

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

Aged Care Act 1997

Aged Care (Subsidy, Fees and Payments) Amendment (Indexation, Pre-Entry Leave and Other Measures) Determination 2015

The *Aged Care Act 1997* (the Act) provides for the regulation and funding of aged care services. Persons who are approved under the Act to provide aged care services (approved providers) can be eligible to receive subsidy and supplement payments in respect of the care they provide to approved care recipients.

The Act provides that for each type of aged care, the Minister may determine the amount of subsidy and supplement payable to an approved provider for the provision of that type of aged care.

The first purpose of the *Aged Care (Subsidy, Fees and Payments) Amendment (Indexation, Pre-Entry Leave and Other Measures) Determination 2015* (the Amending Determination) is to increase the amount of subsidies and supplements payable to approved providers of aged care services in respect of a day from 1 July 2015. The Amending Determination also removes Payroll tax supplement which ceased on 1 January 2015 as a result of a 2014-15 Budget Measure.

The Amending Determination applies only in respect of care recipients who are not continuing care recipients. Continuing care recipients are those who entered a care service before 1 July 2014 and since that time have not left the service for a continuous period of more than 28 days (other than because the person is on leave), or before moving to another service, have not made a written choice to be subject to the new rules relating to fees and payments that took effect on 1 July 2014. The amount of subsidy and supplements payable in respect of continuing care recipients is detailed in the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014*.

The second purpose of the Amending Determination is to reflect measures announced in the 2014-15 Mid-Year Economic and Fiscal Outlook (MYEFO). The MYEFO announced that from 1 July 2015, the payment of the residential care subsidy to residential aged care providers would be ceased for pre-entry leave (the holding of a place for up to seven days prior to a care recipient entering care).

The Amending Determination will give effect to the removal of pre-entry leave subsidy from 1 July 2015 in the event that Schedule 2 of the Social Services Legislation Amendment (No. 2) Bill 2015 (the Amending Bill), which also contains provisions to remove pre-entry leave subsidy, does not receive Royal Assent by that time. Upon commencement, Schedule 2 of the Amending Bill will operate to cease the payment of subsidy and supplements during a period of pre-entry leave. If the Amending Bill commences then this Amending Determination will remove unnecessary provisions in the Determination (Schedule 3). If the Amending Bill does not commence by 1 July 2015 then the Amending Determination operates to reduce the amount of subsidy paid during pre-entry leave to nil (Schedule 2).

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

Commencement

The amendments in Schedule 1 commence on 1 July 2015.

The commencement of amendments in Schedule 2 and 3 are dependent on the commencement of Schedule 2 of the Amending Bill. Schedule 2 of this determination commences on 1 July 2015 if Schedule 2 of the Amending Bill has not commenced on 1 July 2015. Schedule 3 of this determination commences immediately after Schedule 2 of the Amending Bill has commenced. If Schedule 2 of the Amending Bill never commences then Schedule 3 of this Amending Determination will never commence.

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

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Consultation

Routine indexation of subsidies and supplements in this Amending Determination is calculated through the use of a well-established formula based on the consumer price index (CPI) as a measure of the movements in the non-labour costs of providers. As this is in accordance with the general policy for indexation of aged care payments, no specific consultation was undertaken with respect to this indexation.

Information about the increase in the amount of the subsidies and supplements payable to approved providers from 1 July 2015 will be disseminated via electronic media to approved providers.

No specific consultation was undertaken with respect to the amendments contained in Schedules 2 and 3 which give effect to the MYEFO announcement.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) has advised that no Regulation Impact Statement is required to set routine indexation (OBPR ID 11719) or to make changes in line with the Amending Bill (OBPR 18406).

Details of the Aged Care (Subsidy, Fees and Payments) Amendment (Indexation, Pre-Entry Leave and Other Measures) Determination 2015

Clause 1 states that the name of the determination is the *Aged Care (Subsidy, Fees and Payments) Amendment (Indexation, Pre-Entry Leave and Other Measures) Determination 2015*.

Clause 2 sets out the commencement dates for the Amending Determination.

Clause 3 provides that the authority for the making of the determination is the *Aged Care Act 1997*.

The authority for making specific determinations is set out in the following table:

Residential	
Basic subsidy amount	44-3(2)
Amount of primary supplements	44-5(3)
Adjusted subsidy reduction	44-19(2)
Amount of other supplements	44-27(3)
Home care	
Basic subsidy amount	48-2(3)
Amount of primary supplements	48-3(3)
Amount of other supplements	48-9(3)
Flexible care	
Flexible care subsidy	52-1

Clause 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Part 1 - Indexation

Aged Care (Subsidy, Fees and Payments) Determination 2014

Item 1 – Amendments of listed provisions – indexation of amounts

This item provides for the indexation of amounts in relation to the following:

- the basic subsidy amount for residential care and home care;
- the amount of oxygen supplements for residential care and home care;
- the amount of enteral feeding supplement for residential care and home care;
- the adjusted subsidy reduction;
- the amount of other supplements for residential care and home care; and
- the amount of flexible care subsidy.

Item 2 – Subsection 7(3) (table)

This item provides for the indexation of amounts in relation to the ACFI amounts by repealing the table to subsection 7(3) and substituting a new table with the indexed amounts.

