

## EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

*Aged Care Act 1997*

*Aged Care (Maximum Accommodation Payment Amount) Determination 2014*

The *Aged Care Act 1997* (the Act) provides for the regulation and funding of aged care services. Subitems 26(1) and (2) of Schedule 2 to the *Aged Care (Living Longer Living Better) Act 2013* and subsections 52G-3(1) and (2) of the Act allow the Minister to make a determination of the maximum amount of accommodation payment that an approved provider may charge a person.

The purpose of the *Aged Care (Maximum Accommodation Payment Amount) Determination 2014* (the determination) is to set the accommodation payment amount above which approved providers must apply to the Aged Care Pricing Commissioner. Approved providers who wish to charge more than the maximum set in this determination will need to seek approval from the Aged Care Pricing Commissioner.

The determination states the maximum accommodation payment amount expressed as a refundable accommodation deposit amount. The determination also describes the method to work out the equivalent maximum daily accommodation payment amount, based on the maximum permissible interest rate.

The determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

### Consultation

The establishment of this determination flows from amendments to the Act that received Royal Assent on 28 June 2013, which allow the Minister to make a determination of the maximum accommodation payment amount.

The changes to aged care legislation were developed in close consultation with the aged care sector, including consumers, industry and professional bodies.

In addition to wide public consultation undertaken by both the Productivity Commission and Government as part of the development of the changes to the aged care legislation, there has been extensive consultation on the details of implementation, including the changes to accommodation payments. The objective of the consultation on accommodation payments has been to work with industry, financiers and consumers to ensure that the changes can encourage investment in residential aged care whilst remaining sustainable for residents and Government.

In September 2012 the Aged Care Financing Authority (the Authority) released a public discussion paper on the methodology to govern the level (or levels) of the accommodation payments that an approved provider can levy on care recipients for entry to an aged care home from 1 July 2014, including advice on acceptable rates of

return, efficiency, how the level/s of accommodation payments should be set and how equivalency between a refundable lump sum and a daily payment should be ensured.

In addition, independent consultants were engaged to provide advice on these issues. There were 38 unique responses received from this consultation. The Authority conducted a subsequent consultation on its draft recommendations on accommodation payments in November 2012.

The previous Government's announcement on accommodation payments was made on 21 December 2012 and included a requirement to publish prices and the requirement for accommodation payments above the threshold amount to be approved by the relevant Government authority (the Aged Care Pricing Commissioner).

Consultation on the draft aged care reform legislation early in 2013 also resulted in feedback from industry and consumers regarding accommodation payments. Key themes regarding the accommodation payment reforms from this consultation were:

- Industry was concerned about having to set prices for accommodation following a prescribed process and having to document that process;
- Consumers and consumer groups reacted positively to the proposals for the significant improvement in accommodation pricing fairness and transparency.

The Community Affairs Senate Committee Inquiry into the Aged Care (Living Longer Living Better) Bill 2013 provided a further opportunity for public consultation. This inquiry received 112 written submissions and conducted public hearings in most capital cities. The Committee's report recommended that Government support providers through the transition to the new accommodation payment system by closely monitoring the impact of its implementation and by providing targeted assistance to businesses that require it.

The previous Government in its response to this inquiry agreed to closely monitor the impact of the reforms to accommodation payments and the Minister has asked the Authority to perform this function, reporting to Government monthly during the first six months after implementation, then quarterly.

The previous Government released exposure drafts of the Fees and Payments Principles on accommodation payments and the determination of the maximum amount of accommodation payment.

Submissions received were entirely from providers and provider peak bodies, relatively few in number, generally seeking clarifications on the principles and requesting further details on the application process for Aged Care Pricing Commissioner-approved prices. The key issue raised was that a prescriptive price-setting process to set prices below the threshold determined by the Minister would be excessive regulation and not proportional to the risk to consumers.

The Government subsequently announced that there would not be any requirement to follow or document a prescribed price-setting process, resulting in a significant reduction in regulatory burden compared with the original proposal.

The Government also announced that the threshold for determining when accommodation prices need Pricing Commissioner approval would be set at \$550,000 lump sum. This amount is consistent with that originally proposed by the Aged Care Financing Authority who recommended the threshold be set at the amount where approximately 5 per cent of prices would be above the threshold.

