

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Health and Aged Care

Aged Care Act 1997

Aged Care (Transitional Provisions) Act 1997

***Aged Care Legislation Amendment (Subsidies-Royal Commission Response) Instrument
2021***

The *Aged Care Act 1997* (Act) and the *Aged Care (Transitional Provisions) Act 1997* (TP Act) provide for the Commonwealth to give financial support through payment of subsidies for the provision of aged care.

Persons who are approved under the Act to provide aged care services (approved providers) may be eligible to receive subsidy payments under the Act. Approved providers may also 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.

Both the Act and the TP 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.

Purpose

The *Aged Care Legislation Amendment (Subsidies-Royal Commission Response) Instrument 2021* (Amending Instrument) amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014*; the *Aged Care (Transitional Provisions) Principles 2014*; the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014*; the *Information Principles 2014* (Information Principles); and the *Subsidy Principles 2014* (Subsidy Principles).

The purpose of the Amending Instrument is to set out a new 2021 basic daily fee supplement to increase funding to approved providers of residential care and flexible care who meet eligibility requirements that include reporting on a quarterly basis on the quality and quantity of daily living services with a focus on food and nutrition.

The Act and the TP Act provide that an amount of residential care subsidy may include the amount of any relevant ‘other supplements’ (section 44-2 of the Act). Section 44-27 of the Act provides that the other supplements for a care recipient under the residential care subsidy calculator are any of the supplements prescribed in the section (for example, the hardship supplement), if applicable to the care recipient in respect of a payment period.

Paragraph 44-27(1)(c) of the Act provides that other supplements may be set out in the Subsidy Principles. Subsection 44-27(2) provides that the Subsidy Principles may specify the circumstances in which another supplement set out for the purposes of paragraph 44-27(1)(c) will apply for a care recipient in respect of a payment period. Subsection 44-27(3) provides

that the Minister may determine the amount, or the way in which the amount of the supplement is to be worked out, of any other supplements set out for the purposes of paragraph 44-27(1)(c).

Section 52-1 of the Act provides that the amount of flexible care subsidy payable in respect of a day is the amount determined, or worked out in accordance with a method determined, by the Minister by legislative instrument. This includes providing for or incorporating any other supplement set out in the Subsidy Principles.

Section 96-1 of the Act provides that the Minister has the power to make instruments providing for matters required or permitted, or necessary or convenient, in order to give effect to the relevant Part or section of the Act.

These provisions are mirrored in the equivalent sections in the TP Act.

Section 88-1 of the Act provides that approved providers must keep records that enable claims for payments of subsidy to be properly verified.

The purpose of the Amending Instrument is to prescribe a new ‘other supplement’ for the purposes of sections 44-27 and 52-1 of the Act and sections 44-27 and 52-1 of the TP Act.

This new ‘other supplement’ is the new 2021 basic daily fee supplement. The new 2021 basic daily fee supplement is payable from 1 July 2021 for each day that an eligible care recipient was being provided care through a residential care service or multi-purpose service where the approved provider of that service has met the requirements for eligibility for the supplement.

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

Background

Recommendation 112 of the Final Report of the Royal Commission into Aged Care Quality and Safety (Royal Commission) proposed that the Government provide a payment to approved providers of \$10.00 per resident per day from 1 July 2021 with a requirement that approved providers gave a written undertaking and met reporting requirements regarding the basic living needs of residents, and in particular their nutritional requirements.

The Australian Government accepted *Recommendation 112* of the Royal Commission’s Final Report. The Amending Instrument gives effect to a measure announced at Budget 2021-22 as part of the Australian Government’s response to the Final Report of the Royal Commission.

The new 2021 basic daily fee supplement is part of a package of measures that will support residential care by investing \$3.2 billion over 5 years from 2020-21.

To commence receiving the 2021 basic daily fee supplement from 1 July 2021, approved providers will need to give a written undertaking by 21 July 2021 that they will report on a quarterly basis on the quality and quantity of daily living services with a focus on food and nutrition including, but not limited to:

- food (prepared on site and on/or prepared by an external provider);
- food preparation (kitchen and food service staff hours);
- nutrition-related allied health expenses; and

- how the provider ensures an appropriate standard of daily living services.

