

# Thematic Review of Commonwealth Hearing Services Program Legislation

Report prepared for the Department of Health  
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mpconsulting ™

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## Executive Summary

### Scope of Thematic Review

This Thematic Review examined seven legislative instruments as described in the table below.

These instruments were selected to be reviewed together because, collectively, the legislation supports the Hearing Services Program (the Program). The Program is discussed in more detail in Chapter 1.

The following table sets out each of the legislative instruments (and the relevant enabling legislation) reviewed as part of this Thematic Review.

Act	Instrument
<b>Hearing Services Administration Act 1997</b>	<i>Hearing Services (Eligible Persons) Determinations 1997</i>
	<i>Hearing Services (Participants in Voucher System) Determination 1997</i>
	<i>Hearing Services Providers Accreditation Scheme 1997</i>
	<i>Hearing Services Voucher Rules 1997</i>
	<i>Hearing Services Rules of Conduct 2012</i>
<b>Australian Hearing Services Act 1991</b>	<i>Australian Hearing Services Regulations 1992</i>
	<i>Declared Hearing Services Determination 1997</i>

The above instruments were due to sunset at different dates (between 1 April 2016 and 1 October 2022). The Attorney General approved the alignment of all sunset dates to 1 October 2019 so that a Thematic Review could be undertaken in the interim.

### Summary of key findings of the Thematic Review

Question	Finding
Do the objectives of the legislation remain relevant?	<p>Yes. The legislation broadly achieves the current policy objectives of Government by providing eligible people with access to hearing services, reducing the impact of hearing loss.</p> <p>However, the legislation includes numerous provisions that are redundant, duplicative, confusing or outdated. Some of these issues can be addressed through changes to delegated legislation (without any adverse impact on stakeholders) and have been identified in this Thematic Review.</p> <p>Other reforms would require changes to the primary legislation (enabling Acts) or may adversely impact one or more stakeholder groups. Such reforms may be considered separately by the Department of Health (the Department), subject to further consultation.</p>

Question	Finding
<p>Should any of the instruments (or enabling Acts) be repealed or allowed to sunset?</p>	<p>It is proposed that the following instruments be repealed and remade in one consolidated instrument under the <i>Hearing Services Administration Act 1997</i> (the Administration Act):</p> <ul style="list-style-type: none"> <li>• <i>Hearing Services (Eligible Persons) Determinations 1997</i></li> <li>• <i>Hearing Services (Participants in Voucher System) Determination 1997</i></li> <li>• <i>Hearing Services Providers Accreditation Scheme 1997</i></li> <li>• <i>Hearing Services Voucher Rules 1997</i>, and</li> <li>• <i>Hearing Services Rules of Conduct 2012</i>.</li> </ul> <p>In consolidating the content of these instruments, it is proposed that the opportunity be taken to remove redundant provisions, update certain provisions and remove unnecessary regulation, reducing compliance costs.</p> <p>It is proposed that the following instruments made under the <i>Australian Hearing Services Act 1991</i> be repealed and remade (with minor amendments to remove redundant provisions, to update terminology and improve clarity):</p> <ul style="list-style-type: none"> <li>• <i>Australian Hearing Services Regulations 1992</i>, and</li> <li>• <i>Declared Hearing Services Determination 1997</i>.</li> </ul>
<p>What is the regulatory impact of the instruments? Is there opportunity for deregulation?</p>	<p>For each of the instruments, a number of amendments are proposed, including to:</p> <ul style="list-style-type: none"> <li>• repeal redundant provisions (to clarify the legislation and reduce costs to insurers and practitioners having to navigate complex legislation)</li> <li>• to consolidate instruments under the Administration Act into a single instrument (to ease administration and enable stakeholders to view all relevant provisions in relation to eligible persons and the delivery of hearing services by contracted providers in one instrument), and</li> <li>• clarify and simplify provisions to support stakeholders to better understand key elements of the Program.</li> </ul> <p>This will have the effect of clarifying the legislation and reducing costs for the Department, service providers and eligible clients having to navigate complex legislation.</p>
<p>Are the instruments consistent with broader legal and policy context?</p>	<p>Yes. In summary:</p> <ul style="list-style-type: none"> <li>• the overarching purpose of the hearing services legislation is to improve accessibility of hearing services for vulnerable Australians by providing hearing services and assistive technology for eligible people. In summary, two of the seven instruments reviewed were assessed as engaging the human rights and freedoms recognised in the seven core international human rights treaties that Australia has ratified. These instruments determine classes of persons eligible to receive hearing services and determine the hearing services that certain classes of persons are eligible to receive. To the extent these instruments do engage human rights and freedoms, the instruments were assessed as promoting the right in Article 12 of the International Covenant on Economic, Social and Cultural Rights (the right of everyone to the enjoyment of the highest attainable standard of physical and mental health)</li> <li>• none of the instruments pose any international or constitutional law issues</li> <li>• the instruments do not create criminal offences. However, one of the instruments includes a requirement which duplicates the <i>Criminal Code Act 1995</i>. It is</li> </ul>

Question	Finding
	<p>recommended that this provision be removed to avoid duplication across laws</p> <ul style="list-style-type: none"> <li>in relation to administrative law, two of the instruments create review rights in the Administrative Appeals Tribunal (AAT). As detailed in the fit-for-purpose tests, it is suggested that the relevant provisions be revised to provide greater clarity regarding the decisions that may be subject to both reconsideration and review by the AAT. The legislation does not exclude the jurisdictions of the Federal Court under the <i>Administrative Decisions (Judicial Review) Act 1977</i>, and</li> <li>in relation to privacy law, a number of the instruments require submission of information (by applicants for hearing vouchers and by applicants for accreditation) to the Department. Some of the information provided to the Department is personal and/or confidential information protected under the <i>Privacy Act 1988</i> and the Australian Privacy Principles (APP).</li> </ul>
<p>Do the instruments comply with the clearer laws principles? What can be done to make it simpler, clearer or easier to read?</p>	<p>The clearer laws principles require that, amongst other things, laws are no more complex than necessary to give effect to the policy, and that people affected by the laws can understand the laws and how they apply to them. Many of the instruments do not comply with the clearer laws principles, containing numerous examples of:</p> <ul style="list-style-type: none"> <li>dated drafting</li> <li>ambiguous provisions</li> <li>unnecessary cross-referencing within and across instruments</li> <li>provisions that duplicate requirements under other laws</li> <li>confusing, unnecessarily complex and restrictive provisions, and</li> <li>uncertain provisions including in relation to reconsideration and review rights.</li> </ul> <p>These issues make the law difficult to navigate for both non-government stakeholders and government agencies administering the law. A key recommendation of this Thematic Review is that the opportunity be taken to repeal all redundant instruments and provisions and to consolidate and revise the instruments such that they are clearer and more user-friendly.</p>
<p>What was the advice of stakeholders in relation to the instruments?</p>	<p>Stakeholders widely acknowledged the value of the Program in providing free or subsidised hearing services to vulnerable Australians. Stakeholders noted that the legislative instruments underpinning the Program are complex and difficult to interpret, with unnecessary cross-referencing across instruments. Stakeholders acknowledged the value of repealing unnecessary legislation and combining all related requirements into a single instrument where possible. Stakeholders also noted that while the legislation was complex, the guidance materials developed by the Department provided clarity and support regarding requirements under the Program.</p>

## Chapter 1 – Context

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### What is the Hearing Services Program?

One in six Australians is affected by hearing loss. Prevalence rates for hearing loss are associated with increasing age, rising from less than one per cent for people aged younger than 15 years to three in every four people aged over 70 years.<sup>1</sup>

The Australian Government Hearing Services Program (the Program) was established in 1991 to assist eligible people with the cost of hearing services, assessments and devices. The Program aims to improve accessibility of hearing services for vulnerable Australians by providing access to hearing services and devices for eligible people.

The hearing services legislation sets up a system under which hearing services are provided to eligible voucher-holders by accredited service providers. A voucher represents an entitlement to one or more specified hearing services. Hearing services include goods or services in connection with hearing rehabilitation, assessment of hearing or hearing loss prevention.

The Program has two streams for the delivery of hearing services:

- the voucher system, and
- the Community Service Obligations (CSO) Program.

### Voucher system

The voucher system enables eligible clients to obtain hearing services and devices from a national network of private hearing services providers and Australian Hearing. In 2016–17, approximately 713,182 clients received a service under the voucher system, with approximately 1.2 million services delivered in total.<sup>2</sup>

These services are provided by approximately 280 private service providers, offering services from approximately 3,100 sites.<sup>3</sup>

In order to access the voucher system, a person must:

- be an Australian citizen or permanent resident 21 years or older and be:
  - a Pensioner Concession Card holder
  - a Department of Veterans' Affairs Gold Card holder
  - a Department of Veterans' Affairs White Card holder issued for specific conditions that include hearing loss
  - receiving Sickness Allowance from Centrelink
  - a dependent of a person in one of the above categories

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<sup>1</sup> Access Economics, The economic impact and costs of hearing loss in Australia, a report by Access Economics Pty Ltd, February 2006.

<sup>2</sup> Department of Health, 2017, Annual Program Statistics 2016-17

<sup>3</sup> Department of Health, 2017, Annual Program Statistics 2016-17

- a member of the Australian Defence Force
- referred by the Disability Employment Services (Disability Management Services) Program or
- a NDIS participant with hearing needs, referred by a planner from the National Disability Insurance Agency, and
- apply for a voucher (in accordance with the approved application form).

Upon approval of an application, the Department issues a 'voucher' to the eligible client. Vouchers for hearing services are valid for three years and provide for a package of services including assessment; fitting, rehabilitation and maintenance; hearing devices; maintenance; adjustments; and replacements.

In order to receive funding from the Commonwealth for the provision of hearing services to voucher holders, service providers must:

- be accredited and contracted by the Department
- utilise devices that are provided by a device supplier that has entered into a Deed of Standing Offer with the Commonwealth
- comply with all conditions of contracts, deeds and legislation, and
- submit a claim for the service provided.

## CSO Program

The CSO Program provides specialist services to people who are eligible for the voucher system with complex hearing needs, young Australians aged up to 26 years, Indigenous groups, or participants in the Community Development Programme.

In order to access the CSO Program, a person must:

- be an Australian citizen or permanent resident and be:
  - a person who is eligible for the voucher system and has complex hearing or communications needs or lives in a remote area
  - an Aboriginal person and/or Torres Strait Islander person who:
    - is over 50 years of age
    - is a participant in the Community Development Programme (formerly known as the Remote Jobs and Communities Program and the Community Development Employment Projects (CDEP) program), or
    - a person who was a CDEP program participant on or after 30 June 2013; has since ceased participating in the program and was receiving hearing services from Australian Hearing prior to ceasing participation
  - a person under 26 years of age who:
    - is an Australian citizen
    - is a permanent resident, or
    - is a young NDIS participant

Clients aged between 21 and 26 may choose to receive services either through the voucher system or the CSO Program.

Australian Hearing is the sole provider of services under the CSO Program. Australian Hearing's services include assessing hearing, fitting hearing devices and providing counselling and rehabilitative programs to enable eligible clients to manage their hearing impairment.

## What legislation supports the Program?

The Program is supported by two Acts and seven legislative instruments.

The Administration Act establishes a system under which hearing services are provided to eligible voucher-holders by contracted service providers (service providers). The Administration Act details:

- eligible persons to participate in the Program
- the hearing services that may be available to eligible voucher-holders
- requirements for service providers to deliver hearing services to eligible voucher-holders, and
- administrative matters relating to the Program.

The *Australian Hearing Services Act 1991* (the Hearing Services Act) sets up the establishment, functions and powers of Australian Hearing.