Item 3 – Section 57 (table)

This item provides for the indexation of amounts in relation to the amount of viability supplement for residential care by repealing the table to section 57 and substituting a new table with the indexed amounts.

Item 4 – Section 58 (table)

This item provides for the indexation of amounts in relation to the amount of viability supplement for residential care by repealing the table to section 58 and substituting a new table with the indexed amounts.

Item 5 – Section 59 (table)

This item provides for the indexation of amounts in relation to the amount of viability supplement for residential care by repealing the table to section 59 and substituting a new table with the indexed amounts.

Item 6 – Section 67 (table)

This item provides for the indexation of amounts in relation to the basic subsidy amount for home care by repealing the table to section 67 and substituting a new table with the indexed amounts.

Item 7 – Section 85 (table)

This item provides for the indexation of amounts in relation to the amount of viability supplement for home care by repealing the table to section 85 and substituting a new table with the indexed amounts.

Item 8 – Section 94 (table)

This item provides for the indexation of amounts in relation to the respite supplement equivalent amount for a multi-purpose service by repealing the table to section 94 and substituting a new table with the indexed amounts.

Item 9 – Section 96 (table)

This item provides for the indexation of amounts in relation to the additional amount of home care subsidy for a multi-purpose service by repealing the table to section 96 and substituting a new table with the indexed amounts.

Item 10 – Section 97 (table)

This item provides for the indexation of amounts in relation to the viability supplement equivalent amount for Category A multi-purpose services by repealing the table to section 97 and substituting a new table with the indexed amounts.

Item 11 – Section 98 (table)

This item provides for the indexation of amounts in relation to the viability supplement equivalent amount for Category B multi-purpose services by repealing the table to section 98 and substituting a new table with the indexed amounts.

Item 12 – Section 99 (table)

This item provides for the indexation of amounts in relation to the viability supplement equivalent amount for Category C multi-purpose services by repealing the table to section 99 and substituting a new table with the indexed amounts.

Item 13 – Section 101 (table)

This item provides for the indexation of amounts in relation to the concessional resident equivalent amounts for multi-purpose services by repealing the table to section 101 and substituting a new table with the indexed amounts.

Part 2 – Other Measures***Aged Care (Subsidy, Fees and Payments) Determination 2014*****Item 14 – Division 5 of Part 2 of Chapter 2**

This item repeals the Division as payroll tax supplement ceased from 1 January 2015.

Schedule 2 – Residential Care Subsidy for Pre-Entry Leave Subsidy***Aged Care (Subsidy, Fees and Payments) Determination 2014*****Item 1 – Section 10**

This item reduces the basic subsidy amount for care recipients on pre-entry leave from 30 per cent of the amount for the day for the care recipient to nil.

Schedule 3 – Residential Care Subsidy for Pre- Entry Leave Subsidy after amendments to *Aged Care Act 1997****Aged Care (Subsidy, Fees and Payments) Determination 2014*****Items 1 - 5 – Sections 10, 52(4) and 54(2)**

These items remove provisions that refer to subsidy or supplements during pre-entry leave. When Schedule 2 of the Amending Bill commences provisions reducing subsidy and supplements during pre-entry leave will be redundant.

Statement of Compatibility with Human Rights

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

Aged Care (Subsidy, Fees and Payments) Amendment (Indexation, Pre-Entry Leave and Other Measures) Determination 2015

The *Aged Care (Subsidy, Fees and Payments) Amendment (Indexation, Pre-Entry Leave and Other Measures) Determination 2015* 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) Act 2011*.

Overview of Legislative Instrument

This legislative instrument amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014*, and increases the amount of particular subsidies and supplements payable to approved providers of aged care services in line with the changes to the consumer price index (CPI).

The legislative instrument also reflects measures announced in the 2014-15 Mid-Year Economic and Fiscal Outlook (MYEFO). The MYEFO announced that from 1 July 2015, the payment of residential care subsidy to residential aged care providers would be ceased for the holding of a place for up to seven days prior to a care recipient entering care. Specifically, the legislative instrument operates to reduce the amount of subsidy paid during pre-entry leave to nil in the event the Social Services Legislation Amendment (No. 2) Bill 2015 does not commence by 1 July 2015. The legislative instrument also removes unnecessary provisions from the *Aged Care (Subsidy, Fees and Payments) Determination 2014* upon commencement of the Social Services Legislation Amendment (No. 2) Bill 2015.

Human Rights Implications

This 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.

This legislative instrument increases the amount of subsidy and supplements payable to approved providers for the provision of care and services to people with a condition of frailty or disability who require assistance to achieve and maintain the highest attainable standard of physical and mental health. These increases are designed to ensure the payments and contributions keep pace with increases in the consumer price index.

This legislative instrument ceases the payment of residential care subsidy to residential care providers while a resident is on pre-entry leave. To the extent that the legislative instrument limits any rights by ceasing the payment of residential care subsidy payable to an approved provider while the care recipient is on pre-entry leave, the limitation is reasonable. The limitation is mitigated by the fact that the legislative instrument does not remove a care recipient's ability to access pre-entry leave for up to seven days prior to entering a residential care service, and does not allow an aged care provider to recoup any amount representing a residential care subsidy for the pre-entry leave period from the care recipient.

Conclusion

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

Senator the Hon Mitch Fifield
Assistant Minister for Social Services