

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Aged Care

Aged Care Act 1997

Aged Care (Transitional Provisions Act) 1997

Aged Care Legislation Amendment (July Indexation and Other Measures) Instrument 2023

The *Aged Care Act 1997* (the Aged Care Act) and the *Aged Care (Transitional Provisions) Act 1997* (the Transitional Provisions Act) provide for the regulation and funding of aged care services. Persons who are approved under the *Aged Care Quality and Safety Commission Act 2018* 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 Aged Care Act and the Transitional Provisions Act provide that for each type of aged care, the Minister may determine the amount of subsidy and supplements payable to an approved provider for the provision of that type of aged care.

Purpose

The *Aged Care Legislation Amendment (July Indexation and Other Measures) Instrument 2023* (the Amending Instrument) amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014* (the Subsidy, Fees and Payments Determination); the *Aged Care (Transitional Provisions) Principles 2014* (the Transitional Provisions Principles); the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014* (the Transitional Provisions Determination); and the *User Rights Principles 2014* (User Rights Principles).

The purpose of the Amending Instrument is to apply routine indexation to the number of subsidies and supplements payable to approved providers of aged care services in respect of a day from 1 July 2023, and to increase the maximum daily prices for care management and package management which can be charged by approved providers of home care, in line with the home care subsidy increases.

In addition, the Amending Instrument will give effect to measures announced by the Hon Anika Wells MP, Minister for Aged Care on 4 May 2023 and by the Hon Mark Butler MP, Minister for Health and Aged Care on 9 May 2023 of increased aged care funding to support the Fair Work Commission's decisions of 3 March 2023 varying minimum wages for aged care employees across three awards to reflect the value of the work performed by workers in the aged care sector. The Government recognises that aged care is critical and faces significant staffing challenges. This additional funding will also help to ensure the viability of the sector.

Authority

The Aged Care Act provides that for each type of aged care, the Minister may determine, by legislative instrument, the amount of subsidy and supplement payable to an approved provider for the provision of that type of aged care. Specifically, the authority provisions in the Aged Care Act for making specific determinations in the Amending Instrument are set out in the following table:

Type of Care	Aged Care Act section
Residential care	
Basic subsidy amount	subsection 44-3(2)
Primary supplement amount	subsection 44-5(3)
Other supplement amount	subsection 44-27(3)
Home care	
Basic subsidy amount	subsection 48-2(2)
Primary supplement amount	subsection 48-3(3)
Care subsidy reduction income thresholds	subsection 48-7(6)
Other supplement amount	subsection 48-9(3)
Flexible care	
Flexible care subsidy	section 52-1

The Transitional Provisions Act provides that for each type of aged care, the Minister may determine, by legislative instrument, the amount of subsidy and supplement payable to an approved provider for the provision of that type of aged care. Specifically, the authority provisions in the Transitional Provisions Act for making specific determinations in the Amending Instrument are set out in the following table:

Type of Care	Transitional Provisions Act section
Residential care	
Basic subsidy amount	subsection 44-3(2)
Oxygen supplement	subsection 44-13(6)
Enteral feeding supplement	subsection 44-14(6)
Additional primary supplements	subsection 44-16(3)
Other supplements	subsection 44-27(3)
Home care	
Home care subsidy amount	subsection 48-1(3)

Section 96-1 of the Aged Care Act provides that the Minister may, by legislative instrument, make Principles specified in the second column of the table in that section providing for matters required or permitted, or necessary or convenient, to give effect to the corresponding part or section of the Act specified in the third column of the table. This includes the User Rights Principles in relation to user rights matters (Part 4.2 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.

Commencement

The Amending Instrument commences on 1 July 2023.

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

Consultation

The routine indexation of subsidies and supplements in this Amending Instrument is calculated through the use of a well-established formula based on the relevant wage and price indices. No specific consultation was undertaken with respect to the amount of the indexation to the aged care subsidies and supplements applied in this Amending Instrument.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation (OBPR) has previously advised that a Regulation Impact Statement is not required for legislative instruments in order to implement routine indexation (**OBPR ID 11719**) or for amending instruments that implement automatic additional funding increases to subsidies and supplements (**OBPR ID 26422**).

Details of the Aged Care Legislation Amendment (July Indexation and Other Measures) Instrument 2023

Section 1 states that the name of the instrument is the *Aged Care Legislation Amendment (July Indexation and Other Measures) Instrument 2023*.

Section 2 states that the instrument commences on 1 July 2023.

Section 3 provides that the authority for making the 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 – Amendments to subsidy paid under the *Aged Care Act 1997*

Aged Care (Subsidy, Fees and Payments) Determination 2014

Item 1 – Amendments of listed provisions – increased amounts

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

- Items 1, 5 and 6; the amount of oxygen supplement
- Items 2, 3, 7, 8 and 9; the amount of enteral feeding supplement
- Items 4 and 16; the amount of veterans' supplement
- Items 10 – 12; the amounts of income thresholds
- Item 13; the amount of flexible care subsidy for multi-purpose service home care places
- Items 14 -15; the amount of flexible care subsidy for multi-purpose service high care and low care places
- Items 17 - 18; the amount of flexible care subsidy for innovative care services
- Items 19 – 20; the amount of flexible care subsidy for transition care; and
- Items 21 – 22; the amount of flexible care subsidy for short-term restorative care.