In summary, the instruments are designed to achieve the following purposes:

Act	Instrument	Purpose
<b><i>Hearing Services Administration Act 1997</i></b>	<i>Hearing Services (Eligible Persons) Determination 1997</i>	This instrument establishes eligible persons to participate in the voucher system of the Program.
	<i>Hearing Services (Participants in Voucher System) Determination 1997</i>	This instrument establishes classes of eligible people who are participants in the voucher system, the types of hearing services available to participants issued a voucher, and the charges payable by participants within different classes.
	<i>Hearing Services Providers Accreditation Scheme 1997</i>	This instrument provides for accreditation of hearing services providers. It establishes the Hearing Services Providers Accreditation Scheme and establishes Australian Hearing Services as one of the accredited service providers.
	<i>Hearing Services Voucher Rules 1997</i>	This instrument specifies application requirements for the issue of a voucher and requirements for using a voucher (for clients accessing the Program).
	<i>Hearing Services Rules of Conduct 2012</i>	This instrument outlines the requirements and standards that contracted service providers must adhere to when providing services to eligible voucher-holders under the Program. It also establishes the qualification requirements for hearing practitioners that contracted service providers rely on to deliver hearing services to eligible voucher-holders.

Act	Instrument	Purpose
<b>Australian Hearing Services Act 1991</b>	<i>Australian Hearing Services Regulations 1992</i>	This instrument specifies the charges payable to Australian Hearing Services for the provision of certain hearing and other services.
	<i>Declared Hearing Services Determination 1997</i>	This instrument establishes the classes of people to whom Australian Hearing Services provides declared hearing services.

## Chapter 2 – Purpose and scope of the Thematic Review

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### Scope of the Review

The seven legislative instruments were all due to sunset at different dates (between 1 April 2016 and 1 October 2022). In 2015 and in 2016, the Attorney General approved the alignment of all sunset dates to 1 October 2019 so that a Thematic Review could be undertaken in the interim.

Consistent with the requirements for thematic reviews detailed in the Attorney General's *Guide to Managing Sunsetting of Legislative Instruments*, this Thematic Review has involved consideration of each of the following matters for each instrument detailed in the table above:

- the objectives and purpose of the instrument
- whether the instrument is still required
- the regulatory impact of each instrument and any opportunities to reduce compliance costs
- whether the instrument is consistent with the broader legal and policy context (including in relation to human rights, international law, administrative laws, criminal law, constitutional law, privacy law and the deregulation agenda) and if not, any necessary changes
- whether the law complies with the clearer laws principles and any changes required to make the instrument simpler, clearer or easier to read, and
- the outcomes of consultation on each of the instruments.

### Inputs to the Review

The Thematic Review involved:

- review of documents provided by the Department, including:
  - the service provider contract
  - Deed of Standing Offer with device suppliers
  - relevant briefs and guidelines, and
  - summary documents, briefs, data, meeting notes, reports and emails
- consideration of recent reviews including:
  - PricewaterhouseCoopers (PwC) review of services and technology supply in the Program, and
  - Australian Competition and Consumer Commission (ACCC) report on the sale of hearing aids
- engagement with relevant Departments, including the Department of Human Services, and
- review of submissions made by stakeholders. On 1 May 2018, the Department advised stakeholders of the Thematic Review and sought comment as to whether the instruments remain fit-for-purpose and how they might be improved. Submissions were received from 20 organisations, including service providers, consumer representatives, device manufacturers and government agencies.

## Chapter 3 – Findings of the Thematic Review

### Do the objectives of the legislation remain relevant?

Overall, the legislation continues to enable Government to:

- provide hearing services to vulnerable clients. In 2016-17 services were provided to 713,182 clients under the voucher system. Services included:
  - 395,829 devices fitted, with devices provided free of charge or for a subsidised cost
  - 328,664 client assessments
  - 185,662 fittings
  - 535,293 maintenance services (such as provision of batteries and ongoing services to support a client to manage their device)
  - 5,566 rehabilitation services (supporting clients to better manage their life with hearing loss and in decision making regarding managing their communication and hearing goals)
  - 216,420 client reviews (whereby a client’s communication and hearing goals are reviewed to determine whether their device requires refitting), and
  - 41,548 other hearing-related services.<sup>4</sup>
- provide hearing services to clients under the CSO Program.

The legislation achieves the current policy objectives of Government by enabling the payment of service providers to deliver hearing services to vulnerable people. This assists eligible people with the cost of hearing services, assessments and AHT, improving accessibility of hearing services to vulnerable Australians.

### Should any of the instruments be repealed or allowed to sunset?

It is recommended that the following actions be taken in relation to each of the instruments. The reasoning supporting each of these recommendations is included in the fit-for-purpose tests for each instrument, at Attachment A.

Instrument	Recommendation
<i>Hearing Services (Eligible Persons) Determinations 1997</i>	<p>Repeal the <i>Hearing Services (Eligible Persons) Determination 1997</i>.</p> <p>Remake the relevant provisions as part of a consolidated instrument made under the Administration Act with changes to:</p> <ul style="list-style-type: none"> <li>• update cross-references with dated legislation</li> <li>• delete redundant provisions where they refer to classes of persons who are no longer eligible for hearing services, and</li> <li>• clarify eligibility for holders of White and Gold cards issued by the Department of Veterans’ Affairs.</li> </ul>
<i>Hearing Services (Participants in Voucher System) Determination 1997</i>	<p>Repeal the <i>Hearing Services (Participants in the Voucher System) Determination 1997</i>.</p>

<sup>4</sup> Department of Health, Annual Program Statistics 2016-17

Instrument	Recommendation
	<p>Remake the relevant provisions as part of a consolidated instrument made under the Administration Act with changes to:</p> <ul style="list-style-type: none"> <li>clarify who is a participant in the voucher system and what hearing services are available to participants in the voucher system, and</li> <li>simplify the provisions, make consequential amendments, delete redundant provisions and better articulate those services that are fully subsidised and those that are partially subsidised for participants in the voucher system.</li> </ul>
<p><i>Hearing Services Providers Accreditation Scheme 1997</i></p>	<p>Repeal the <i>Hearing Service Providers Accreditation Scheme 1997</i>.</p> <p>Remake the relevant provisions as part of a consolidated instrument made under the Administration Act with changes to:</p> <ul style="list-style-type: none"> <li>consolidate provisions to simplify and modernise provisions regarding applications for accreditation</li> <li>clarify processes relating to the accreditation of service providers</li> <li>remove provisions that duplicate requirements in other legislation</li> <li>make the requirement for a public register of accredited service providers consistent with contemporary practice</li> <li>provide that a service provider's accreditation is cancelled on the termination of their contract with the Commonwealth (removing unnecessary administrative steps), and</li> <li>include a section clarifying the decisions in the consolidated instrument that are subject to review and reconsideration.</li> </ul>
<p><i>Hearing Services Voucher Rules 1997</i></p>	<p>Repeal the <i>Hearing Services Voucher Rules 1997</i>.</p> <p>Remake the relevant provisions as part of a consolidated instrument made under the Administration Act with changes to:</p> <ul style="list-style-type: none"> <li>consolidate and amend provisions to simplify and modernise requirements regarding applications for vouchers (and applications for changes to services available under vouchers)</li> <li>remove provisions relating to replacement vouchers as the concept of physical vouchers is redundant, and</li> <li>consolidate and amend provisions to simplify and clarify the requirements for using a voucher and services available under a voucher.</li> </ul>
<p><i>Hearing Services Rules of Conduct 2012</i></p>	<p>Repeal the <i>Hearing Services Rules of Conduct 2012</i>.</p> <p>Remake the instrument as part of a consolidated instrument made under the Administration Act with changes to:</p> <ul style="list-style-type: none"> <li>remove provisions that are duplicated in the service provider contract, other instruments or in general law</li> <li>update provisions to clarify requirements of service providers</li> <li>remove unnecessarily prescriptive provisions that may delay clients' access to hearing services</li> <li>consolidate and amend provisions to clarify the information that must be provided to all voucher-holders</li> <li>consolidate and amend provisions to clarify requirements regarding the safe provision of hearing services</li> <li>remove unnecessarily prescriptive provisions relating to qualified and supervised practitioners, and</li> </ul>

Instrument	Recommendation
	<ul style="list-style-type: none"> <li>consolidate and group provisions to clarify the fees and charges payable by clients.</li> </ul>
<i>Australian Hearing Services Regulations 1992</i>	<p>Repeal the <i>Australian Hearing Services Regulations 1992</i>.</p> <p>Remake the content of the instrument, with changes to:</p> <ul style="list-style-type: none"> <li>remove the requirement for an application for a replacement device to be supported by a statutory declaration (removing unnecessary regulatory burden for clients), and</li> <li>include a provision enabling charges to be automatically adjusted annually by CPI (removing the ongoing need to update legislation).</li> </ul>
<i>Declared Hearing Services Determination 1997</i>	<p>Repeal the <i>Declared Hearing Services Determination 1997</i>.</p> <p>Remake the content of the instrument, with changes to:</p> <ul style="list-style-type: none"> <li>restructure the instrument, to better present the information and improve clarity for stakeholders</li> <li>update dated references to the Remote Jobs and Communities Program, and</li> <li>update the way that rural and remote areas are determined (in line with broader Government policy).</li> </ul>

### What is the regulatory impact of the instruments? Is there opportunity for deregulation?

Many of the instruments contain provisions that are redundant or impose unnecessary regulatory burden or costs on individuals and service providers.

It is proposed that:

- all redundant provisions be repealed (to clarify the legislation and reduce costs to insurers and practitioners having to navigate complex legislation)
- all remaining relevant provisions contained in separate instruments under the Administration Act be consolidated in a single instrument (to ease administration and enable stakeholders to view all relevant provisions in relation to eligible persons, rules relating to vouchers and the hearing services for which vouchers may be used in one instrument)
- unnecessary application requirements be removed (to reduce costs to applicants and prevent delay in accessing the Program), and
- wherever possible, instruments be clarified and simplified to enable stakeholders to more clearly understand the legislative requirements relating to the Program.

Any changes that have policy or financial implications have not been addressed through this Thematic Review.

### Are the instruments consistent with the broader legal and policy context?

In summary:

- Human rights** – The overarching purpose of the hearing services legislation is to improve

accessibility of hearing services for vulnerable Australians by providing hearing services and assistive technology for eligible people. In summary, two of the seven instruments reviewed were assessed as engaging the human rights and freedoms recognised in the seven core international human rights treaties that Australia has ratified. These instruments determine classes of persons eligible to receive hearing services and determine the hearing services that certain classes of persons are eligible to receive. To the extent these instruments do engage human rights and freedoms, the instruments were assessed as promoting the right in Article 12 of the International Covenant on Economic, Social and Cultural Rights (the right of everyone to the enjoyment of the highest attainable standard of physical and mental health).

- **International law** – None of the instruments intersect with any international agreements or arrangement and nor do they relate to any matters of security, trade or investment.
- **Constitutional law** – No constitutional law issues have been raised in any litigation or by state or territory governments.
- **Criminal offences** – The instruments do not create criminal offences. However, one instrument includes a requirement that duplicates the *Criminal Code Act 1995*. It is recommended that this provision be removed to avoid duplication of laws.
- **Administrative law** – In relation to administrative law, two instruments create review rights to the AAT. As detailed in the fit-for-purpose tests, it is suggested that the relevant provisions be revised to provide greater clarity regarding the decisions that may be subject to both reconsideration and review by the AAT. The legislation does not exclude the jurisdictions of the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977*
- **Privacy Law** – A number of the instruments require submission of information (by applicants for hearing services) to the Department. Some of the information provided to the Department is personal and/or confidential information protected under the Privacy Act and the APP. Section 10 of the *Hearing Services Rules of Conduct 2012* provides that any breach of the Privacy Act must be reported to the Department. While the other instruments do not expressly refer to the Privacy Act or the APP, the application forms do. Government departments and agencies are subject to privacy legislation and deal with all information in accordance with relevant requirements.

### Do the instruments comply with the clearer laws principles? What can be done to make them simpler, clearer or easier to read?

The clearer laws policy requires that, amongst other things, laws are no more complex than necessary to give effect to the policy, and that people affected by the laws can understand the laws and how they apply to them.

Many of the instruments do not comply with the clearer laws principles, containing numerous examples of:

- dated drafting
- ambiguous provisions

- unnecessary cross-referencing within and across instruments
- provisions that duplicate requirements under other laws
- uncertain provisions including in relation to reconsideration and review rights, and
- confusing, unnecessarily complex and restrictive provisions.