Approved providers need to provide each quarterly report within 21 days after the end of each relevant quarter to continue receiving the new 2021 basic daily fee supplement. Payment of the new 2021 basic daily fee supplement ceases if the quarterly report is not provided within 21 days after the end of each quarter.

If eligibility for the 2021 basic daily fee supplement has ceased because an approved provider has not provided their quarterly report within 21 days after the end of a quarter, eligibility will not recommence until the date the outstanding report is lodged.

It is a priority to increase funding to the aged care sector and raise the quality of care in the sector. Residential aged care is a key component of the Australian aged care system.

Residential care subsidies and supplements are paid on a per care recipient per day basis for a payment period of a calendar month. The number of care recipients can fluctuate as residents enter and leave residential aged care.

An equivalent amount of 2021 basic daily fee supplement will be paid to the approved providers of multi-purpose services and flexible care services who meet the same requirements for a written undertaking and quarterly reports as the providers of mainstream residential aged care services. Flexible care subsidies and supplements are paid per day per allocated place instead of per resident per day. The 2021 basic daily fee supplement will be paid in multi-purpose services for the number of allocated high care and low care residential places. An equivalent amount will also be paid to National Aboriginal and Torres Strait Islander Flexible Aged Care (NATSIFAC) Program approved providers through separate payment arrangements.

In addition, a basic daily fee supplement is already payable to eligible aged care residents based on their circumstances as at 1 July 2012. To prevent any confusion, the Amending Instrument renames the current payment as the “2012 basic daily fee supplement” to differentiate it from the new 2021 basic daily fee supplement. Renaming the current payment as the “2012 basic daily fee supplement” does not affect the relevant eligibility requirements for that supplement. Aged care recipients can receive both the “2012 basic daily fee supplement” and the 2021 basic daily fee supplement if they are eligible for both.

Authority

The Act and the TP Act both provide 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 authority for making specific determinations in the Amending Instrument is set out in the following tables:

<i>Aged Care Act 1997</i>	
Residential care	Section
Other supplements	44-27
Flexible care	
Flexible care subsidy	52-1

<i>Aged Care (Transitional Provisions) Act 1997</i>	
Residential care	Section
Other supplements	44-27
Flexible care	
Flexible care subsidy	52-1

Section 96-1 of the Act provides that the Minister has the power to make instruments providing for matters required or permitted, or necessary or convenient, in order to give effect to the relevant Part or section of the Act. The Information Principles are made under section 96-1 of the Act, and set out matters for the purposes of Part 6.2 of the Act. The Subsidy Principles are also made under section 96-1 of the Act, and set out matters for the purposes of Parts 3.1, 3.2 and 3.3 of the Act.

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

On 26 February 2021 the Royal Commission provided its Final Report.

The Australian Government accepted *Recommendation 112* of the Royal Commission's Final Report and the Amending Instrument gives effect to a measure announced at Budget 2021-22 as part of the Australian Government's response to the Final Report of the Royal Commission.

No consultation was undertaken regarding the amount of the 2021 basic daily fee supplement implemented by this Amending Instrument which had been announced at Budget 2021-22.

Commencement

The Amending Instrument commences on 1 July 2021.

Details of the Aged Care Legislation Amendment (Subsidies—Royal Commission Response) Instrument 2021

Section 1 states that the name of the Amending Instrument is the *Aged Care Legislation Amendment (Subsidies—Royal Commission Response) Instrument 2021*.

Section 2 states that the instrument commences on 1 July 2021.

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

Section 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 amends the following five legislative instruments:

- *Aged Care (Subsidy, Fees and Payments) Determination 2014* (Subsidy, Fees and Payments Determination);
- *Aged Care (Transitional Provisions) Principles 2014* (Transitional Provisions Principles);
- *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014* (Transitional Provisions Determination);
- *Information Principles 2014* (Information Principles); and
- *Subsidy Principles 2014* (Subsidy Principles).

The amendments to the Subsidy Principles and the Subsidy, Fees and Payments Determination apply to care recipients under the Act.

The amendments to the Transitional Provisions Principles and the Transitional Provisions Determination apply to continuing care recipients under the TP Act.

