

EXPLANATORY STATEMENT

Australian Hearing Services Act 1991

Hearing Services Program (Voucher) Amendment (Administrative Review Tribunal and Other Matters) Instrument 2024

Purpose and operation

The *Hearing Services Program (Voucher) Instrument 2019* (the Voucher Instrument) is established by the *Hearing Services Administration Act 1997* (the Act). It provides for a scheme under which hearing services are provided to voucher-holders by contracted service providers under the Hearing Services Program (the Program). The Voucher Instrument facilitates the administration of the voucher component of the Program. Among other things, it:

- determines classes of ‘eligible persons’ (i.e. persons eligible to become participants in the voucher system) in addition to those described by the Act;
- sets out rules regarding the issuing, validity and effect of vouchers for government-funded hearing services; and
- specifies hearing services that are available to voucher-holders.

The *Hearing Services Program (Voucher) Amendment (Administrative Review Tribunal and Other Matters) Instrument 2024* (the Instrument) amends the Voucher Instrument to reflect the commencement of the new Administrative Review Tribunal (the Tribunal) established through the *Administrative Review Tribunal Act 2024* (ART Act). It provides that decisions relating to the issuing of a voucher, accreditation of entities as service providers and the approval of additional hearing services may be reviewed by the Tribunal.

The Instrument also updates the Voucher Instrument to remove references to obsolete eligibility categories and clarifies Program materials.

Background

The Hearing Services Program

The Program aims to reduce the consequences of hearing loss in the Australian community by providing access to high quality hearing services and devices. Under the Program, eligible people can receive government-funded hearing services, including a fully subsidised hearing assessment, hearing rehabilitation and, if appropriate, hearing devices.

The Program consists of two components – the voucher system, and community service obligations. This amendment relates to the voucher system component only.

Establishment of the Administrative Review Tribunal

In March 2022, the Senate Legal and Constitutional Affairs Committee reported on the performance and integrity of the administrative review system. The report recommended the abolition of the Administrative Appeals Tribunal and establishment of a new federal administrative review body, with a transparent merit-based selection process for its members,

as well as the re-establishment of the Administrative Review Council. The ART Act gives effect to these recommendations.

Authority

The Instrument is made under the following provisions of the Act which provide that the Minister may, by legislative instrument:

- determine that a specified person is an eligible person (subsection 5(3));
- formulate rules relating to vouchers, known as the voucher rules (subsection 11(1));
- determine that each eligible person included in a specified class of eligible persons is a participant in the voucher system (section 13);
- formulate a scheme for the accreditation of entities as service providers (subsection 15(1)); and
- formulate rules of conduct relating to the provision of hearing services to voucher-holders (subsection 17(1)).

Reliance on subsection 33(3) of the *Acts Interpretation Act 1901*

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.

Commencement

The instrument commences on 14 October 2024, aligning with the commencement of the ART Act and the Tribunal.

Consultation

Changes relating to amendments made by this instrument included consultation with the Attorney-General's Department, the Disability Legislation Team within the Western Australian Department of Communities, and the Legal Advice and Legislation Branch in the Department of Health and Aged Care.

The Western Australian Department of Communities confirmed that while the sections in Part 4B of the *Disability Services Act 1993* (referred to in section 8 of the Voucher Instrument) remain in force, they no longer have any operative effect. They confirmed no individuals would be affected by this change, and thus removal of this reference is not opposed.

Section 10 of the Voucher Instrument referred to the *Disability Services Act 1986*, which has been repealed. Eligibility for the affected cohort are covered under subsection 5(2)(g) of the Act.

The Attorney-General's Department has led extensive consultation on the ART Act and further consequential amendments. The amendments in the Instrument give effect to the Tribunal and commence in alignment with the commencement date of the Tribunal. Due to

the minor nature of the amendments to the Instrument, further consultation was considered unnecessary.

General

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

Details of this instrument are set out in **Attachment A**.

This instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment B**.

Hearing Services Program (Voucher) Amendment (Administrative Review Tribunal and Other Matters) Instrument 2024

Section 1 – Name

This section provides that the name of the Instrument is the *Hearing Services Program (Voucher) Amendment (Administrative Review Tribunal and Other Matters) Instrument 2024*.

Section 2 – Commencement

This section provides that the Instrument commences on 14 October 2024.

Section 3 – Authority

This section provides that the Instrument is made under subsection 5(3), subsection 11(1), section 13, subsection 15(1) and subsection 17(1) of the *Hearing Services Administration Act 1997*.

Section 4 – Schedule

This section 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

Hearing Services Program (Voucher) Instrument 2019

Item 1 – Section 7 (heading)

Item 1 omits “Dependents” and substitutes it with “Spouses or de facto partner” in the heading of section 7.

This clarifies the intent of this eligibility cohort. ‘Dependents’ typically refers to children under the care of a responsible guardian, whereas this eligibility type only refers to eligible spouses and de facto partners as described at subsection 7(c).

Item 2 – Section 8

Item 2 repeals section 8.

This removes reference to the *Disability Services Act 1993 (WA)* which no longer has any operational effect or relevance.

Item 3 – Subsection 9(a)

Item 3 omits “DVA Health Card (Gold)” and substitutes it with “Veteran Gold Card”. This updates terminology to reflect the current card name.