Stakeholders consistently noted that the delegated legislation is complex and difficult to interpret.

*The legislative instruments in their totality are difficult to read and appear to contain unnecessary repetition and cross-referencing between the legislative instruments and the relevant Acts. Where possible, inclusion of all related requirements into a single piece of legislation would significantly ease access and improve the accessibility of the legislation.<sup>5</sup>*

These issues make the law difficult to navigate, adversely impacting on those in government administering the law and stakeholders. A key recommendation of this Thematic Review is that the opportunity be taken to repeal all redundant instruments and provisions and to consolidate and rename the instruments such that they are clearer and more user-friendly.

In order to improve the clarity of the instrument, a number of amendments are proposed. These changes do not require amendments to the Administration Act in order to be achieved. However, further clarity and streamlining could be achieved with amendments to the Administration Act.

## What has been the stakeholder response to the Thematic Review?

Most stakeholders did not make comments on individual instruments but expressed support for repealing redundant legislation, consolidating instruments and any other measures designed to support ease of use for stakeholders.

Stakeholders noted that the legislative instruments underpinning the Program are complex and difficult to interpret, with unnecessary cross-referencing across instruments. Stakeholders acknowledged the value of repealing unnecessary legislation and combining all related requirements into a single instrument where possible.

Some of the specific matters noted by stakeholders that are being addressed through this Thematic Review include:

- the complexity, overlap and cross-referencing between and within the Eligible Persons Determination and the Participants Determination makes it difficult to determine who the different classes of eligible people are and what services they are eligible for
- there would be value in modernising the legislation with respect to the register of service providers, and
- the requirement for eligible participants in the voucher system to obtain a certificate from a medical practitioner to apply for a voucher creates unnecessary administrative burden for service providers, individuals and medical practitioners.

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<sup>5</sup> Submission to the Thematic Review of hearing services legislation, May 2018

Through the submissions on the Thematic Review a number of stakeholders also raised broader matters of policy and suggested a number of changes to the Program. These broader policy issues and stakeholder suggestions will be separately examined by the Department.

## Bibliography

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### Legislation

Act	Instrument
<i>Hearing Services Administration Act 1997</i>	<i>Hearing Services (Eligible Persons) Determinations 1997</i>
	<i>Hearing Services (Participants in Voucher System) Determination 1997</i>
	<i>Hearing Services Providers Accreditation Scheme 1997</i>
	<i>Hearing Services Voucher Rules 1997</i>
	<i>Hearing Services Rules of Conduct 2012</i>
<i>Australian Hearing Services Act 1991</i>	<i>Australian Hearing Services Regulations 1992</i>
	<i>Declared Hearing Services Determination 1997</i>

### Reports and additional resources

#### Service Provider Contracts and guidance

Department of Health, Australian Government Hearing Services Program Service Provider Contract 1 July 2015 – 30 June 2018 and associated documents, including:

- Schedule of Fees 1 July 2015 – 30 June 2018
- Schedule of Service Items as amended 20 May 2013
- Eligibility Criteria for Refitting
- Hearing Rehabilitation Outcomes
- Minimum Hearing Loss Threshold Guidelines
- Application for Accreditation Forms Package
- Application for Accreditation Kit Manual

#### Manufacturers and Suppliers Deed of Standing Offer

Department of Health, Australian Government Hearing Services Program Deed of Standing Offer 1 July 2017 – 30 June 2018

#### Quick Reference and User Guides

Hearing Services web pages, including:

- About the Australian Government Hearing Services Program
- Annual Program Statistics 2015-16
- Annual Program Statistics 2016-17

### **Previous related reviews**

Australian Competition and Consumer Commission, 3 March 2017, Issues around the sale of hearing aids – Consumer and clinician perspectives

PricewaterhouseCoopers Australia, September 2017, Review of services and technology supply in the Hearing Services Program Final Report to the Department of Health

mpconsulting, July 2012, Review of the efficiency and effectiveness of the regulatory framework for hearing services, report prepared for the Office of Hearing Services

### **Stakeholder submissions**

On 1 May 2018, the Department advised stakeholders of the Thematic Review and sought comment as to whether the instruments remain fit-for-purpose and how they might be improved. Submissions were received from 20 organisations, including service providers, consumer representatives, device manufacturers and government agencies.

## Attachment A – Fit for purpose tests

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### ***HEARING SERVICES (ELIGIBLE PERSONS) DETERMINATION 1997 (F2014C00934)***

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#### **1. OBJECTIVE OF THE INSTRUMENT**

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##### **What is the objective and purpose of the instrument?**

The *Hearing Services (Eligible Persons) Determination 1997* (the Eligible Persons Determination) is made under the *Hearing Services Administration Act 1997* (the Administration Act).

The Australian Government Hearing Services Program (the Program) was established in 1991 to assist eligible people with the cost of hearing services, assessments and devices. The Program aims to improve accessibility of hearing services for vulnerable Australians.

The Administration Act establishes a scheme under which hearing services are provided to eligible voucher-holders by contracted service providers (service providers). A voucher represents an entitlement to one or more specified hearing services. Hearing services include goods or services in connection with hearing rehabilitation, assessment of hearing or hearing loss prevention. The Administration Act details:

- eligible persons to participate in the Program
- the hearing services that may be available to eligible voucher-holders
- requirements for service providers to deliver hearing services to eligible voucher-holders, and
- administrative matters relating to the Program.

Section 5 of the Administration Act defines eligible persons for the purpose of the Administration Act. Subsection 5(3) of the Administration Act enables the Minister, by legislative instrument, to determine an eligible person.

The Eligible Persons Determination establishes classes of eligible persons for the purpose of the Administration Act.

##### **Is the instrument still required?**

Yes, the substance of the instrument allowing the Minister to establish classes of eligible persons under the Program (in addition to those outlined in section 5 of the Administration Act) is required. In the context of this requirement, the instrument should not be allowed to sunset.

However, changes can be made to clarify the provisions and remove redundant provisions. The instrument can be consolidated with other instruments under the Administration Act (as described in section 5 of this fit for purpose test).

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## 2. REGULATORY IMPACT

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**Does the instrument impose significant compliance costs on business, community organisations and individuals?**

No. This instrument is declaratory only.

**If so, how could compliance costs be reduced?**

Not applicable.

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## 3. IDENTIFIED ADMINISTRATIVE ISSUES

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Nil.

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## 4. BROADER LEGAL AND POLICY CONTEXT

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Assessment of impact on the following legal and policy issues:

Issue	Impact	Assessment
Human rights particularly the rights and freedoms recognised or declared by the seven core international conventions.	No	<p>Yes, this instrument does engage 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.</p> <p>To the extent this instrument does engage human rights, it promotes Article 12 of the International Covenant on Economic, Social and Cultural Rights regarding the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This instrument promotes Article 12 by providing access to hearing services and assistive hearing technology for eligible people.</p>
International law particularly security, trade, investment, fisheries, maritime, aviation and space law.	No	The instrument does not raise any international law issues.

Issue	Impact	Assessment
Constitutional law particularly where constitutional issues have been raised in litigation or by state and territory governments.	No	No constitutional law issues have been raised in any litigation or by state or territory governments.
Criminal law particularly to ensure compliance with the Guide to Framing Commonwealth Offences.	No	No criminal offences are created, or referenced, by the instrument.
Administrative law particularly merits or judicial review, administrative decision making processes and alternative dispute resolution.	No	The instrument does not create any reviewable decisions.
Privacy law particularly compliance with the Australian Privacy Principles (APP).	No	The instrument does not require the provision of information to the Department or any other person such that the requirements of the <i>Privacy Act 1988</i> and the APP would be triggered.
Deregulation particularly the Government's commitment to reducing regulatory burdens.	No	Not relevant because the instrument is declaratory only (noting the potential to improve clarity).

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## 5. CLEARER LAWS

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### Does the instrument comply with clearer laws principles?

Yes, this instrument complies with the clearer laws principles.

### What can be done to make the instrument simpler, clearer or easier to read?

In order to improve the clarity of the instrument, a number of amendments are proposed.

The changes identified do not require amendments to the Administration Act in order to be achieved.

#### Consolidate delegated legislation

It is proposed that the provisions specified in the Eligible Persons Determination be consolidated in a single instrument made under the Administration Act (the Hearing Services Rules), along with provisions from the:

- *Hearing Services (Participants in the Voucher System) Determination 1997*
- *Hearing Service Providers Accreditation Scheme 1997*

- *Hearing Services Voucher Rules 1997*, and
- *Hearing Services Rules of Conduct 2012*.

This would ease administration and enable stakeholders to view all relevant provisions in relation to eligible persons, rules relating to vouchers and the hearing services for which vouchers may be used in one instrument.

#### Update dated provisions

Section 3 defines ‘de facto partner’ with reference to section 22B of the *Acts Interpretation Act 1901*. This definition should be updated to remove reference to section 22B and instead reference section 2D of the *Acts Interpretation Act 1901*.

Paragraph 5(2)(c) the Administration Act refers to “a person who holds a card issued by the Commonwealth and known as a Repatriation Health Card, where the card is expressed to be issued for all conditions”. Paragraph 5(2)(d) the Administration Act refers to “a person who, for purposes connected with obtaining treatment for an injury, disease or condition that involves hearing loss, holds a card issued by the Commonwealth and known as a Repatriation Health Card, where the card is expressed to be issued for specific conditions”.

The Repatriation Health Card no longer exists and has been replaced by the White and Gold Cards issued by the Department of Veterans’ Affairs. In the absence of changes to the Administration Act, a new provision should be included in delegated legislation to clarify eligibility for holders of White and Gold cards.

#### Remove redundant provisions

Some of the provisions within the Eligible Persons Determination refer to classes of persons who are no longer eligible for hearing services:

- Subsections 4(2) and 4(3) refer to persons who were fitted under the *Australian Hearing Services Act 1991* prior to the introduction of the voucher system. There are no longer any clients eligible under these provisions and thus these classes are redundant.
- Subsection 4(4) refers to any persons who have had a device fitted and since ceased to be eligible under the Administration Act. This eligibility class was contemplated when the voucher period was much shorter (6-12 months). As the voucher period is now three years, this provision is redundant. Further, it may be being incorrectly relied on by service providers as the basis for providing services to former clients who are no longer eligible for the Program.
- Subsection 4(7) refers to persons who have had a device fitted and since ceased to be eligible under the NDIS. This is a transitional provision for which there are currently no persons in these classes.

Only two subsections are proposed to be retained from this instrument:

- Subsection 4(5) provides eligibility for certain dependants of people who are otherwise eligible under the Administration Act. This class is intended to cover adult dependants of persons with low means. While persons in this class are likely to also be eligible under the Community Service

Obligations Program, there is a need to retain the class to ensure no person's eligibility for hearing services is inadvertently removed.

- Subsection 4(6) provides eligibility for certain people aged 21 and over who are participants in the NDIS or the Western Australian disability scheme (provided for through the *Disability Services Act 1993*).

### **Does the instrument meet OPC drafting and publishing standards?**

Yes. The instrument broadly meets drafting and publishing standards but would benefit from consolidation with other instruments (made under the same Act) and from removing redundant provisions.

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## **6. CONSULTATION**

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Stakeholders noted that the legislative instruments underpinning the Program are complex and difficult to interpret, with unnecessary cross-referencing across instruments. Stakeholders acknowledged the value of repealing unnecessary legislation and combining all related requirements into a single instrument where possible.

Stakeholders noted that some of the provisions within the Eligible Persons Determination, (specifically subsections 4(2), 4(3), and 4(7)) are now redundant.

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## **7. OUTCOME**

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### **Recommendation**

- Repeal the *Hearing Services (Eligible Persons) Determination 1997*.
- Remake the relevant provisions as part of a consolidated instrument made under the *Hearing Services Administration Act 1997* with changes to:
  - section 3 to update a definition
  - subsections 4(2), (3), (4), and (7) to delete redundant provisions
  - subsection 4(1) to amend cross-references (consequential to deleting subsections 4(2), (3), (4), and (7)), and
  - include a new provision to clarify eligibility for holders of White and Gold cards issued by the Department of Veterans' Affairs.

