



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

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I, Greg Hunt, Minister for Health and Aged Care, make the following instrument.

Dated 28 June 2021

Greg Hunt  
Minister for Health and Aged Care

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## 1 Name

This instrument is the *Aged Care Legislation Amendment (Subsidies—Royal Commission Response) Instrument 2021*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2021.	1 July 2021

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the following:

- (a) the *Aged Care Act 1997*;
- (b) the *Aged Care (Transitional Provisions) Act 1997*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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## Schedule 1—Amendments

### *Aged Care (Subsidy, Fees and Payments) Determination 2014*

#### **1 At the end of Part 4 of Chapter 2**

Add:

#### **Division 8—2021 basic daily fee supplement (for payment periods July 2021 to September 2022)**

##### **64E Purpose of this Division**

- (1) For the purposes of subsection 44-27(3) of the Act, this Division sets out the amount of the 2021 basic daily fee supplement for a day for a care recipient.
- (2) For the purposes of this Division, 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 2014*.

##### **64F Amount of 2021 basic daily fee supplement (for payment periods July 2021 to September 2022)**

The amount of the 2021 basic daily fee supplement for a day for a care recipient is \$10.00.

#### **2 After section 91B**

Insert:

##### **91C Amount of flexible care subsidy on and after 1 July 2021 (addition of 2021 basic daily fee supplement equivalent amount)**

- (1) Despite section 91, the amount of flexible care subsidy payable for a day in respect of flexible care that is provided through a multi-purpose service is, for a day on or after 1 July 2021 for which the approved provider of the service meets the requirements for eligibility for a 2021 basic daily fee supplement equivalent amount under section 91D, the sum of:
  - (a) the amount worked out under section 91 for the day and the service; and
  - (b) the amount worked out by multiplying:
    - (i) the 2021 basic daily fee supplement equivalent amount; and
    - (ii) the number of high care places and low care places allocated in respect of the service.

- (2) In this section:

*2021 basic daily fee supplement equivalent amount* means \$10.00.

**91D Eligibility for 2021 basic daily fee supplement equivalent amount***Notice to Secretary*

- (1) An approved provider may give the Secretary a notice in accordance with subsection (2), but may give such a notice only once.
- (2) The notice must:
  - (a) be in writing, in a form approved by the Secretary; and
  - (b) include an undertaking to give the Secretary reports in accordance with subsection (8) relating to the quarter in which the notice is given and each subsequent quarter; and
  - (c) include any other statements or information required by the approved form.

*Eligibility based on giving notice—initial quarter*

- (3) If the notice is given on or before the 21st day of a quarter, the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement equivalent amount on each day between the first day of the quarter and the 21st day of the following quarter.
- (4) If the notice is given after the 21st day of a quarter and before the end of the quarter, the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement equivalent amount on each day between the day the notice is given and the 21st day of the following quarter.

*Eligibility based on giving reports—later quarters*

- (5) Subsections (6) and (7) apply to an approved provider that has given a notice in accordance with subsection (2) in a quarter.
- (6) 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 (8), the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement equivalent amount on each day between the 22nd day of the current quarter and the 21st day of the following quarter.
- (7) 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 (8), the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement equivalent amount on each day between the day the report is given and the 21st day of the following quarter.

*Reports*

- (8) For the purposes of paragraph (2)(b) and subsections (6) and (7), a report relating to a quarter must:
  - (a) be in writing, in a form approved by the Secretary; and
  - (b) 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 multi-purpose service through which the approved provider provides flexible care.

*Meaning of quarter*

(9) In this section:

**quarter** means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October in a year.

***Aged Care (Transitional Provisions) Principles 2014***

**3 Subparagraph 17(c)(v)**

Before “basic”, insert “2012”.

**4 At the end of paragraph 17(h)**

Add:

; (v) the 2021 basic daily fee supplement.

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

Omit “**Basic**”, substitute “**2012 basic**”.

**6 Section 38 (heading)**

Omit “**Basic**”, substitute “**2012 basic**”.

**7 Section 38**

Before “basic” (wherever occurring), insert “2012”.

**8 Section 39 (heading)**

Before “**basic**”, insert “**2012**”.

**9 Section 39**

Before “basic daily”, insert “2012”.

**10 At the end of Division 8 of Part 3 of Chapter 2**

Add:

**Subdivision G—2021 basic daily fee supplement (for payment periods July 2021 to September 2022)**

**64B 2021 basic daily fee supplement (for payment periods July 2021 to September 2022)**

For the purposes of paragraph 44-27(1)(e) of the Transitional Provisions 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:

- (a) the care recipient was provided with residential care through the residential care service in question; and



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- (b) the approved provider of the service met the requirements for eligibility for a 2021 basic daily fee supplement under section 64C.

## **64C Eligibility for 2021 basic daily fee supplement**

### *Notice to Secretary*

- (1) An approved provider may give the Secretary a notice in accordance with subsection (2), but may give such a notice only once.
- (2) The notice must:
  - (a) be in writing, in a form approved by the Secretary; and
  - (b) include an undertaking to give the Secretary reports in accordance with subsection (10) relating to the quarter in which the notice is given and each subsequent quarter; and
  - (c) include any other statements or information required by the approved form.

### *Eligibility based on giving notice—initial quarter*

- (3) 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:
  - (a) if paragraph (b) does not apply—the 21st day of the following quarter; or
  - (b) if the initial quarter begins on 1 July 2022—30 September 2022.
- (4) 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:
  - (a) if paragraph (b) does not apply—the 21st day of the following quarter; or
  - (b) if the initial quarter begins on 1 July 2022—30 September 2022.

