

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Aged Care and Senior Australians

Aged Care (Transitional Provisions) Act 1997

Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (July Indexation) Determination 2019

The *Aged Care (Transitional Provisions) Act 1997* (the TP Act), in conjunction with the *Aged Care Act 1997* (the Act), provides for the funding of aged care services in operation before 1 July 2014 that are providing care to continuing care recipients.

Persons who are approved under the Act to provide aged care services (approved providers) can be eligible to receive subsidy payments under the TP Act in respect of the care they provide to continuing care recipients. Continuing care recipients are those who entered an aged 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 new rules relating to fees and payments that came into effect on 1 July 2014.

Purpose

The *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (July Indexation) Determination 2019* (the Amending Determination) amends the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014*. The purpose of the Amending Determination is to set the amount of subsidies and supplements payable to approved providers of aged care services in respect of a day from 1 July 2019.

The Amending Determination also gives effect to the measure announced on 17 December 2018 by the Prime Minister, of an increase of up to \$400 per year for the level one home care basic subsidy, \$200 per year for the level two home care basic subsidy, and \$100 per year for the level three home care basic subsidy. The increases to the level one, level two and level three home care basic subsidy amounts are in addition to routine indexation. These increases ensure that the overall value of the level one, level two and level three home care packages is not reduced by the reduction to the maximum daily fees payable by the recipients of these home care package levels that applies from 1 July 2019.

The new Aged Care Funding Instrument (ACFI) and Resident Classification Scale (RCS) basic subsidy amounts to apply from 1 July 2019 are based on the routine indexation of the subsidy rates that applied at 1 July 2018.

The two temporary subsidy increases that applied in the final quarter of 2018-19 cease on 30 June 2019. These were the \$320 million temporary general subsidy boost announced on 10 February 2019 and the \$50 million temporary increase to support the transition to new quality standards that was announced on 8 May 2018.

Authority

The TP Act allows the Minister to determine, by legislative instrument, the amounts of subsidy and supplements. Specifically, the authority in the TP Act to make specific determinations in the Amending Determination is set out in the following table:

Residential	Section
Basic subsidy	subsection 44-3(2)
Accommodation supplement	subsection 44-5A(3)
Concessional resident supplement	subsection 44-6(4)
Charge exempt resident supplement	subsection 44-8A(3)(b)
Oxygen supplement	subsection 44-13(6)
Enteral feeding supplement	subsection 44-14(6)
Additional primary supplements	subsection 44-16(3)
Adjusted subsidy reduction	subsection 44-19(2)
Hardship supplement	subsection 44-30(5)
Veterans' supplement	subsection 44-27(3)
Homeless supplement	subsection 44-27(3)
Home care	
Basic subsidy amount	subsection 48-1(3)
Top-up supplement	subsection 48-1(3)
Viability supplement	subsection 48-1(3)

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 relevant wage and price indices. Accordingly, no specific consultation was undertaken with respect to the amounts to which routine indexation has been applied in this Amending Determination.

Commencement

The Amending Determination commences on 1 July 2019.

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

Details of the Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (July Indexation) Determination 2019

Section 1 states that the name of the instrument is the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (July Indexation) Determination 2019*.

Section 2 sets out the commencement date for the instrument.

Section 3 provides that the authority for the making of the instrument is the *Aged Care (Transitional Provisions) Act 1997*.

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

Schedule 1 – Indexation

Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014

Item 1 – Amendment of listed provisions – indexation of amounts of supplements

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

- the oxygen supplement;
- the enteral feeding supplement;
- the veterans' supplement;
- the homeless supplement
- the adjusted subsidy reduction; and
- the top-up supplement.

Item 2 – Subsection 8(3) (table)

This item provides for the indexation of amounts in relation to the ACFI amounts, by repealing the table to subsection 8(3) and substituting a new table with the indexed amounts.

Item 3 – Subsection 10(3) (table)

This item provides for the indexation of amounts in relation to the RCS amounts by repealing the table to subsection 10(3) and substituting a new table with the indexed amounts.

Item 4 – Section 83 (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 83 and substituting a new table with the indexed amounts.

Statement of Compatibility with Human Rights

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

Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (Indexation) Determination 2019

The *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (July Indexation) Determination 2019* 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 Legislative Instrument

This legislative instrument amends the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014* and increases the amount of particular subsidies and supplements payable to approved providers of aged care services.

Human Rights Implications

This legislative instrument is compatible with the right to an adequate standard of living and the right to 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 aged care subsidy 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.

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 Richard Colbeck
Minister for Aged Care and Senior Australians**