Schedule 1 – Amendments

Aged Care (Subsidy, Fees and Payments) Determination 2014

Item 1 – At the end of Part 4 of Chapter 2

Item 1 inserts new Division 8—2021 basic daily fee supplement (for payment periods July 2021 to September 2022), which consists of new section 64E and new section 64F.

New section 64E sets out that the purpose of Division 8 is to set out the amount of the 2021 basic daily fee supplement for a day for a care recipient. New section 64E also provides that the 2021 basic daily fee supplement is the 2021 basic daily fee supplement set out in Subdivision H of Division 5 of Part 3 of Chapter 2 of the Subsidy Principles (see item 19 below).

New section 64F sets out that the amount of 2021 basic daily fee supplement for a day in respect of a care recipient is \$10.00.

Item 2 – After section 91B

This item inserts new section 91C and new section 91D after section 91B.

New section 91C sets out the 2021 basic daily fee supplement equivalent amount for a day in respect of flexible care that is provided through a multi-purpose service on and after 1 July 2021. The amount is calculated by adding together the amount worked out under section 91 for the day and the amount worked out by multiplying the 2021 basic daily fee supplement equivalent amount and the number of high care places and low care places allocated in respect of the multi-purpose service. For multi-purpose services the 2021 basic daily fee supplement equivalent amount is \$10.00.

New section 91D relevantly sets out the eligibility requirements for the 2021 basic daily fee supplement equivalent amount. Eligibility requires an approved provider to give a notice, in a form approved by the Secretary, undertaking to provide quarterly reports to the Secretary that include required information about the quality and quantity of daily living services with a focus on food and nutrition provided by each residential service through which the approved provider provides residential care. If the undertaking is provided by the 21st day of a quarter, eligibility commences from the beginning of that quarter.

New section 91D also sets out that to remain eligible, the quarterly reports that the approved provider has undertaken to provide must be provided within 21 days after the end of a quarter.

New section 91D also sets out that the quarters are a period of 3 months beginning on 1 January, 1 April, 1 July, and 1 October in a year.

These requirements are similar to new section 64C of the Transitional Provisions Principles (item 10 below) and new section 70AG of the Subsidy Principles (item 19 below). The new requirements are expanded in detail in item 19 below.

The 2021 basic daily fee supplement for flexible care subsidy applies to continuing care recipients under the TP Act through Chapter 3A of the Transitional Provisions Principles.

Aged Care (Transitional Provisions) Principles 2014

Item 3 – Subparagraph 17(c)(v)

Section 17 sets out the purpose of Part 3 of the Transitional Provisions Principles. This item inserts “2012” before “basic” in the list of additional primary supplements that may apply to a care recipient.

Item 4 – At the end of paragraph 17(h)

This item adds new sub-paragraph 17(h)(v) to section 17. New sub-paragraph 17(h)(v) provides that the 2021 basic daily fee residential care supplement is an other supplement that may apply to a care recipient.

Item 5 – Subdivision E of Division 4 of Part 3 of Chapter 2 (heading)

This item omits “Basic” and inserts “2012 basic” in the heading of Subdivision E of the

Transitional Provisions Principles, which sets out the requirements for the 2012 basic daily fee supplement to be paid in respect of a payment period for a care recipient. The effect of this amendment, in conjunction with items 3, 6, 7, 8 and 9, is to differentiate the 2012 basic daily fee supplement from the new 2021 basic daily fee supplement in the Transitional Provisions Principles.

Item 6 – Section 38 (heading)

This item omits “Basic” and inserts “2012 basic” in the heading of section 38.

Item 7 – Section 38

This item inserts “2012” before “basic” wherever “basic” occurs in section 38. Section 38 of the Transitional Provisions Principles sets out when the 2012 basic daily fee supplement applies to a care recipient.

Item 8 – Section 39 (heading)

This item inserts “2012” before “basic” in the heading of section 39.

Item 9 – Section 39

This item inserts “2012” before “basic daily” in section 39. Section 39 of the Transitional Provisions Principles sets out the eligibility requirements for the 2012 basic daily fee supplement.

Item 10 – At the end of Division 8 of Part 3 of Chapter 2

This item adds new Subdivision G—2021 basic daily fee supplement (for payment periods July 2021 to September 2022) at the end of Division 8 of Part 3 of Chapter 2 of the Transitional Provisions Principles. Subdivision G consists of section 64B and section 64C.