### *Eligibility based on giving reports—later quarters*

- (5) Subsections (6) to (9) apply to an approved provider that has given a notice in accordance with subsection (2) in a quarter.
- (6) Subject to subsection (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 (10), 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.
- (7) 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 (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.
- (8) Subject to subsection (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 (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 the 21st day of the following quarter.

- (9) 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 (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.

*Reports*

- (10) For the purposes of paragraph (2)(b) and subsections (6) to (9), a report relating to a quarter must:
- (a) be in writing, in a form approved by the Secretary; and
  - (b) 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.

*Meaning of quarter*

- (11) In this section:

**quarter** means a quarter beginning on 1 July 2021, 1 October 2021, 1 January 2022, 1 April 2022 or 1 July 2022.

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

**11 Division 11 of Part 2 of Chapter 2 (heading)**

Omit “**Basic**”, substitute “**2012 basic**”.

**12 Section 58**

Before “basic” (wherever occurring), insert “2012”.

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

Before “basic”, insert “2012”.

**14 Section 60 (heading)**

Before “**basic**”, insert “**2012**”.

**15 Section 60**

Before “basic daily”, insert “2012”.

**16 At the end of Part 4 of Chapter 2**

Add:

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## **Division 8—2021 basic daily fee supplement (for payment periods July 2021 to September 2022)**

### **79E Purpose of this Division**

- (1) For the purposes of subsection 44-27(3) of the Transitional Provisions Act, this Division sets out the amount of the 2021 basic daily fee supplement for a day for a care recipient.
- (2) For the purposes of this Division, 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.

### **79F Amount of 2021 basic daily fee supplement (for payment periods July 2021 to September 2022)**

The amount of the 2021 basic daily fee supplement for a day for a care recipient is \$10.00.

## ***Information Principles 2014***

### **17 At the end of section 8**

Add:

- ; (c) information about whether an approved provider of a residential care service:
  - (i) has given a notice in accordance with subsection 70AG(2) of the *Subsidy Principles 2014* or subsection 64C(2) of the *Aged Care (Transitional Provisions) Principles 2014*; or
  - (ii) has given a report for a quarter in accordance with subsection 70AG(10) of the *Subsidy Principles 2014* or subsection 64C(10) of the *Aged Care (Transitional Provisions) Principles 2014*;
- (d) information about whether an approved provider of flexible care provided through a multi-purpose service:
  - (i) has given a notice in accordance with subsection 91D(2) of the *Aged Care (Subsidy, Fees and Payments) Determination 2014*; or
  - (ii) has given a report for a quarter in accordance with subsection 91D(8) of the *Aged Care (Subsidy, Fees and Payments) Determination 2014*.

## ***Subsidy Principles 2014***

### **18 At the end of paragraph 20(e)**

Add:

- ; (vi) the 2021 basic daily fee supplement.

### **19 At the end of Division 5 of Part 3 of Chapter 2**

Add:

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**Subdivision H—2021 basic daily fee supplement (for payment periods July 2021 to September 2022)**

**70AE 2021 basic daily fee supplement (for payment periods July 2021 to September 2022)**

For the purposes of paragraph 44-27(1)(c) of the 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:

- (a) the care recipient was provided with residential care through the residential care service in question; and
- (b) the care recipient was eligible for a 2021 basic daily fee supplement under section 70AF; and
- (c) the approved provider of the service met the requirements for eligibility for a 2021 basic daily fee supplement under section 70AG.

**70AF Eligibility for 2021 basic daily fee supplement—care recipients**

- (1) A care recipient is eligible for a 2021 basic daily fee supplement on a particular day if, on that day, the care recipient is being provided with residential care other than as respite care.
- (2) A care recipient is eligible for a 2021 basic daily fee supplement on a particular day if, on that day:
  - (a) the care recipient is being provided with residential care as respite care; and
  - (b) under Division 2 of Part 1 of Chapter 2 of the *Aged Care (Subsidy, Fees and Payments) Determination 2014*, the basic subsidy amount for the day for the care recipient is not nil.

**70AG Eligibility for 2021 basic daily fee supplement—approved providers**

*Notice to Secretary*

- (1) An approved provider may give the Secretary a notice in accordance with subsection (2), but may give such a notice only once.
- (2) The notice must:
  - (a) be in writing, in a form approved by the Secretary; and
  - (b) include an undertaking to give the Secretary reports in accordance with subsection (10) relating to the quarter in which the notice is given and each subsequent quarter; and
  - (c) include any other statements or information required by the approved form.

*Eligibility based on giving notice—initial quarter*

- (3) 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:
  - (a) if paragraph (b) does not apply—the 21st day of the following quarter; or
  - (b) if the initial quarter begins on 1 July 2022—30 September 2022.

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- (4) 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:
- (a) if paragraph (b) does not apply—the 21st day of the following quarter; or
  - (b) if the initial quarter begins on 1 July 2022—30 September 2022.

*Eligibility based on giving reports—later quarters*

- (5) Subsections (6) to (9) apply to an approved provider that has given a notice in accordance with subsection (2) in a quarter.
- (6) Subject to subsection (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 (10), 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.
- (7) 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 (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.
- (8) Subject to subsection (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 (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 the 21st day of the following quarter.
- (9) 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 (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.

*Reports*

- (10) For the purposes of paragraph (2)(b) and subsections (6) to (9), a report relating to a quarter must:
- (a) be in writing, in a form approved by the Secretary; and
  - (b) 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.

*Meaning of **quarter***

- (11) In this section:

**quarter** means a quarter beginning on 1 July 2021, 1 October 2021, 1 January 2022, 1 April 2022 or 1 July 2022.