Item 2 – Section 64H

This item provides for the increase of the National Efficient Price amount for residential care by substituting the increased amount.

Item 3 – Section 67 (table)

This item provides for the increase 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 increased amounts.

Item 4 – Section 84A (table to definition of *ARIA value viability supplement amount*)

This item provides for the increase of amounts in relation to the amount of viability supplement for home care by repealing the table to the definition of *ARIA value viability supplement amount* in section 84A and substituting a new table with the increased amounts.

Item 5 – Section 84A (table to definition of *MMM classification viability supplement amount*)

This item provides for the increase of amounts in relation to the amount of viability supplement for home care by repealing the table to the definition of *MMM classification viability supplement amount* in section 84A and substituting a new table with the increased amounts.

Item 6 – Section 87 (table to definition of *ARIA value additional amount*)

This item provides for the increase of amounts in relation to the amount of viability supplement for a home care place allocated in respect of a multi-purpose service by repealing the table to the definition of *ARIA value additional amount* in section 87 and substituting a new table with the increased amounts.

Item 7 – Section 87 (table to definition of *MMM classification additional amount*)

This item provides for the increase of amounts in relation to the amount of viability supplement for a home care place allocated in respect of a multi-purpose service by repealing the table to the definition of *MMM classification additional amount* in section 87 and substituting a new table with the increased amounts.

Item 8 – Section 94 (table)

This item provides for the increase 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 increased amounts.

Item 9 – Section 97 (table)

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

Item 10 – Section 98 (table)

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

Item 11 – Section 99 (table)

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

Item 12 – Section 99A (table)

This item provides for the increase of amounts in relation to the viability supplement equivalent amounts for Category D multi-purpose services by repealing the table to section 99A and substituting a new table with the increased amounts.

Item 13 – Section 101 (table)

This item provides for the increase 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 increased amounts.

Item 14 – Subsection 104(1) (table)

This item provides for the increase of amounts in relation to the flexible care subsidy amounts for innovative care services by repealing the table to subsection 104(1) and substituting a new table with the increased amounts.

Item 15 – Subsection 104(2) (table)

This item provides for the increase of amounts in relation to the flexible care subsidy amount for care provided through an innovative care service by repealing the table to subsection 104(2) and substituting a new table with the increased amount.

Schedule 2 – Amendments to subsidy paid under the *Aged Care (Transitional Provisions) Act 1997****Aged Care (Transitional Provisions) Principles 2014*****Item 1 – Section 67E (table)**

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

Item 2 – Section 67N

This item provides for the increase of the home care top-up supplement amount.

Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014**Item 3 – Section 81**

This item provides for the increase of the National Efficient Price amount for residential care by substituting the increased amount.

Item 4 – Amendments of listed provisions – increased amounts

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

- Item 1; the amount of oxygen supplement
- Items 2 – 3; the amount of enteral feeding supplement
- Item 4; the amount of veterans' supplement

Schedule 3 – Other amendments***User Rights Principles 2014*****Item 1 – Subsection 21KA(1) (table)**

This item provides for the increase of maximum daily prices for care management and package management for home care services in line with the increases of home care basic subsidy by repealing the table to subsection 21KA(1) and substituting a new table with the increased maximum prices.

Statement of Compatibility with Human Rights

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

Aged Care Legislation Amendment (July Indexation and Other Measures) Instrument 2023

The *Aged Care Legislation Amendment (July Indexation and Other Measures) Instrument 2023* (the Amending 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) Act 2011*.

Overview of the legislative instrument

The 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*, and the *User Rights Principles 2014*. The Amending Instrument increases the number of particular subsidies and supplements payable to approved providers of aged care services and the maximum daily prices for care management and package management for home care from 1 July 2023.

Human rights implications

The Amending 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 articles 11(1) and 12(1) of the *International Covenant on Economic, Social and Cultural Rights*, and articles 25 and 28 of the *Convention on the Rights of Persons with Disabilities*.

The Amending Instrument gives effect to measures announced on 4 May 2023 by the Hon Anika Wells MP, Minister for Aged Care and on 9 May 2023 by the Hon Mark Butler MP, Minister for Health and Aged Care of increases in aged care funding in addition to normal indexation increases. The additional funding increases are to support improving wages and conditions for aged care workers resulting from the Fair Work Commission's decisions of 3 March 2023 to vary minimum wages for aged care employees so that they properly reflect the value of the work performed by those workers.

The Government recognises that aged care is a critical sector that faces staffing challenges. The additional funding increases in this Amending Instrument, in addition to the routine indexation increases, help ensure the viability of residential care, home care, and flexible care approved providers. The Amending Instrument increases the number of subsidies 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.

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

Conclusion

The Amending 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 by maintaining the value of these payments and contributions.

The Hon Anika Wells
Minister for Aged Care