EXPLANATORY STATEMENT

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

Aged Care (Consequential and Transitional Provisions) (Aged Care System Modification) Rules 2025

Purpose

The *Aged Care (Consequential and Transitional Provisions) (Aged Care System Modification) Rules 2025* (System Modification Rules) modifies the operation of the *Aged Care Act 2024* (Act) and the *Aged Care Rules 2025* (Rules), which commence on 1 November 2025. The System Modification Rules will:

- Modify the scope of section 317 of the Act, which provides for variations of individual contribution rates following social security decisions;
- Replicate section 317 (as modified) for the purposes of income and asset determinations for residential care means testing;
- Modify the dates of effect for variations of individual contribution rate determinations under sections 317 and 318 of the Act, and sections 315-10 and 318-10 of the Rules;
- Modify provisions for variation of asset determinations due to a notification from a registered provider of an event or change in the individual's circumstances in relation to the individual's refundable deposit balance or refundable accommodation contribution balance;
- Modify section 337 to make it mandatory for registered providers to report the individual's refundable deposit balance or refundable accommodation contribution balance.

These changes are necessary to ensure the effective operation of the Act from 1 November 2025 and continuity of care for older people.

Background

Subitem 2(1) in Schedule 6 of the *Aged Care (Consequential and Transitional Provisions) Act 2024* (the Transitional Act) provides that the Minister may make modification rules or saving provisions that alter the operation of any aspect of the Commonwealth aged care system by modifying the operation if the Minister is satisfied it is necessary or appropriate to do so.

This broad modification power is intended to be used only to ensure continuity and operability in relation to care provided under the old and new law, despite transition. The foremost reason for this provision is to serve as a failsafe which ensures that the Minister is empowered to act swiftly to address the impact that unintended or unforeseen circumstances may have on the operation of the new Commonwealth aged care system, as interruption to these critical services may result in significant detriment to the older persons who rely upon them.

The Minister's legislative power has been appropriately confined so that the power may only be exercised where the Minister is satisfied that it is necessary or appropriate to do so. Further, any rules made may only modify the effect of legislation that is related to the Commonwealth aged care system. This means that any rules must materially relate to the provision and support of Commonwealth-funded aged care to individuals.

The System Modification Rules are made within this context. I am satisfied that these Rules are necessary to respond to circumstances that were unforeseen and that it is in the interests of older people for these issues to be resolved prior to commencement of the Act, in order to ensure its effective operation. Specifically, the amendments address issues in relation to variations of individual contribution rate determinations and income and asset determinations following the operation of the social security law and certain decisions under that law, the dates of effect for variations to individual contribution rate determinations, and variations to asset determinations where a registered provider has notified the System Governor of an event or change in the individual's circumstances.

These provisions are also time limited, both in relation to the period in which they may be exercised and in the period of effect of any rules made through that exercise. As provided for in the Transitional Act, the System Modification Rules will automatically be repealed after 12 months and will need to be made permanent through normal parliamentary processes.

Authority

Subitem 2(1) in Schedule 6 of the Transitional Act provides that the Minister may, by legislative instrument, make rules that alter the operation of any aspect of the Commonwealth aged care system by modifying the operation of certain provisions of the Act, the Transitional Act (other than Schedule 6), or any other Act or instrument, if the Minister is satisfied that it is necessary or appropriate to do so. This instrument is made under this item and modifies the operational detail of the Act and the Rules to ensure the effective implementation of the new aged care framework established by the Act.

In accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, the power to make these Rules includes the power to amend, repeal or vary them as necessary. This ensures that these Rules can be updated promptly in response to emerging issues. However, it is noted that subitem 2(8) of Schedule 6 of the Transitional Act provides that rules must not be made under subitem 2(1) in Schedule 6 of the Transitional Act after the end of the period of 12 months beginning on the day this subitem commenced on 20 September 2025. This means that no further rules can be made in reliance of subitem 2(1) in Schedule 6 of the Transitional Act after 20 September 2026.

Consultation

The department has undertaken internal consultation and external consultation with Services Australia in relation to this instrument.

Commencement

This instrument commences at the same time as the Act, as amended by the *Aged Care and Other Legislative Amendment Act 2025,* commences on 1 November 2025.

Schedule

The operation of each Act or instrument that is specified in a Schedule to this instrument is modified as if it were amended as set out in the applicable items in the Schedule concerned.

Repeal

This instrument is repealed at the end of 12 months beginning on the day after the rules are made, as provided for by paragraph (4)(a) of Schedule 6 of the Transitional Act.

Explanation of the provisions

Section 1 – Name

This section provides that the name of this instrument is the Aged Care (Consequential and Transitional Provisions) (Aged Care System Modification) Rules 2025.

Section 2 – Commencement

This section provides for the commencement of this instrument. The table under subsection (1) provides that the whole of this instrument commences at the same time as the *Aged Care Act 2024,* as amended by the *Aged Care and Other Legislative Amendment Act 2025,* commences on 1 November 2025.

The note under the table clarifies that this table relates only to the provisions of the instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

Subsection (2) clarifies that 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.

Section 3 – Authority

This section provides that the authority for making this instrument is under subitem 2(1) of Schedule 6 of to the *Aged Care (Consequential and Transitional Provisions) Act 2024*.

Section 4 – Schedules

This section provides that the operation of each Act or instrument that is specified in a Schedule to this instrument is modified as if it were amended as set out in the applicable items in the Schedule concerned.