## **HEARING SERVICES (PARTICIPANTS IN THE VOUCHER SYSTEM) DETERMINATION 1997 (F2013C00890)**

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### **1. OBJECTIVE OF THE INSTRUMENT**

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#### **What is the objective and purpose of the instrument?**

The *Hearing Services (Participants in the Voucher System) Determination 1997* (the Participants Determination) is made under the *Hearing Services Administration Act 1997* (the Administration Act).

The Australian Government Hearing Services Program (the Program) was established in 1991 to assist eligible people with the cost of hearing services, assessments and devices. The Program aims to improve accessibility of hearing services for vulnerable Australians.

The Administration Act sets up a system under which hearing services are provided to eligible voucher-holders by contracted service providers (service providers). A voucher represents an entitlement to one or more specified hearing services. Hearing services include goods or services in connection with hearing rehabilitation, assessment of hearing or hearing loss prevention. The Administration Act details:

- eligible persons to participate in the Program
- the hearing services that may be available to eligible voucher-holders
- requirements for service providers to deliver hearing services to eligible voucher-holders, and
- administrative matters relating to the Program.

Section 10 of the Administration Act, enables the Minister to issue vouchers to participants in the voucher system established under the Administration Act.

Section 13 of the Administration Act, enables the Minister to determine various matters concerning participants in the voucher system.

The Participants Determination is a legislative instrument made under section 13 of the Administration Act. The Participants Determination establishes classes of eligible persons who are participants in the voucher system and the types of hearing services available to a participant who is issued a voucher. It describes the charges payable by participants who come within certain classes, additional requirements participants must meet to be a participant in the voucher system and the persons to whom the Minister may delegate the function of approving hearing devices.

#### **Is the instrument still required?**

Yes, the substance of the instrument establishing persons who are participants in the voucher system and the types of hearing services available to participants is required.

If no amendments are made to the Administration Act, changes can be made to clarify the provisions and remove redundant provisions. The instrument can be consolidated with other instruments under the Administration Act (as described in section 5 of this fit for purpose test).

However, if amendments were made to the Administration Act, it would be possible to remove the concept of participants entirely, such that delegated legislation would set out the services available to different classes of eligible persons (without the need for the separate concept of participants).

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## 2. REGULATORY IMPACT

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### Does the instrument impose significant compliance costs on business, community organisations and individuals?

No. The instrument is declaratory and outlines the types of services available to different classes of eligible persons (voucher-holders). However as detailed below, stakeholders have identified the administrative burden associated with interpreting unnecessarily complex provisions included in this instrument.

### If so, how could compliance costs be reduced?

Indirect compliance costs could be reduced by making the provisions in this instrument clearer and more readily understandable for stakeholders.

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## 3. IDENTIFIED ADMINISTRATIVE ISSUES

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A number of the administrative issues posed by the instrument relate to the instrument's compliance with the clearer laws policies. All issues have been dealt with together in section 5 of this fit for purpose test.

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## 4. BROADER LEGAL AND POLICY CONTEXT

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Assessment of impact on the following legal and policy issues:

Issue	Impact	Assessment
Human rights particularly the rights and freedoms recognised or declared by the seven core international conventions	Yes	This instrument does engage human rights and freedoms recognised in the seven core international human rights treaties that Australia has ratified because it determines what hearing services certain classes of persons are eligible to receive. To the extent this instrument does engage human rights, it supports Article 12 of the International Covenant on Economic, Social and Cultural Rights regarding the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This instrument supports Article 12 as it promotes the accessibility of hearing services for the

Issue	Impact	Assessment
		most vulnerable people in society by providing access to hearing services and assistive hearing technology for eligible people.
International law particularly security, trade, investment, fisheries, maritime, aviation and space law.	No	The instrument does not raise any international law issues.
Constitutional law particularly where constitutional issues have been raised in litigation or by state and territory governments.	No	No constitutional law issues have been raised in any litigation or by state or territory governments.
Criminal law particularly to ensure compliance with the Guide to Framing Commonwealth Offences.	No	No criminal offences are created, or referenced, by the instrument.
Administrative law particularly merits or judicial review, administrative decision making processes and alternative dispute resolution.	No	The instrument does not create any reviewable decisions.
Privacy law particularly compliance with the Australian Privacy Principles (APP).	No	The instrument does not require the provision of information to the Department or any other person such that the requirements of the <i>Privacy Act 1988</i> and the APP would be triggered.
Deregulation particularly the Government's commitment to reducing regulatory burdens.	No	Not relevant because the instrument is declaratory only (noting the potential to improve clarity).

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## 5. CLEARER LAWS

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### Does the instrument comply with clearer laws principles?

No, this instrument does not comply with the clearer laws principles. It is difficult to interpret, with unnecessary cross-referencing within the instrument and across other instruments.

### What can be done to make the instrument simpler, clearer or easier to read?

In order to improve the clarity of the instrument, a number of amendments are proposed. The following changes do not require amendments to the Administration Act in order to be achieved.

However, further clarity and streamlining could be achieved with amendments to the Administration Act.

### Consolidate delegated legislation

It is proposed that the provisions specified in the Participants Determination be consolidated in a single instrument made under the Administration Act, along with provisions from the:

- *Hearing Services (Eligible Persons) Determination 1997*
- *Hearing Service Providers Accreditation Scheme 1997*
- *Hearing Services Voucher Rules 1997*, and
- *Hearing Services Rules of Conduct 2012*.

This would ease administration and enable stakeholders to view all relevant provisions in relation to eligible classes of people, rules relating to vouchers and the hearing services for which vouchers may be used in one instrument.

### Participants in the voucher system

Section 5 of the Administration Act defines an eligible person. The term 'eligible person' is used in only one other provision at section 13 of the Act. Section 13 provides that each eligible person within a specified class of eligible persons is a 'participant in the voucher system'.

Two separate instruments define 'eligible persons' (*Hearing Services (Eligible Persons) Determination 1997*) and 'participants in the voucher system' (the Participants Determination). This is confusing for stakeholders because the two concepts are used when the reality is that both concepts are describing people to whom a voucher may be issued such that they can receive hearing services and devices under the Program.

If there were opportunities to amend the Administration Act, changes could be made to that Act to refer to only one concept of eligible persons.

In the absence of Act amendments, the consolidation of existing instruments can improve clarity regarding eligibility. When consolidated, it is proposed the existing provisions in the Participants Determination be replaced with one provision which states that, for the purposes of paragraph 13(1)(a) of the Administration Act, each eligible person is a participant in the voucher system.

### Hearing services available to participants

The instrument currently describes the different types of hearing services available to certain classes of participants in the voucher system.

Existing provisions include:

- redundant provisions
- dated provisions, and
- transitional provisions that are no longer operable.

It is proposed that sections 5, 6, 7, 8, 9 and 10 of the Participants Determination be redrafted to more clearly set out the hearing services available to participants in the voucher system. Separate provisions should more clearly articulate those services that are fully subsidised and those that are partially subsidised for participants in the voucher system.

### **Does the instrument meet OPC drafting and publishing standards?**

No. As noted above, the instrument includes numerous examples of dated and unnecessarily complicated drafting.

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## **6. CONSULTATION**

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Stakeholders noted that the cross-referencing and repetition of eligibility criteria within the Administration Act, the *Hearing Services (Eligible Persons) Determination 1997* and the Participants Determination is confusing and requires careful cross-referencing, making eligibility difficult to determine.

Stakeholders acknowledged the value of repealing unnecessary legislation and combining all related requirements into a single instrument where possible.

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## **7. OUTCOME**

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### **Recommendation**

- Repeal the *Hearing Services (Participants in the Voucher System) Determination 1997*.
- Remake the relevant provisions as part of a consolidated instrument made under the *Hearing Services Administration Act 1997* with changes to:
  - include a provision for the purposes of paragraph 13(1)(a) of the Administration Act, stating that an eligible person is a participant in the voucher system, and
  - amend sections 5, 6, 7, 8, 9 and 10 to simplify the provisions, make consequential amendments, delete redundant provisions and better articulate those services that are fully subsidised and those that are partially subsidised for participants in the voucher system.

## **HEARING SERVICES PROVIDERS ACCREDITATION SCHEME 1997 (F2007C00350)**

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### **1. OBJECTIVE OF THE INSTRUMENT**

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#### **What is the objective and purpose of the instrument?**

The *Hearing Service Providers Accreditation Scheme 1997* (the Accreditation Scheme) is made under the *Hearing Services Administration Act 1997* (the Administration Act).

The Australian Government Hearing Services Program (the Program) was established in 1991 to assist eligible people with the cost of hearing services, assessments and devices. The Program aims to improve accessibility of hearing services for vulnerable Australians.

The Administration Act sets up a system under which hearing services are provided to eligible voucher-holders by contracted service providers (service providers). A voucher represents an entitlement to one or more specified hearing services. Hearing services include goods or services in connection with hearing rehabilitation, assessment of hearing or hearing loss prevention. The Administration Act details:

- eligible persons to participate in the Program
- the hearing services that may be available to eligible voucher-holders
- requirements for service providers to deliver hearing services to eligible voucher-holders, and
- administrative matters relating to the Program.

Subsection 15(1) of the Administration Act provides for the Minister to formulate a scheme by legislative instrument for the accreditation of entities as service providers.

The Accreditation Scheme provides for accreditation of entities that can demonstrate that they are able to provide to participants in the voucher system a specified level and range of hearing services.

The Accreditation Scheme:

- describes how an entity may apply to the Minister for accreditation
- describes the matters the Minister may have regard to in deciding to accredit an entity
- describes the conditions to which the accreditation decision may be subject
- establishes Australian Hearing Services as an accredited service provider
- describes actions the Minister may take in regard to alleged contravention by a service provider of a condition of its accreditation, and
- describes the circumstances in which accreditation may be cancelled or surrendered.

#### **Is the instrument still required?**

Yes. The Administration Act compels the making of a legislative instrument by the Minister. In the context of this requirement, the instrument should not be allowed to sunset.

However, changes can be made to clarify the provisions and remove redundant provisions. The instrument can be consolidated with other instruments under the Administration Act (as described in section 5 of this fit for purpose test).

Further consideration of the ongoing need for an accreditation scheme, in which service providers must first be accredited in order to contract with the Commonwealth, may be considered separately by the Department.

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## 2. REGULATORY IMPACT

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### **Does the instrument impose significant compliance costs on business, community organisations and individuals?**

The instrument imposes compliance costs on business by requiring accreditation of service providers.

Accreditation is the process of approving an entity to provide hearing services to Program clients. The Accreditation Scheme establishes the criteria that entities need to demonstrate in their applications, including:

- experience in providing hearing services
- proposed staffing profile and qualifications of the staff
- the accessibility of the premises in which it is proposed to provide the services
- whether the proposed premises are of a satisfactory standard
- capacity to meet the rules of conduct
- financial viability, and
- other matters that might affect the standard of service.

Entities that are not accredited cannot be offered a contract with the Commonwealth to provide hearing services through the Program.

### **If so, how could compliance costs be reduced?**

Compliance costs could be reduced by removing the requirements for accreditation and instead relying on due diligence undertaken by the Commonwealth as part of its pre-contractual negotiations.

For the purposes of this Thematic Review it has been assumed that amendments to the Administration Act may not be possible, such that the suggested changes involve retention of the concept of accreditation but redesign the scheme to provide maximum flexibility and minimise regulatory burden.

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## 3. IDENTIFIED ADMINISTRATIVE ISSUES

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A number of the administrative issues posed by the instrument relate to the instrument's compliance with the clearer laws policies. All issues have been dealt with together in section 5 of this fit for purpose test.