New section 64B sets out that for the purposes of paragraph 44-27(1)(e) of the TP Act, the 2021 basic daily fee supplement for a care recipient in respect of a payment period beginning on or after 1 July 2021 and before 1 October 2022 is the sum of all the 2021 basic daily fee supplements for the days during the period on which the care recipient was provided with residential care through the residential care service in question, and the approved provider met the requirements for eligibility for the 2021 basic daily fee supplement under section 64C.

New section 64C sets out the eligibility for the 2021 basic daily fee supplement.

Section 64C sets out the eligibility requirements for the 2021 basic daily fee supplement, requiring an approved provider to give a notice, in a form approved by the Secretary, undertaking to provide quarterly reports to the Secretary that include required information about the quality and quantity of daily living services with a focus on food and nutrition provided by each residential service through which the approved provider provides residential care. If the undertaking is provided by the 21st day of a quarter, eligibility commences from the beginning of that quarter.

Section 64C also sets out that to remain eligible, the quarterly reports that the approved provider has undertaken to provide must be provided within 21 days after the end of a quarter.

Section 64C also provides that the meaning of ‘quarter’ in this section is a quarter beginning

on 1 July 2021, 1 October 2021, 1 January 2022, 1 April 2022 or 1 July 2022.

These requirements are similar to new section 70AG of the Subsidy Principles (item 19 below). The new requirements are expanded in detail in item 19 below.

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

Item 11 – Division 11 of Part 2 of Chapter 2 (heading)

This item omits “Basic” and inserts “2012 basic” in the heading of Division 11 of the Transitional Provisions Determination, which sets out the amount of the 2012 basic daily fee supplement to be paid in respect of a payment period for a care recipient. The effect of this amendment, in conjunction with items 12, 13, 14 and 15, is to differentiate the 2012 basic daily fee supplement from the new 2021 basic daily fee supplement in the Transitional Provisions Determination.

Item 12 – Section 58

This item inserts “2012” before “basic” wherever “basic” occurs in section 58. Section 58 of the Transitional Provisions Determination sets out the purpose of Division 11.

Item 13 – Section 59 (definition of *eligible care recipient*)

This item inserts “2012” before “basic” in the definition of *eligible care recipient*.

Item 14 – Section 60 (heading)

This item inserts “2012” before “basic” in the heading of section 60.

Item 15 – Section 60

This item inserts “2012” before “basic daily” in section 60. Section 60 of the Transitional Provisions Determination provides how the amount of the 2012 basic daily fee supplement is worked out.

Item 16 – At the end of Part 4 of Chapter 2

This item adds new Division 8—2021 basic daily fee supplement (for payment periods July 2021 to September 2022), which consists of new section 79E and new section 79F.

New section 79E sets out that the purpose of Division 8 is to set out the 2021 basic daily fee supplement amount for a day for a care recipient. New section 79C also provides that the 2021 basic daily fee supplement is the 2021 basic daily fee supplement set out in Subdivision G of Division 8 of Part 3 of Chapter 2 of the Transitional Provisions Principles (see Item 10 above).

New section 79F sets out that the amount of the 2021 basic daily fee supplement for a day for a care recipient is \$10.00.

Information Principles 2014

Item 17 – At the end of section 8

This item adds new paragraph 8(c) and new paragraph 8(d) to section 8 of the Information Principles.

Section 8 of the Information Principles specifies information about an aged care service that

the Secretary may make publicly available for the purposes of paragraph 86-9(1)(m) of the Act (section 7 of the Information Principles).

New paragraph 8(c) sets out information about an aged care service that the Secretary may make publicly available includes whether an approved provider of a residential care service:

- has given a notice in accordance with subsection 70AG(2) of the Subsidy Principles (see item 19) or subsection 64C(2) of the Transitional Provisions Principles (see item 10); or
- has given a report for a quarter in accordance with subsection 70AG(10) of the Subsidy Principles (see item 19) or subsection 64C(10) of the Transitional Provisions Principles (see item 10).

