to build and maintain a wide range of relationships with members of the community.

The definition of *eligible service* in section 7 of the Act includes (amongst others): information services and print disability services. The Determination accordingly supports the obligations under Article 21 of the CRPD to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice.

ICCPR Article 17

Article 17 of the ICCPR provides that:

1. No one shall be subject to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

The standards support Article 17 of the ICCPR. For example standard 4 addresses protection of the dignity, privacy and confidentiality of consumers through policies and procedures about the handling of personal information and in relation to personal activities. Standard 7 provides that complaints and disputes are handled in a manner consistent with the agency’s policies on privacy.

The Determination accordingly supports the ICCPR Convention with a specific standard that provides for a consumer's right to privacy, dignity and confidentiality in all aspects of their life is recognised and respected.

Conclusion

The Determination is compatible with human rights and promotes the rights of people with disability. It establishes standards that must be adhered to by providers of eligible services, which support Australia's obligations under the CRPD and ICCPR Conventions by:

- providing increased accessibility to services and information;
- supporting people with disability to live independently and be included in the community;
- ensuring that persons with disabilities can exercise the right to freedom of expression and opinion; and
- providing that each consumer has the same level of privacy, dignity and confidentiality as is expected by the rest of the community.

Circulated by authority of Senator the Hon. Anne Ruston, Minister for Families and Social Services