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#### 4. BROADER LEGAL AND POLICY CONTEXT

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Assessment of impact on the following legal and policy issues:

Issue	Impact	Assessment
Human rights particularly the rights and freedoms recognised or declared by the seven core international conventions	No	The instrument does not engage any of the human rights and freedoms recognised in the seven core international human rights treaties that Australia has ratified. However, the overarching purpose of the hearing services legislation is to improve accessibility of hearing services for vulnerable Australians by providing access to hearing services and assistive hearing technology for eligible people. This supports Article 12 of the International Covenant on Economic, Social and Cultural Rights regarding the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
International law particularly security, trade, investment, fisheries, maritime, aviation and space law.	No	The instrument does not raise any international law issues.
Constitutional law particularly where constitutional issues have been raised in litigation or by state and territory governments.	No	No constitutional law issues have been raised in any litigation or by state or territory governments.
Criminal law particularly to ensure compliance with the Guide to Framing Commonwealth Offences.	No	No criminal offences are created by the instrument.  However, subsection 6(5) refers to the provision of false or misleading information to a Commonwealth entity, which is an offence under section 137.1 of the <i>Criminal Code Act 1995</i> . It is proposed this subsection be removed, as discussed below, in order to avoid duplication of laws.
Administrative law particularly merits or judicial review, administrative decision making	No	The instrument creates reviewable decisions in relation to decisions made under the accreditation scheme or under a condition of accreditation. Reconsideration of decisions is

Issue	Impact	Assessment
processes and alternative dispute resolution.		<p>undertaken by the Minister. Where the Minister affirms or varies the decision on reconsideration, review by the Administrative Appeals Tribunal may be sought.</p> <p>Changes are not proposed in relation to reviewable decisions or review rights. However, it is proposed that the consolidated instrument provide greater clarity regarding where a decision is, or is not, a reviewable decision.</p>
Privacy law particularly compliance with the Australian Privacy Principles (APP).	No	<p>The instrument requires the provision of information to the Minister that includes personal and/or confidential information protected under the <i>Privacy Act 1988</i> and the APP. While the instrument does not expressly refer to the legislation or the APP, the approved form for the collection of such information does. The form also gains consent to share personal information with relevant agencies. The Department is subject to privacy legislation and deals with information in accordance with relevant requirements.</p>
Deregulation particularly the Government's commitment to reducing regulatory burdens.	No	<p>Further consideration of the ongoing need for an accreditation scheme, in which service providers must first be accredited in order to contract with the Commonwealth, may be considered separately by the Department in consultation with stakeholders.</p>

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## 5. CLEARER LAWS

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### Does the instrument comply with clearer laws principles?

No, this instrument does not comply with the clearer laws principles. The instrument includes numerous examples of:

- dated provisions
- ambiguous provisions
- unnecessary provisions that duplicate requirements under other laws, and
- uncertain provisions including in relation to reconsideration and review rights.

## What can be done to make the instrument simpler, clearer or easier to read?

In order to improve the clarity of the instrument, a number of amendments are proposed. The following changes require no amendments to the Administration Act in order to be achieved.

### Consolidate delegated legislation

It is proposed that the provisions specified in the Accreditation Scheme be consolidated in a single instrument made under the Administration Act, along with relevant provisions from the:

- *Hearing Services (Eligible Persons) Determination 1997*
- *Hearing Services (Participants in the Voucher System) Determination 1997*
- *Hearing Services Voucher Rules 1997*, and
- *Hearing Services Rules of Conduct 2012*

This would ease administration and enable stakeholders to view all relevant provisions in relation to eligible classes of Program participants, rules relating to vouchers and the hearing services for which vouchers may be used in one instrument.

### Application for accreditation

Sections 5, 5A and 6 of the Accreditation Scheme outline the process for an entity to apply to the Minister to be accredited as a service provider.

The provisions:

- require an application to be made in the manner approved by the Minister and to include information reasonably required for a decision to be made by the Minister. This creates uncertainty as to the application requirements and is not consistent with contemporary drafting practice whereby applications must be in the approved form and contain the information required by the approved form
- include unnecessary details that can readily be addressed through the approved form (such as the express requirement for the application to authorise the Minister to check the accuracy of the information provided). This can readily be dealt with through a declaration in the application form itself and does not need to be expressly mentioned in the instrument, and
- highlight some matters to be addressed in the application and not others. For example, section 5A highlights the need for applicants who are audiometrists to show they have a link to an audiologist but does not position this requirement as part of a more significant requirement that they demonstrate they have systems in place (including policies and procedures) to ensure that services are delivered safely (and by qualified practitioners).

In order to simplify and modernise the legislation, sections 5 and 5A could be replaced with one provision that requires an application to be in the approved form, and to contain the information required by the approved form.

### Decisions by the Minister

Subsection 6(2) outlines the matters the Minister must consider in deciding to accredit an entity. The accreditation requirements are overly burdensome for service providers and the Department and are not well aligned to the Program risks or outcomes. Subsection 6(2) could be amended to better reflect the intent of the Program and the ongoing responsibilities of service providers.

Subsection 6(3) provides that a decision to accredit an entity as a service provider can be subject to conditions specified in the “instrument of accreditation”. This introduces a new concept that is not referenced elsewhere and creates confusion. Subsection 6(3) could be reframed such that a decision to accredit an entity may be subject to one or more conditions.

### Conditions of accreditation

Subsection 6(5) provides that the decision to accredit an entity is subject to a condition that the entity does not provide false and misleading information to the Commonwealth. Section 137.1 of the *Criminal Code Act 1995* makes the provision of false or misleading information to a Commonwealth entity an offence. Subsection 6(5) should be removed as it duplicates the requirements of the *Criminal Code Act 1995* and creates ambiguity as to the consequence for providing false or misleading information for the purposes of accreditation.

### Register of providers

Section 8 of the instrument requires the Minister to keep a register of accredited service providers, and for that register to be open to public inspection during business hours.

It is proposed that subsection 8(2) be updated to reflect contemporary practice, whereby a register must be kept and made publicly available on the relevant Department’s website.

### Cancellation and surrender of accreditation

Section 11 provides that the Minister may cancel the accreditation of a service provider whose contract with the Commonwealth is terminated. This creates uncertainty and requires an unnecessary administrative step because the service provider’s accreditation is not automatically taken to be cancelled if the contract is terminated. Section 11 could be amended such that the accreditation of a service provider is automatically taken to be cancelled upon termination of their contract with the Commonwealth.

Section 12 provides that an accredited service provider may “surrender” its accreditation by giving the Minister 30 days’ written notice of this intention. This introduces a concept that is not referenced elsewhere and creates confusion. Section 12 could be amended such that the Minister must cancel a service provider’s accreditation upon written request by the service provider. This would simplify the provisions because there would be a single provision that sets out all of the different ways accreditation may be cancelled, including on request by a service provider.

### Reconsideration and review

Section 29 of Administration Act broadly provides that a decision made by the Minister under the Accreditation Scheme may be subject to reconsideration by the Minister and review by the Administrative Appeals Tribunal (refer sections 29 and 35 of the Administration Act). However, it is not clear within the Accreditation Scheme which decisions are subject to reconsideration and review. It is proposed that a new provision is included in the Accreditation Scheme expressly providing that:

- the following decisions are subject to reconsideration and review:
  - not to accredit an entity as a service provider
  - to impose a condition on accreditation
  - to revoke or vary a condition of accreditation
  - to determine there has been a contravention of a condition of accreditation, and
  - to cancel accreditation (other than in circumstances where the service provider requests cancellation)
- the following decisions are not subject to reconsideration and review:
  - to accredit an entity as a service provider, and
  - to cancel accreditation where a service provider requests cancellation.

### **Does the instrument meet OPC drafting and publishing standards?**

No. As noted above, the instrument includes numerous examples of dated drafting.

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## **6. CONSULTATION**

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Stakeholders noted that the legislative instruments underpinning the hearing services program are complex and difficult to interpret, with unnecessary cross-referencing across instruments. Stakeholders acknowledged the value of repealing unnecessary legislation and combining all related requirements into a single instrument where possible.

Stakeholders noted the value in modernising the legislation with respect to the register of service providers.

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## **7. OUTCOME**

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### **Recommendation**

- Repeal the *Hearing Service Providers Accreditation Scheme 1997*.
- Remake the relevant provisions as part of a consolidated instrument made under the *Hearing Services Administration Act 1997* with changes to:
  - consolidate and amend sections 5 and 5A to simplify and modernise provisions regarding applications for accreditation
  - amend subsection 6(2) to better reflect the responsibilities of an accredited service provider
  - amend subsection 6(3) and section 12 to reduce complexity
  - delete subsection 6(5) as it duplicates existing requirements

- amend section 8 to make the requirement for a public register consistent with contemporary practice
- amend section 11 to clarify cancellation of accreditation, and
- include a section outlining the decisions in the consolidated instrument that are subject to review and reconsideration.

## **HEARING SERVICES VOUCHER RULES 1997 (F2006C00689)**

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### **1. OBJECTIVE OF THE INSTRUMENT**

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#### **What is the objective and purpose of the instrument?**

The *Hearing Services Voucher Rules 1997* (the Voucher Rules) are made under the *Hearing Services Administration Act 1997* (the Administration Act).

The Australian Government Hearing Services Program (the Program) was established in 1991 to assist eligible people with the cost of hearing services, assessments and devices. The Program aims to improve accessibility of hearing services for vulnerable Australians.

The Administration Act sets up a system under which hearing services are provided to eligible voucher-holders by contracted service providers (service providers). A voucher represents an entitlement to one or more specified hearing services. Hearing services include goods or services in connection with hearing rehabilitation, assessment of hearing or hearing loss prevention. The Administration Act details:

- eligible persons to participate in the Program
- the hearing services that may be available to eligible voucher-holders
- requirements for service providers to deliver hearing services to eligible voucher-holders, and
- administrative matters relating to the Program.

Subsection 11(1) of the Administration Act enables the Minister to formulate by legislative instrument rules relating to vouchers. The Voucher Rules detail:

- application requirements for the issue of a voucher
- conditions for the replacement of a voucher
- conditions for using vouchers
- conditions for the authorisation of replacement hearing devices
- conditions on the validity of a voucher, and
- application requirements for revalidation of a voucher.

#### **Is the instrument still required?**

Yes, rules relating to vouchers are still required. However, changes to reduce regulatory burden, clarify provisions, better align with clearer laws principles and remove redundant provisions are detailed below. The instrument can be consolidated with other instruments under the Administration Act (as described in section 5 of this fit for purpose test).

If amendments were made to the Administration Act, the concept of a voucher could be removed from the legislation entirely, such that rules made under the Administration Act could simply detail services available to eligible persons notified to the Department (along with any conditions attached to the delivery of such services and any approval).

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## 2. REGULATORY IMPACT

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### **Does the instrument impose significant compliance costs on business, community organisations and individuals?**

Section 5 of the Voucher Rules sets out the matters to be included in an application for a voucher.

Subsections 5(3) and 5(4) of the Voucher Rules impose compliance costs on individuals by stating that the form must require applicants:

- who have not previously applied for a voucher to obtain a certificate from a medical practitioner stating whether there are any medical contraindications to the fitting of the applicant with a hearing device, and
- who have previously been fitted with a hearing device to obtain a certificate from a hearing services practitioner or a medical practitioner stating that the applicant needs the hearing service applied for.

Through consultations to inform this Thematic Review, stakeholders highlighted the cost of this requirement on the Medicare system, on the client (in gap fees to the medical practitioner) and in the waste of valuable time for medical practitioners.

The Rules also impose costs on voucher-holders (and service providers) seeking to change the voucher including to expand the suite of services available under the voucher or to revalidate the voucher to enable additional services to be provided. Some of these compliance costs are reasonable (given the benefit to the voucher-holder) and others are unnecessary. This is discussed in more detail below.

### **If so, how could compliance costs be reduced?**

Compliance costs could be reduced by removing overly prescriptive application conditions from the legislation, as described in section 5 of this fit for purpose test.

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## 3. IDENTIFIED ADMINISTRATIVE ISSUES

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A number of the administrative issues posed by the instrument relate to the instrument's compliance with the clearer laws policies. All issues have been dealt with together in section 5 of this fit for purpose test.