New paragraph 8(d) sets out information about an aged care service that the Secretary may make publicly available includes whether an approved provider of flexible care provided through a multi-purpose service has given a notice in accordance with subsection 91D(2) of the Subsidy, Fees and Payments Determination, or has given a report for a quarter in accordance with subsection 91D(8) of the Subsidy, Fees and Payments Determination (see item 2).

Subsidy Principles 2014

Item 18 – At the end of paragraph 20(e)

This item adds new sub-paragraph 20(e)(vi) to section 20, which sets out the purpose of Part 3 of the Subsidy Principles. New sub-paragraph 20(e)(vi) provides that the 2021 basic daily fee supplement is an other supplement that may apply to a care recipient.

Item 19 – At the end of Division 5 of Part 3 of Chapter 2

This item adds new Subdivision H—2021 basic daily fee supplement (for payment periods July 2021 to September 2022) to the Subsidy Principles. Subdivision H consists of new section 70AE, new section 70AF and new section 70AG.

New section 70AE sets out that the 2021 basic daily fee supplement for a care recipient in respect of the payment period beginning on or after 1 July 2021 and before 1 October 2022 is the sum of all the 2021 basic daily fee supplements for the days during the period on which the care recipient was provided with residential care through the residential care service in question, the care recipient was eligible for a 2021 basic daily fee supplement under section 70AF, and the approved provider of the service met the requirements for eligibility for a 2021 basic daily fee supplement under section 70AG.

New subsection 70AF(1) sets out that a care recipient is eligible for a 2021 basic daily fee supplement on a day if they are being provided with residential care other than respite care.

New subsection 70AF(2) sets out that a care recipient who is being provided with residential care as respite care is eligible for a 2021 basic daily fee supplement on a day if the amount of respite care basic subsidy for the care recipient is not nil under Division 2 of Part 1 of Chapter 2 of the Subsidy, Fees and Payments Determination.

New section 70AG sets out the eligibility requirements for approved providers for the 2021 basic daily fee supplement. In short, an approved provider will be eligible for the 2021 basic daily fee supplement if they provide an undertaking to the Secretary that they will provide

quarterly reports about the quality and quantity of daily living services, with a focus on food and nutrition, provided in the quarter by each residential care service through which the approved provider provides residential care. However, whether an approved provider will be eligible for the new 2021 basic daily fee supplement for the entirety of a quarter will depend on whether they provide the undertaking or a report within a particular timeframe.

New subsection 70AG(1) provides that an approved provider may give the Secretary a notice in accordance with new subsection 70AG(2), and clarified that the approved provider may give such a notice only once.

New subsection 70AG(2) provides that the notice must be in a form approved by the Secretary and include an undertaking to give the Secretary reports in accordance with new subsection 70AG(10) relating to the quarter in which the notice is given and each subsequent quarter. The notice must also include any other statements or information required by the approved form.

New subsection 70AG(3) states that, if the notice is given on or before the 21st day of a quarter (the *initial quarter*), the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement on each day between the first day of the initial quarter and the 21st day of the following quarter. However, if the initial quarter begins on 1 July 2022, the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement on each day between the first day of that quarter and 30 September 2022.

New subsection 70AG(4) provides that, if the notice is given after the 21st day of a quarter (the *initial quarter*) and before the end of the initial quarter, the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement on each day between the day the notice is given and the 21st day of the following quarter. However, if the initial quarter begins on 1 July 2022, the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement on each day between the day the notice is given and 30 September 2022.

New subsection 70AG(5) provides that subsections 70AG(6) to (9) apply to an approved provider that has given a notice in accordance with subsection 70AG(2) in a quarter.

New subsection 70AG(6) states that, subject to subsection 70AG(7), if, on or before the 21st day of a later quarter (the *current quarter*) the approved provider gives the Secretary a report relating to the previous quarter in accordance with subsection 70AG(10), then the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement on each day between the 22nd day of the current quarter and the 21st day of the following quarter.

For example, if the approved provider gives a report relating to the 1 July 2021 quarter on 3 October 2021, then the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement on each day between 22 October 2021 and 21 January 2022.

New subsection 70AG(7) provides that, if, on or before 21 July 2022, the approved provider gives the Secretary a report relating to the quarter beginning on 1 April 2022 in accordance with subsection 70AG(10), the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement on each day between 22 July 2022 and 30 September 2022.