#### Regulation Impact Statement

A Regulation Impact Statement (RIS) was prepared for this determination. The RIS covers the requirements in the determination and the *Fees and Payments Principles 2014*. The RIS was approved by the Office of Best Practice Regulation (OBPR ID 14985).

#### Commencement

The determination commences on 1 July 2014.

**Details of the Aged Care (Maximum Accommodation Payment Amount) Determination 2014**

**Section 1 – Name of determination**

This section states that the name of the determination is the *Aged Care (Maximum Accommodation Payment Amount) Determination 2014*.

**Section 2 – Commencement**

This section states that the determination commences on 1 July 2014. It is necessary for this determination to be made, but not commence, before 31 January 2014 to assist approved providers when determining their 1 July 2014 accommodation prices and ascertaining whether the prices need to be approved by the Aged Care Pricing Commissioner (the Pricing Commissioner). Approved providers can apply to the Pricing Commissioner from 31 January 2014 with respect to prices they wish to charge from 1 July 2014 that are higher than the maximum accommodation payment amount specified in this determination.

**Section 3 - Authority**

Section 3 provides that the authority for making the determination is the *Aged Care (Living Longer Living Better) Act 2013* and the *Aged Care Act 1997* (the Act).

**Section 4 - Definitions**

This section defines terms used in the determination. The Act means the *Aged Care Act 1997*. The price agreement day refers to the date the person agrees to the maximum accommodation payment that is payable (if the person pays an accommodation payment).

Other expressions used in the determination are defined in Schedule 1 to the Act.

**Section 5 – Maximum refundable accommodation deposit amount**

This section provides that the maximum refundable accommodation deposit amount that an approved provider may charge a person is \$550,000. An approved provider may charge a care recipient an amount up to the maximum refundable accommodation deposit without seeking approval from the Pricing Commissioner.

**Section 6 – Maximum daily accommodation payment amount**

Section 6 describes the method used to calculate the maximum daily accommodation payment amount. An accommodation payment can be paid as a refundable accommodation deposit, daily accommodation payment or a combination of both.

To calculate the equivalent maximum daily accommodation payment, the maximum refundable accommodation deposit amount is multiplied by the maximum permissible interest rate and divided by 365. The method specifies that the maximum permissible interest rate that applies is the rate on the person's price agreement day. It is calculated by working out the general interest charge rate on the person's price agreement day, multiplying by the number of days in that calendar year and subtracting three percentage points. The note to this clause states that the maximum

daily accommodation payment amount would be \$99.30 based on the maximum permissible interest rate (6.59% p.a.) on the day on which this determination is made.

## **Statement of Compatibility with Human Rights**

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

### **Aged Care (Maximum Accommodation Payment Amount) Determination 2014**

The legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the legislative instrument**

The determination sets out the maximum amount of accommodation payment that an approved provider of residential or flexible aged care may charge a person. The purpose of the *Aged Care (Maximum Accommodation Payment Amount) Determination 2014* (the determination) is to set the accommodation payment amount above which approved providers must apply to the Aged Care Pricing Commissioner. Approved providers who wish to charge more than the maximum set in this determination will need to seek approval from the Pricing Commissioner.

#### **Human Rights Implications**

The legislative instrument is compatible with the right to an adequate standard of living and the right to the enjoyment of the highest attainable standard of physical and mental health as contained in article 11(1) and article 12(1) of the International Covenant on Economic, Social and Cultural Rights, and article 25 and article 28 of the Convention on the Rights of Persons with Disabilities.

The legislative instrument provides consumer protection by setting a maximum amount of accommodation payment that an approved provider is able to charge a person who has been assessed as having sufficient means to contribute towards the cost of their aged care accommodation, and by requiring approved providers to offer equivalent alternative payment options calculated using the method set out in the instrument. A consumer will be able to choose to pay a lump sum refundable accommodation deposit, a daily accommodation payment or a combination of lump sum and daily payments.

Approved providers wishing to charge amounts higher than the maximum accommodation payment set in this determination would need to apply to the Aged Care Pricing Commissioner.

#### **Conclusion**

This legislative instrument is compatible with human rights as it promotes the human right to health and the right to an adequate standard of living.