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## 4. BROADER LEGAL AND POLICY CONTEXT

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Assessment of impact on the following legal and policy issues:

Issue	Impact	Assessment
Human rights particularly the rights and freedoms recognised or declared by the seven core international conventions.	No	The instrument does not engage any of the human rights and freedoms recognised in the seven core international human rights treaties that Australia has ratified. However, the overarching purpose of the hearing services legislation is to improve accessibility of hearing services for the most vulnerable people in society by providing access to hearing services and assistive hearing technology for eligible people. This supports Article 12 of the International Covenant on Economic, Social and Cultural Rights regarding the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
International law particularly security, trade, investment, fisheries, maritime, aviation and space law.	No	The instrument does not raise any international law issues.
Constitutional law particularly where constitutional issues have been raised in litigation or by state and territory governments.	No	No constitutional law issues have been raised in any litigation or by state or territory governments.
Criminal law particularly to ensure compliance with the Guide to Framing Commonwealth Offences.	No	No criminal offences are created, or referenced, by the instrument.
Administrative law particularly merits or judicial review, administrative decision making processes and alternative dispute resolution.	Yes	<p>The instrument creates reviewable decisions in relation to refusing to: issue a voucher; issue a replacement voucher or revalidate a voucher. Reconsideration of decisions is undertaken by the Minister. Where the Minister affirms or varies the decision on reconsideration, review by the Administrative Appeals Tribunal may be sought.</p> <p>Due to electronic storage of voucher information, changes are proposed that will remove the concept of a replacement voucher. Under the current system the voucher is electronic, removing the need to for hard copy vouchers. While changes are proposed to provisions that currently provide</p>

Issue	Impact	Assessment
		for reconsideration and review rights, there is no diminution proposed to the rights of voucher-holders.
Privacy law particularly compliance with the Australian Privacy Principles (APP).	No	The instrument requires the provision of information to the Minister that includes personal and/or confidential information protected under the <i>Privacy Act 1988</i> and the APP. While the instrument does not expressly refer to the legislation or the APP, the approved form for the collection of such information does. The Department is subject to privacy legislation and deals with all information in accordance with relevant requirements.
Deregulation particularly the Government's commitment to reducing regulatory burdens.	Yes	Opportunity to reduce regulatory burden by removing unnecessary requirements.

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## 5. CLEARER LAWS

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### Does the instrument comply with clearer laws principles?

No, this instrument does not comply with the clearer laws principles.

The instrument includes numerous examples of dated and ambiguous provisions. The instrument in its current form is overly complex and prescriptive in some areas and lacking clarity in others. It:

- includes overly prescriptive and dated application requirements
- lacks clarity regarding critical concepts (including the period for which a voucher is valid)
- creates confusion due to the assumption of a physical voucher, which does not exist in practice
- creates confusion regarding the concepts of replacement vouchers and the revalidation of vouchers, and
- includes provisions that are dated and do not comply with contemporary drafting standards.

### What can be done to make the instrument simpler, clearer or easier to read?

In order to improve the clarity of the instrument, a number of amendments are proposed. The following changes do not require amendments to the Administration Act in order to be achieved. Further clarity and streamlining could be achieved with amendments to the Administration Act.

### Consolidate delegated legislation

It is proposed that the provisions specified in the Voucher Rules be consolidated in a single instrument made under the Administration Act, along with provisions from the:

- *Hearing Services (Eligible Persons) Determination 1997*
- *Hearing Services (Participants in the Voucher System) Determination 1997*
- *Hearing Service Providers Accreditation Scheme 1997*, and
- *Hearing Services Rules of Conduct 2012*.

This would ease administration and enable stakeholders to view all relevant provisions in relation to eligible classes of voucher-holders, rules relating to vouchers and the hearing services for which vouchers may be used in one instrument.

### Applying for and issuing vouchers

Sections 5, 6, 7 and 11 of the Voucher Rules describe how an application for a voucher may be made and how a person may use a voucher.

The provisions:

- enable the Minister to approve a form (for a person to apply for a voucher) but also include unnecessary information about some of the matters that may be included in the form and some matters that must be included in the form. This includes a requirement that the applicant obtain a certificate from a medical practitioner, which imposes unnecessary burden and compliance cost on applicants and can also delay access to the Program
- provide for a voucher to include the date of issue, but not the date of expiry
- lack clarity regarding the voucher conditions including the services available under the voucher (such that the Voucher Rules then need to include detailed provisions relating to replacement and revalidation of vouchers rather than standard provisions relating to applications for variation of conditions of voucher).

In order to simplify and modernise the legislation, sections 5, 6, 7 and 11 could be deleted and redrafted to provide that:

- A person may apply to the Minister for a voucher or a variation to a condition of a voucher.
- An application must be in the approved form and contain the information required by the approved form.
- The Minister may grant the application for a voucher if satisfied that the voucher holder is an eligible person and certain requirements have been met (i.e. issuing the voucher is reasonable).
- The voucher must specify the date of issue, the date of expiry and any conditions to which the voucher is subject (including the service or services the eligible person is able to access).

- A voucher entitles the person identified to receive the service or services stipulated, from a contracted service provider.

This aligns with current drafting practice, streamlines legislative and administrative requirements and provides flexibility for application requirements to be changed as necessary.

#### Replacement vouchers

Section 8 of the Voucher Rules contemplates that a current voucher may be defaced, destroyed or lost. In the 20 years since the instrument was drafted, the issue of physical vouchers has been replaced by digital vouchers, making the concept of vouchers being defaced or destroyed redundant.

In addition, voucher related information is now stored in an electronic system, making the concept of a replacement voucher redundant. It is therefore proposed that section 8 be deleted.

#### Increasing or changing services available through the voucher

The services referenced on the voucher are limited and once a person has received some of the services, they may not receive the same services again.

Sections 10 and 12 therefore describe the circumstances in which the Minister can vary a voucher such that a replacement device can be supplied or additional services can be provided.

The existing provisions are confusing, unnecessarily complex and restrictive, particularly regarding the concepts of replacement vouchers and revalidation of vouchers.

In order to simplify and clarify the legislation, sections 9, 10 and 12 could be amended to provide that a person may apply to the Minister for a variation to the conditions of a voucher where the service or services the eligible person may receive are described as conditions of the voucher.

The rules could set out the matters to which the Minister must have regard in deciding whether to vary the conditions of the voucher to enable supply of a replacement device or changes to the services available under the voucher.

Standard provisions relating to reconsideration and review could be included.

#### **Does the instrument meet OPC drafting and publishing standards?**

No. As noted above, the instrument includes numerous examples of dated drafting.

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## **6. CONSULTATION**

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Stakeholders noted the requirement in subsection 5(3) of the instrument that an application form for the issue of a voucher must require an applicant to obtain a certificate from a medical practitioner creates unnecessary administrative burden for service providers, individuals and medical practitioners.

Stakeholders acknowledged the value of repealing unnecessary legislation and combining all related requirements into a single instrument where possible.

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## 7. OUTCOME

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### Recommendation

- Repeal the *Hearing Services Voucher Rules 1997*.
- Remake the relevant provisions as part of a consolidated instrument made under the *Hearing Services Administration Act 1997* with changes to:
  - consolidate and amend sections 5, 6, 7 and 11 to simplify and modernise requirements regarding the application for vouchers and issue of vouchers
  - delete section 8 as the concept of physical vouchers is redundant, and
  - consolidate and amend sections 9, 10 and 12 to simplify and clarify the requirements for using a voucher and varying services under a voucher.

## **HEARING SERVICES RULES OF CONDUCT 2012 (F2012L01149)**

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### **1. OBJECTIVE OF THE INSTRUMENT**

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#### **What is the objective and purpose of the instrument?**

The *Hearing Services Rules of Conduct 2012* (the Rules of Conduct) are made under the *Hearing Services Administration Act 1997* (the Administration Act).

The Australian Government Hearing Services Program (the Program) was established in 1991 to assist eligible people with the cost of hearing services, assessments and devices. The Program aims to improve accessibility of hearing services for vulnerable Australians.

The Administration Act sets up a system under which hearing services are provided to eligible voucher-holders by contracted service providers (service providers). A voucher represents an entitlement to one or more specified hearing services. Hearing services include goods or services in connection with hearing rehabilitation, assessment of hearing or hearing loss prevention. The Administration Act details:

- eligible persons to participate in the Program
- the hearing services that may be available to eligible voucher-holders
- requirements for service providers to deliver hearing services to eligible voucher-holders, and
- administrative matters relating to the Program.

The Rules of Conduct are a legislative instrument made under subsection 17(1) of the Administration Act. The Rules of Conduct outline the requirements and standards that service providers must adhere to when providing services to voucher-holders. They also establish the qualification requirements for hearing practitioners engaged by service providers to deliver hearing services to voucher-holders.

#### **Is the instrument still required?**

Yes. The Administration Act compels the making of a legislative instrument by the Minister. The instrument also details critical requirements relating to the way that hearing services must be delivered by service providers. These requirements provide protections for voucher-holders and reduce risk to the Commonwealth. In the context of these requirements, the instrument should not be allowed to sunset.

However, changes should also be made to some provisions to update them, provide clarity and ensure the Rules of Conduct operate as intended. The instrument can be consolidated with other instruments under the Administration Act (as described in section 5 of this fit for purpose test).

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## 2. REGULATORY IMPACT

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### Does the instrument impose significant compliance costs on business, community organisations and individuals?

The Rules of Conduct impose requirements on service providers, regarding:

- the services they provide under the Program
- practitioner qualifications
- the circumstances in which they can and cannot charge voucher-holders fees and charges, and
- requirements relating to record-keeping, advertising, complaints and reporting.

These requirements impose compliance costs on service providers.

### If so, how could compliance costs be reduced?

The regulation of service providers is proportionate to the Commonwealth's role in setting requirements and monitoring the compliance of service providers, relative to the objectives of the Program and Commonwealth funding of hearing services.

The requirements (and related compliance costs) ensure that, among other things:

- services are provided by appropriately qualified practitioners
- voucher-holders can move between service providers
- voucher-holders are not misled as to the services they require and the cost of such services
- voucher-holders who are dissatisfied with services provided have an opportunity to complain, and
- the Commonwealth can monitor service provider compliance with the minimum requirements.

However, there are some requirements that are outdated, unnecessarily prescriptive or piecemeal such that the expectations of the Commonwealth with respect to the delivery of hearing services is not always clear. Consolidation of instruments under the Administration Act could enable changes to some of the provisions to reduce unnecessary compliance costs and improve the quality of the regulation. This is outlined in section 5 of this fit for purpose test.

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## 3. IDENTIFIED ADMINISTRATIVE ISSUES

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A number of the administrative issues posed by the instrument relate to the instrument's compliance with the clearer laws policies. All issues have been dealt with together in section 5 of this fit for purpose test.

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## 4. BROADER LEGAL AND POLICY CONTEXT

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Assessment of impact on the following legal and policy issues:

Issue	Impact	Assessment
Human rights particularly the rights and freedoms recognised or declared by the seven core international conventions	No	<p>Section 22 of the instrument states that a service provider must not discriminate against a voucher-holder on the ground of the voucher-holder's: age; disability; gender; racial or ethnic characteristics, origin or background; religious beliefs or affiliation; sexual preference or participation in the voucher system. This provision promotes multiple rights contained in the seven core international human rights treaties that Australia has ratified (including, for example, Article 25 of the United Nations Convention on the Rights of Persons with Disabilities: that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability).</p> <p>The overarching purpose of the hearing services legislation is to improve accessibility of hearing services for vulnerable people by providing access to hearing services and assistive hearing technology for eligible people. This supports Article 12 of the International Covenant on Economic, Social and Cultural Rights regarding the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.</p>
International law particularly security, trade, investment, fisheries, maritime, aviation and space law.	No	The instrument does not raise any international law issues.
Constitutional law particularly where constitutional issues have been raised in litigation or by state and territory governments.	No	No constitutional law issues have been raised in any litigation or by state or territory governments.
Criminal law particularly to ensure compliance with the Guide to Framing Commonwealth Offences.	No	No criminal offences are created, or referenced, by the instrument.