Item 4 – Subsection 9(b)

This omits “for purposes connected with obtaining treatment for an injury, disease or condition that involves hearing loss, a card that is issued by the Commonwealth and known as a DVA Health Card (White)” and substitutes it with “a card issued by the Commonwealth and known as a Veteran White Card”.

This updates terminology to reflect the current card name.

Item 5 – Section 10

Item 5 repeals section 10.

This removes reference to the *Disability Services Act 1986* which is no longer in force. The relevant eligible cohort are covered by subsection 5(2)(g) of the *Hearing Services Administration Act 1997*.

Item 6 - Amendments of listed provisions – Administrative Review Tribunal

Item 6 omits “Administrative Appeals Tribunal” wherever it occurs in the notes of subsection 13(1), subsection 13(5), subsection 19(1) and subsection 43(2) and substitutes it with “Administrative Review Tribunal”.

This replaces references to the existing Administrative Appeals Tribunal with the new Administrative Review Tribunal.

Item 7 – Subsection 25(1)

Item 7 inserts “including devices (in person or online),” after “If a person asks a contracted service provider about any hearing services,”.

This clarifies the occasions when a service provider must provide certain information, consistent with other program material guidance.

Item 8 – Section 28

Item 8 omits “guidance published on the program’s website” and substitutes it with “schedule of service items and fees”.

This provides the updated and correct location of where the relevant information can be found.

Item 9 – Subsection 50(1) (note):

Item 9 omits “In 2019 a factsheet on Specialist Hearing Services could be viewed at <http://www.hearingservices.gov.au>.” and substitutes it with “In 2024, information about Specialist Hearing Services could be viewed at: <https://www.health.gov.au/hear>”.

This provides the updated and correct location of where the relevant information can be found.

Statement of Compatibility with Human Rights

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

Hearing Services Program (Voucher) Amendment (Administrative Review Tribunal and Other Matters) Instrument 2024

This disallowable 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 Disallowable Legislative Instrument

The *Hearing Services Program (Voucher) Instrument 2019* (the Voucher Instrument) is established by the *Hearing Services Administration Act 1997* (the Act), which provides the legislative framework for the Hearing Services Program (the Program). The objective of the Program is to provide subsidised high quality hearing services, including devices, to eligible people with hearing loss.

The purpose of the *Hearing Services Program (Voucher) Amendment (Administrative Review Tribunal and Other Matters) Instrument 2024* (the Instrument) is to replace references from the existing Administrative Appeals Tribunal with the new Administrative Review Tribunal (the Tribunal) from 14 October 2024.

Human rights implications

The Instrument engages the following rights contained in the *Universal Declaration of Human Rights* (UDHR), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the *Convention of the Rights of Persons with Disabilities* (CRPD) and the *International Covenant on Civil and Political Rights* (ICCPR):

- the right to the enjoyment of the highest attainable standard of physical and mental health (Article 12(1) of ICESCR), including without discrimination on the basis of disability (Article 25 of the CPRD);
- the right to an effective remedy (Article 8 of the UDHR);
- the right to a fair and public hearing (Article 14 of ICCPR);
- the right of equality and non-discrimination (Articles 2, 16 and 26 of ICCPR); and
- the right of access to justice for persons with a disability (Article 13 of the CRPD).

The Voucher Instrument sets up a scheme under which hearing services are provided to voucher-holders by contracted services providers and facilitates the administration of the voucher component of the Program. The Instrument updates references to outdated legislation, terminology, or program materials. This facilitates access to government-subsidised high quality hearing support to eligible persons, supporting communication needs and engagement in the community. This supports the rights under Article 12(1) of the

ICESCR and Article 25 of the CRPD by improving the standard of physical health for vulnerable Australians living with hearing impairment.

Additionally, the Tribunal's objective will be to provide an independent mechanism of review that:

- is fair and just;
- resolves applications as quickly, and with as little formality and expense, as a proper consideration of matters before the Tribunal permits;
- is accessible and responsive to the diverse needs of parties to proceedings;
- improves the transparency and quality of government decision-making, and
- promotes public trust and confidence in the Tribunal.

The Voucher Instrument provides for the Minister to make decisions relating to vouchers for participants in the voucher system. This includes those relating to the issuing of a voucher under subsection 13(1), cessation of a voucher under subsection 13(5), accreditation of entities as service providers under subsection 19(1) and the refusal to approve additional hearing services under subsection 43(2). The Instrument provides for these decisions to be reviewed by the Tribunal in accordance with the above principles. This preserves the right of voucher-holders and service providers who are affected by these decisions, the ability to seek continued access to merits review with the Tribunal. In doing so, it promotes the rights under Article 8 of the UDHR, Articles 2, 14, 16 and 26 of the ICCPR and Article 13 of the CRPD. It further supports the rights under Articles 12(1) of the ICESCR and Article 25 of the CRPD, as the review may allow them to attain the highest standard of physical health.

Conclusion

The Instrument is compatible with human rights because it further promotes the protection of relevant human rights under the UDHR, ICESCR, CRPD and ICCPR.

The Hon Mark Butler
Minister for Health and Aged Care