New subsection 70AG(8) states that, subject to subsection 70AG(9), if, after the 21st day of a

later quarter (the *current quarter*) and on or before the 21st day of the immediately following quarter (the *following quarter*), the approved provider gives the Secretary a report relating to the quarter immediately before the current quarter in accordance with subsection 70AG(10), then the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement on each day between the day the report is given and the 21st day of the following quarter.

For example, if the approved provider gives a report relating to the 1 July 2021 quarter on 1 November 2021, then the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement on each day between 1 November 2021 and 21 January 2022.

New subsection 70AG(9) provides that if, after 21 July 2022 and on or before 30 September 2022, the approved provider gives the Secretary a report relating to the quarter beginning on 1 April 2022 in accordance with subsection 70AG(10), the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement on each day between the day the report is given and 30 September 2022.

New subsection 70AG(10) sets out the requirements for the reports to be provided to the Secretary. For the purposes of paragraph 70AG(2)(b) and subsections 70AG(6) to (9), a report relating to a quarter must be in writing, in a form approved by the Secretary, and include the information required by the approved form about the quality and quantity of daily living services, with a focus on food and nutrition, provided in the quarter by each residential care service through which the approved provider provides residential care.

New subsection 70AG(11) defines the meaning of ‘quarter’ for the purposes of section 70AG to mean a quarter beginning on 1 July 2021, 1 October 2021, 1 January 2022, 1 April 2022 or 1 July 2022.

Statement of Compatibility with Human Rights

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

Aged Care Legislation Amendment (Subsidies—Royal Commission Response) Instrument 2021

The *Aged Care Legislation Amendment (Subsidies—Royal Commission Response) Instrument 2021* 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

The *Aged Care Legislation Amendment (Subsidies—Royal Commission Response) Instrument 2021* (Amending Instrument) amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014*; the *Aged Care (Transitional Provisions) Principles 2014*; the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014*; the *Information Principles 2014*; and the *Subsidy Principles 2014*.

The purpose of Schedule 1 of the Amending Instrument is to make a new 2021 basic daily fee supplement available from 1 July 2021 to approved providers of residential care and flexible care who meet eligibility requirements that include reporting on a quarterly basis on the quality and quantity of daily living services with a focus on food and nutrition..

Eligible approved providers will commence to receive the 2021 basic daily fee supplement after they lodge their claims for subsidy in August 2021.

Human Rights Implications

The Amending Instrument engages the following human rights as contained in article 11(1) and article 12(1) of the *International Convention on Economic, Social and Cultural Rights* and articles 25 and 28 of the *Convention of the Rights of Persons with Disabilities*:

- the right to an adequate standard of living, including with respect to food, clothing and housing, and to the continuous improvement of living conditions; and
- the right to the enjoyment of the highest attainable standard of physical and mental health.

Residential aged care is a key component of the Australian aged care system. The Final Report of the Royal Commission into Aged Care Quality and Safety made recommendations including improving the amount of funding of residential aged care. *Recommendation 112* of the Final Report was to implement a basic daily fee supplement of \$10.00 per care recipient per day.

The Government accepted *Recommendation 112* of the Royal Commission's Final Report and the Amending Instrument gives effect to the implementation of that new supplement.

The 2021 basic daily fee supplement is part of a package of measures that will support residential care by investing \$3.2 billion over 5 years from 2020-21.

The Amending Instrument increases the amount of funding 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. The additional funding will assist approved providers to provide care to their care recipients in accordance with an adequate standard of living and the right to the enjoyment of the highest attainable standard of physical and mental health.

The additional aged care funding provided by this legislative instrument is part of the Australian Government's response to the Final Report of the Royal Commission into Aged Care Quality and Safety. It supports the viability of the residential and flexible aged care sectors with a particular focus on the food and nutrition provided to their care recipients.

Legislation requires government-subsidised aged care homes meet standards to ensure that quality care and services are provided to all residents. The Australian Government's spending on aged care will protect residential aged care recipient's rights to an adequate standard of living.

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.

**The Hon Greg Hunt MP
Minister for Health and Aged Care**