Issue	Impact	Assessment
Administrative law particularly merits or judicial review, administrative decision making processes and alternative dispute resolution.	No	The instrument does not create any reviewable decisions.
Privacy law particularly compliance with the Australian Privacy Principles (APP).	No	<p>The instrument requires the provision of information to the Department that includes personal and/or confidential information protected under the <i>Privacy Act 1988</i> and the APP. While the instrument does not expressly refer to the legislation or the APP, the Department is subject to such legislation and deals with all information in accordance with relevant requirements.</p> <p>In addition, section 26 of the instrument gives authorisation for the Minister to disclose and obtain information about a qualified practitioner, a provisional audiologist or provisional audiometrist for the purposes of investigating and monitoring compliance with the instrument.</p>
Deregulation particularly the Government's commitment to reducing regulatory burdens.	No	The Rules of Conduct will be maintained consistent with the existing requirement of the Administration Act. However, further consideration of the ongoing need for legislated rules of conduct and contractual terms and conditions, may be considered separately by the Department.

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## 5. CLEARER LAWS

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### Does the instrument comply with clearer laws principles?

No. This instrument does not comply with the clearer laws principles. The instrument includes numerous examples of:

- outdated provisions
- ambiguous provisions
- unnecessary provisions that duplicate requirements under other laws or quasi-regulation (including contracts)
- confusing and unnecessarily prescriptive provisions
- piecemeal provisions that do not comprehensively deal with critical issues, and
- related requirements spread across multiple provisions and instruments.

## What can be done to make the instrument simpler, clearer or easier to read?

In order to improve the clarity of the instrument, a number of amendments are proposed. The following changes do not require amendments to the Administration Act in order to be achieved. Further clarity and streamlining could be achieved with amendments to the Administration Act.

### ***Consolidation of delegated legislation***

It is proposed that the provisions specified in the Rules of Conduct be consolidated in a single instrument made under the Administration Act, along with relevant provisions from the:

- *Hearing Services (Eligible Persons) Determination 1997*
- *Hearing Services (Participants in the Voucher System) Determination 1997*
- *Hearing Service Providers Accreditation Scheme 1997*, and
- *Hearing Services Voucher Rules 1997*.

This would ease administration and enable stakeholders to view all relevant provisions in relation to eligibility, accessing the Program, the services available under the Program and the requirements that must be met by service providers.

### ***Duplicative provisions***

The Rules of Conduct detail many matters that are also dealt with in contracts with service providers, other legislative instruments and general law. It is recommended that duplication be removed including to reduce confusion and inconsistency. Some examples of duplication are detailed below.

#### *Duplication with service provider contracts*

It is proposed that matters relating to the relationship between the Commonwealth and the service provider (including requirements relating to notifications and provision of information) be dealt with in contracts only and not duplicated in the Rules of Conduct.

However, all matters relating to the relationship between the voucher-holder and the service provider, the services the voucher-holder can expect and the way that the services must be delivered should be dealt with in the Rules of Conduct. This provides transparency for all stakeholders.

Consistent with this principle, it is recommended that the following provisions not be included in the new consolidated instrument to be made under the Administration Act:

- **Section 7 – Records** – This section requires the service provider to maintain accurate and comprehensive records relating to services provided to voucher-holders and provide the Commonwealth with access to these records as required. It is proposed only the requirement to give certain information to voucher holders be retained, as matters relating to the service providers' relationship with the Commonwealth will be dealt with in the contract.

- Subsection 9(1) – Complaints – This subsection requires the service provider to cooperate with the Minister or the Office in relation to any complaints.
- Section 10 – Breaches to be reported – This section requires service providers to inform the Department of breaches of the Rules of Conduct or the *Privacy Act 1988*.
- Section 11 – Power to require information – This section requires service providers to provide certified copies of documents relating to services delivered to voucher-holders to the Minister, as requested.
- Section 25 – Qualified Practitioner number – This section provides that the Minister may allocate each qualified practitioner a unique number, which are used by service providers in online claiming.
- Section 26 – Authorisation – This section provides that the Minister may disclose or obtain information regarding service provider personnel for the purposes of monitoring compliance with the Rules of Conduct.

#### Duplication between Rules of Conduct and other legislative instruments

The Rules of Conduct address a number of issues that are dealt with in other legislative instruments. For example, section 15 details the hearing services to be supplied to voucher-holders, which is also addressed in the *Hearing Services (Participants in the Voucher System) Determination 1997*.

It is proposed that in the consolidated instrument, the hearing services to be supplied to voucher-holders are outlined in one cohesive set of provisions only.

#### Duplication with general law

Section 22 of the Rules of Conduct prohibits discrimination against a voucher-holder. It is recommended that this provision be removed because it duplicates general law. In Australia, it is unlawful to discriminate on the basis of a number of protected attributes including age, disability, race, sex, intersex status, gender identity and sexual orientation in certain areas of public life, including education and employment. Australia's federal anti-discrimination laws are contained in the following legislation:

- *Age Discrimination Act 2004*
- *Disability Discrimination Act 1992*
- *Racial Discrimination Act 1975*, and
- *Sex Discrimination Act 1984*.

#### Duplication with the Hearing Rehabilitation Outcomes for voucher holders

The Hearing Rehabilitation Outcomes (HRO) documents the outcomes to be achieved by contracted service providers in delivering services to voucher holders. This is referenced throughout the instrument and many sections of the instrument are duplicated or contradicted by the HRO. It is recommended the HRO be merged with the consolidated instrument to streamline and clarify requirements on the provision of services to voucher-holders.

## ***Dated provisions***

### *Advertising*

Section 8 of the Rules of Conduct prohibit service providers from publishing certain advertisements in connection with the provision of hearing services under the Program. This includes, for example, advertisements that are misleading, bring the voucher system into disrepute or suggest hearing services are provided free by the service provider rather than the Australian Government.

As this section (and related definitions) were drafted many years ago, the provisions are dated and do not address the many ways that a service provider might promote themselves or Program-related messages.

It is recommended that section 8 be amended to avoid focusing on the way the service provider delivers inappropriate messages (e.g. through advertising) and instead focuses on the outcome to be avoided. The revised provision should focus on prohibiting a service provider from causing a person to believe that, for example:

- hearing services are only available from the service provider
- the service provider's accreditation is an endorsement by the Commonwealth, or
- suggests hearing services have not been subsidised by Government.

### *Refusal of services*

Section 13 describes the circumstances in which a service provider may refuse services to a voucher-holder.

It is recommended that the provision be amended to remove references to the voucher-holder presenting a valid voucher or Letter of Authority (noting that a voucher is not a physical document and that Letters of Authority no longer exist).

## ***Confusing and unnecessarily prescriptive provisions (imposing regulatory burden)***

The Rules of Conduct include numerous examples of confusing and unnecessarily prescriptive requirements. This increases administrative burden for service providers and, in some cases, can delay service provision to voucher-holders (or otherwise present barriers to timely service delivery).

These issues arise in relation to four provisions in particular:

- Section 12 – Voucher-holders relocating between service providers
- Section 14 – Complex clients
- Sections 16 – Choice of hearing device, and
- Section 17 – Top-up devices.

### Voucher-holders relocating between service providers

Section 12 provides for a voucher-holder to move between or change service providers. This provision requires the new service provider to obtain written authority from the voucher-holder to request their records from the old service provider. It also includes prescriptive detail about the treatment of written records (including both originals and copies).

This creates unnecessary burden in two ways:

- by requiring written authority from the voucher-holder (when in practice this often occurs by phone), and
- by specifying the treatment of different types of records (when many records are now electronic such that the distinction between originals and copies is not relevant).

It is therefore recommended this provision be simplified such that, if a voucher-holder wishes to change service providers, the new service provider must obtain the voucher-holder's consent (which may be verbal or written) in order to request information from the old service provider. Where a request is made of the old service provider, they must meet that request within a specified timeframe.

### Information to be provided to complex clients

Section 14 describes the information that must be provided to complex clients. The intent of the provision is to ensure complex clients have the necessary information to enable them to make an informed choice, including informing them that they may access services at nil cost through Australian Hearing.

This section is unnecessarily prescriptive, such that it requires the service provider to advise the client about services available from Australian Hearing and allow at least 14 days before confirming whether they wish to receive services from Australian Hearing. This requirement can unnecessarily delay access to services by complex clients. This section also includes prescriptive requirements about notifying the Department and keeping copies of documents.

This provision should be simplified and refocused such that, if a service provider receives a request for services from a complex client, they must inform the Department (of the complex client) and inform the client that Australian Hearing provides hearing services for complex clients at no cost. This ensures the client is fully informed and able to make an informed decision about their service provider but does not delay service delivery nor place prescriptive record keeping requirements on the service provider (beyond existing record keeping requirements).

### **Piecemeal provisions that do not comprehensively deal with critical issues**

#### Information to be provided to all voucher-holders

A number of provisions in the Rules of Conduct describe the information that must be provided to voucher-holders to assist them to make informed decisions about where they receive the services, what services they receive and how much they pay for the services. For example:

- section 16 details the choices that must be offered to voucher-holders
- section 17 prohibits service providers from encouraging voucher-holders to select devices that are not subsidised or only partially subsidised such that the voucher-holder would be required to pay a 'top-up', and
- section 20 requires service providers to inform voucher-holders of services that are free of charge.

It is recommended that sections 16, 17 and 20 (along with section 14) be consolidated into a single set of cohesive provisions outlining the information to be provided to voucher-holders to inform their decision making (noting that matters relating to fees and charges in section 17 should be moved to the relevant part on fees and charges – as discussed in more detail below).

### Safe provision of services

Section 19 relates to professional standards. The section requires service providers to, among other things, exercise professional judgment and professional behaviour, take reasonable care and deliver hearing services in accordance with the 'Outcomes document'. Section 19 provides a list of expectations in terms of the way that services are delivered which is piecemeal, does not require the service provider to have systems in place to ensure the outcomes and does not reflect that qualified practitioners are subject to other laws regarding their professional conduct (creating confusion about the intersection between the Rules of Conduct, national laws relating to health professional registration and State and Territory laws about matters such as working with vulnerable people).

Similarly, section 21 requires service providers to make referrals in certain circumstances (including to medical practitioners), but this is ad hoc and not presented as a cohesive set of requirements relating to the safe provision of hearing services.

It is recommended that section 19 and 21 be amended and consolidated to provide more generally for the safe provision of hearing services and to require:

- service providers to develop and maintain policies and procedures for ensuring that hearing services are performed with reasonable care for the voucher-holder's safety, and
- that policies and procedures must address:
  - environment and premises
  - how hearing services are to be performed (including compliance with relevant laws and the professional standards that are applicable to the types of practitioner)
  - who may perform hearing services (including prohibiting individuals from performing hearing services unless those individuals are qualified and comply with State and Territory laws about working with vulnerable persons), and
  - when a voucher-holder must be referred to a medical practitioner for assessment.

### Provisions of services by appropriately qualified practitioners

Sections 23 and 24 include detailed information about qualified and supervised practitioners, including rules about the relationship between audiometrists and audiologists and those that are only provisionally qualified or otherwise in training.

It is recommended these provisions be amended and consolidated to remove confusing and unnecessarily prescriptive provisions relating to qualified practitioners (including because matters relating to supervision are addressed through relevant health professionals regulation).

Schedule 1 to the instrument outlines the approved membership categories for qualified and provisional practitioners who may provide services to voucher-holders under the Program. These membership categories refer to entities by reference to their legal name and ABN. These provisions are outdated. It is recommended, consistent with the change detailed above that, specific references are removed so that currency can be maintained.

### Fees and charges

The fees and charges regime is spread across multiple provisions in the Rules of Conduct and across other instruments, leading to confusion and gaps in an area where both service providers and voucher-holders seek certainty. For example:

- section 17 describes certain circumstances in which a voucher-holder may be charged for devices that are partially subsidised
- section 18 describes the follow up assistance that must be provided free of charge for 12 months after the service provider fits a hearing device to a voucher-holder under the Program
- section 28 describes the fees and charges that may be levied by a service provider
- section 29 describes the indexation of the annual fee for the supply of batteries and maintenance of a hearing device (as described in paragraph 28(5)(b)), and
- the *Hearing Services (Participants in the Voucher System) Determination 1997* describes charges payable by different classes of eligible persons in respect of certain hearing services.

It is recommended that a new part be created in the consolidated instrument, which deals with all matters relating to fees and charges for hearing services provided to voucher-holders.

### **Does the instrument meet OPC drafting and publishing standards?**

No. For the reasons detailed above, the instrument does not meet current drafting and publishing standards.

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## **6. CONSULTATION**

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Stakeholders noted that the legislative instruments underpinning the Program are complex and difficult to interpret, with unnecessary cross-referencing across instruments. Stakeholders acknowledged the value of repealing unnecessary legislation and combining all related requirements into a single instrument where possible.

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## **7. OUTCOME**

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### **Recommendation**

- Repeal the *Hearing Services Rules of Conduct 2012*.

- Remake the instrument as part of a consolidated instrument made under the *Hearing Services Administration Act 1997* with changes to:
  - amend section 4 to make consequential definitional changes
  - delete sections 7, 10, 11, 15, 22, 25 and 26 and subsection 9(1) as these are duplicated in the service provider contract, other instruments or in general law
  - amend sections 8 and 13 to update provisions
  - amend sections 12 and 14 to remove unnecessarily prescriptive provisions
  - consolidate and amend sections 14, 16, 17 and 20 to clarify provisions relating to information that must be provided to all voucher-holders
  - consolidate and amend sections 19 and 21 to clarify provisions relating to the safe provision of hearing services
  - consolidate and amend sections 23, 24 to remove unnecessarily prescriptive provisions
  - consolidate and amend sections 17, 18, 28 and 29 (together with relevant provisions from the *Hearing Services (Participants in the Voucher System) Determination 1997*) to clarify and group provisions relating to fees and charges, and
  - amend Schedule 1 to remove unnecessarily prescriptive provisions.

## **AUSTRALIAN HEARING SERVICES REGULATIONS 1992 (F2012C00014)**

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### **1. OBJECTIVE OF THE INSTRUMENT**

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#### **What is the objective and purpose of the instrument?**

The *Australian Hearing Services Regulations 1992* (the Regulations) are made under the *Hearing Services Act 1991* (the Act).

In summary, the Act:

- establishes Australian Hearing Services (now known as Australian Hearing) and describes the functions and powers of the organisation
- enables the Minister to give directions to Australian Hearing regarding its function and powers
- establishes the constitution of the Board of Australian Hearing and its key operating instructions
- provides for money to be appropriated by Parliament to Australian Hearing
- enables Australian Hearing to charge for services provided under the Act, and
- provides for reviews of certain decisions made by Australian Hearing.

The Regulations are a legislative instrument made under subsection 62(1) of the Act. The Regulations provide, among other matters, for hearing aid service charges and specify days on which a person is liable to pay those charges. The Regulations also prescribe fees payable to Australian Hearing by recipients of certain services under the Community Services Obligations (CSO) Program.

#### **Is the instrument still required?**

Yes, the instrument is still required as it sets out charges payable to Australian Hearing for services provided under the Act.

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### **2. REGULATORY IMPACT**

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#### **Does the instrument impose significant compliance costs on business, community organisations and individuals?**

This instrument is declaratory only and outlines charges payable by individuals utilising hearing services provided by Australian Hearing under the Act.

However, one regulation enables a person to apply for a replacement device if the person's hearing device has been destroyed, lost (and unlikely to be found) or damaged such that it cannot reasonably be repaired. In such circumstances a person may, by submitting a statutory declaration to Australian Hearing, seek a replacement device.

The requirement for a statutory declaration is dated and imposes unnecessary burden on applicants as they require a Justice of the Peace or other signatory to witness the statutory declaration.

**If so, how could compliance costs be reduced?**

The requirement for an application under Regulation 4A to be supported by a statutory declaration could be removed. Instead, the form on which the person makes an application could include a simple declaration (rather than a statutory declaration), noting that any declaration to the Commonwealth must be truthful and the provision of false or misleading information to a Commonwealth entity is an offence under section 137.1 of the *Criminal Code Act*. This would reduce the impost on applicants seeking a replacement device.

**3. IDENTIFIED ADMINISTRATIVE ISSUES**

Nil.

**4. BROADER LEGAL AND POLICY CONTEXT**

Assessment of impact on the following legal and policy issues:

Issue	Impact	Assessment
Human rights particularly the rights and freedoms recognised or declared by the seven core international conventions	No	The instrument does not engage any of the human rights and freedoms recognised in the seven core international human rights treaties that Australia has ratified. However, the overarching purpose of the hearing services legislation is to improve accessibility of hearing services for most vulnerable people by providing access to hearing services and assistive hearing technology for eligible people. This supports Article 12 of the International Covenant on Economic, Social and Cultural Rights regarding the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
International law particularly security, trade, investment, fisheries, maritime, aviation and space law.	No	The instrument does not raise any international law issues.
Constitutional law particularly where constitutional issues have been raised in litigation or by state and territory governments.	No	No constitutional law issues have been raised in any litigation or by state or territory governments.

Issue	Impact	Assessment
Criminal law particularly to ensure compliance with the Guide to Framing Commonwealth Offences.	No	No criminal offences are created, or referenced, by the instrument.
Administrative law particularly merits or judicial review, administrative decision making processes and alternative dispute resolution.	No	The instrument does not create any reviewable decisions.
Privacy law particularly compliance with the Australian Privacy Principles (APP).	No	The instrument does not require the provision of information to the Department or any other person such that the requirements of the <i>Privacy Act 1988</i> and the APP would be triggered.
Deregulation particularly the Government's commitment to reducing regulatory burdens.	No	Not relevant because the instrument is declaratory only.

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## 5. CLEARER LAWS

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### Does the instrument comply with clearer laws principles?

Yes, the instrument broadly complies with clearer laws principles.

### What can be done to make the instrument simpler, clearer or easier to read?

To improve and update the instrument, a provision could be include enabling the charges described in the Regulations to be automatically increased by CPI annually. Currently the charges are described in each Regulation and there is no capacity for these to be increased other than by amending the relevant regulations (which have not been updated since 2000). Including a CPI provision in the Regulations would remove the need for routine amendments to the Regulations in order to adjust the charges.

### Does the instrument meet OPC drafting and publishing standards?

Yes, the instrument meets the current drafting and publishing standards.

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## 6. CONSULTATION

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Stakeholders noted the fees and charges payable to the Authority outlined in the Regulations have not been updated since 2000 and do not include a mechanism for an annual CPI increase, where an

annual CPI increase is built into the voucher system (refer section 29 of the *Hearing Services Rules of Conduct 2012*).

Stakeholders noted this has resulted in significant differences in the charges applicable to different client groups under the voucher system and the CSO Program.

Stakeholders acknowledged the value of repealing unnecessary legislation where possible.

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## 7. OUTCOME

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### Recommendation

- Repeal the *Australian Hearing Services Regulations 1992*.
- Remake the content of the instrument, with changes to:
  - remove the requirement for an application under section 4A to be supported by a statutory declaration, and
  - include a provision enabling charges described in the Regulations to be adjusted annually by CPI.

## **DECLARED HEARING SERVICES DETERMINATION 1997 (F2016C00672)**

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### **1. OBJECTIVE OF THE INSTRUMENT**

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#### **What is the objective and purpose of the instrument?**

The *Declared Hearing Services Determination 1997* (the Declared Services Determination) is made under the *Hearing Services Administration Act 1997* (the Administration Act).

In summary, the Act:

- establishes Australian Hearing Services (now known as Australian Hearing) and describes the functions and powers of the organisation
- enables the Minister to give directions to Australian Hearing regarding its function and powers
- establishes the constitution of the Board of Australian Hearing and its key operating instructions
- provides for money to be appropriated by Parliament to Australian Hearing
- enables Australian Hearing to charge for services provided under the Act, and
- provides for reviews of certain decisions made by Australian Hearing.

The Declared Services Determination is a legislative instrument made under subsections 8(4), (5), (6), (7) and (8) of the Act. The Declared Services Determination establishes the classes of eligible persons who are participants in the Community Services Obligations (CSO) Program, and the types of hearing services available to each class of eligible persons.

#### **Is the instrument still required?**

Yes, the instrument is still required as it sets out the classes of eligible persons and the types of hearing services available to them under the CSO Program.

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### **2. REGULATORY IMPACT**

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#### **Does the instrument impose significant compliance costs on business, community organisations and individuals?**

This instrument is declaratory only. As such it does not impose compliance costs on business, community organisations or individuals.

#### **If so, how could compliance costs be reduced?**

If the instrument were more simply and clearly drafted it would reduce the effort required by stakeholders to understand who is able to access the CSO Program and the services available under the CSO Program.

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### 3. IDENTIFIED ADMINISTRATIVE ISSUES

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Nil.

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### 4. BROADER LEGAL AND POLICY CONTEXT

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Assessment of impact on the following legal and policy issues:

Issue	Impact	Assessment
Human rights particularly the rights and freedoms recognised or declared by the seven core international conventions	No	<p>Yes, this instrument does engage 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.</p> <p>To the extent this instrument does engage human rights, it promotes Article 12 of the International Covenant on Economic, Social and Cultural Rights regarding the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 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.</p>
International law particularly security, trade, investment, fisheries, maritime, aviation and space law.	No	The instrument does not raise any international law issues.
Constitutional law particularly where constitutional issues have been raised in litigation or by state and territory governments.	No	No constitutional law issues have been raised in any litigation or by state or territory governments.
Criminal law particularly to ensure compliance with the Guide to Framing Commonwealth Offences.	No	No criminal offences are created, or referenced, by the instrument.
Administrative law particularly merits or judicial review, administrative decision making processes and alternative dispute resolution.	No	The instrument does not create any reviewable decisions.

Issue	Impact	Assessment
Privacy law particularly compliance with the Australian Privacy Principles (APP).	No	The instrument does not require the provision of information to the Department or any other person such that the requirements of the <i>Privacy Act 1988</i> and the APP would be triggered.
Deregulation particularly the Government's commitment to reducing regulatory burdens.	No	Not relevant because the instrument is declaratory only.

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## 5. CLEARER LAWS

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### Does the instrument comply with clearer laws principles?

While the instrument broadly complies with clearer laws principles, its structure means that it is not easy to read.

### What can be done to make the instrument simpler, clearer or easier to read?

While some of the provisions specified in the Declared Services Determination are necessary, the instrument is difficult to interpret, with unnecessary complexity and cross-referencing. Further, the instrument includes many dated or redundant definitions.

The following changes are suggested to improve the remade instrument:

- Section 3 and subparagraph 12(d)(iii) refer to the RDCP (Remote Jobs and Communities Program), which has been replaced by the Community Development Programme. These references should be updated.
- Subparagraph 12(d)(vii) refers to the CDEP Program (Community Development Employment Projects Program), which has also been replaced by the Community Development Programme. This reference should be updated. The definition should remain as there are transitional provisions relating to persons who were a participant in the CDEP Program at a certain time.
- Schedule 2 lists postcodes for remote areas for the purposes of determining eligibility for designated persons under paragraph 8(1)(ad) of the Act. It is recommended that the opportunity be taken to update the way that rural and remote areas are determined by reference to the Modified Monash Model (MMM). This would deliver on the Government's commitment (reflected in a statement on 31 October 2014 by the former Assistant Minister for Health) that the MMM would be progressively introduced to more effectively target a range of health programs.
- Restructure the instrument and utilise tables to better present the information such that the relevant class of client is aligned with the services available to them. This would reduce

repetition in the instrument and better enable stakeholders to see the services available to different classes of client.

### **Does the instrument meet OPC drafting and publishing standards?**

The instrument broadly meets the current drafting and publishing standards but, as identified above, the information could be better presented including through tables to make the instrument easier to read for stakeholders.

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## **6. CONSULTATION**

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Stakeholders noted that this instrument is difficult to interpret due to the cross-referencing within the document.

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## **7. OUTCOME**

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### **Recommendation**

- Repeal the *Declared Hearing Services Determination 1997*.
- Remake the content of the instrument, with changes to:
  - amend section 3, subparagraphs 12(d)(iii) and 12(d)(vii) to update references
  - amend Schedule 2 to update the way that rural and remote areas are determined, and
  - restructure the instrument, utilising tables to better present the information and improve clarity for stakeholders.