Schedule 1—Modifications of the Aged Care Act 2024

Item 1 – Paragraph 315(2)(a)

Item 1 modifies paragraph 315(2)(a) to insert "(if any)" after "period".

This is a technical modification.

Item 2 – Subsection 316(1) (note)

Item 2 modifies the note under subsection 316(1) to substitute "income" with "individual contribution rate".

This is a technical modification to change the reference in the note from income determination to individual contribution rate determination as section 316 provides for variations of the individual contribution rate determination.

Item 3 – Paragraph 316(2)(a)

Item 3 modifies paragraph 316(2)(a) to substitute "social security decisions" with "decisions, the taking of certain actions, the operation of certain laws or programs or on the basis of certain information ".

This is a technical modification to reflect and align with changes to section 317 (as outlined in Item 4 of Schedule 1 of this instrument).

Item 4 – Section 317

Item 4 repeals the whole of section 317 and substitutes it with new provisions.

New subsection (1) provides that this section applies if:

- individual contribution rate determination is in force for an individual; and
- the determination is no longer correct because of a decision made under, an administrative action taken under, or the operation of, the social security law (within the meaning of the *Social Security Act 1991*), a centrelink program or a law or program prescribed by the rules, or on the basis of information referred to in subsection (1A); and
- any requirements prescribed by the rules are met.

The note under subsection (1) refers the person to section 40 of the *Human Services (Centrelink) Act 1997* where a centrelink program is defined, including which programs are not centrelink programs.

New subsection (1A) provides that for the purposes of subparagraph (1)(b)(ii), the information is information obtained under or for the purposes of a law or program referred to in subparagraph (1)(b)(i), and that is held by the System Governor, the Chief Executive Centrelink or the Chief Executive Medicare.

The modifications in the new subsections (1) and (1A) ensures that section 317 captures decisions made, administrative actions taken, and operation of the law under legislation other than the social security law or a centrelink program that results in updated information for the individual in Services Australia's systems (for example, the Income Support Integrated System (ISIS)) to result in a mandatory variation of the individual contribution rate determination for the individual.

New subsection (2) provides that the System Governor must, within the period (if any) prescribed by the rules, vary the determination.

New subsection (4) provides that, subject to subsection (5), if the variation results in an increase to the individual contribution rate and the individual has the classification type ongoing for the service group for home support, then the variation takes effect on the day after the end of the quarter in which the variation is made. This is consistent with the existing provision in paragraph 317(4)(a) of the Act but clarifies that it applies to increases in individual contribution rate for individual with the classification type ongoing for the service group home support.

For example, David is receiving ongoing Support at Home services. Based on his income and assets his contributions towards his Independence services is 7%. On 15 May 2026 his income increases, and the calculated contribution would rise to 10%. This increase will not take effect until 1 July 2026, the beginning of the next quarter.

New subsection (4A) provides that, subject to subsection (5), if the variation results in an increase to the individual contribution rate and the individual has the classification type ongoing for the service group assistive technology, then the variation takes effect at the start of the next anniversary of the entry day for the individual for the classification type for the service group. This modification clarifies that if the individual has ongoing assistive technology, the increase in their individual contribution rate will take effect at the next anniversary of the individual's entry day for ongoing assistive technology.

New subsection (4B) provides that, subject to subsection (5), if the variation results in an increase to the individual contribution rate and the individual has the classification type short-term for the service group home support, assistive technology or home modifications, then the variation does not take effect during their current care episode for that classification type for the service group. If they have a subsequent episode of care under the classification type short-term, the increase takes effect at the start of the next period of effect. This modification clarifies that for short-term classification types that operate based on periods of effect, rather than quarters, an increase takes effect from the start of the next episode of short-term care.

New subsection (4C) provides that, subject to subsection (5), if the variation results in a decrease to the individual contribution rate, the variation takes effect from the day the occurrence of the event or change in circumstances that resulted in a decision, action or operation referred to in subparagraph (1)(b)(i) being made, taken or occurring, or to which the information referred to in subparagraph (1)(b)(ii) relates (as applicable). This modification is required to clarify that decreases in individual contribution rates take effect from the day the event or change in individual circumstances occurred. In other words, decreases in individual contribution rates are backdated to the day the event or change in the individual's circumstances occurred to the advantage of the individual.

For example, on 10 June, Sue begins receiving short-term services through the End-of-Life Pathway. Based on her income and assets her contribution towards her Independence services is 8%. On 29 July her income increases, and the calculation contribution increases to 9%. This increase will not take effect.

New subsection (5) provides that the rules may prescribe that the variation takes effect on a specified day, which must not be earlier than the day of the occurrence of the event or change in circumstances that either resulted in the decision, action or operation referred to in subparagraph (1)(b)(i) being made, taken or occurring, or to which the information referred to in subparagraph (1)(b)(ii) relates (as applicable).

If the person has an approval for assistive technology or home modifications they will be able to access that funding for 12 months or 24 months for progressive conditions and high-tier home modifications. The provider will agree the assistive technology or home modifications that the person needs at the commencement of the period of effect including any contributions the person will make. Once this is agreed it is expected the provider will source the assistive technology or home modifications. Sourcing assistive technology and home modifications can have a significant lead time particularly for high-cost assistive technology and home modifications, and can also be high cost as there is no cap on the assistive technology high tier (e.g., electronic wheelchairs can be $30,000 or more for customised items). We expect that the person will not experience an increase to their contributions during the period of effect i.e. 12 months or 24 months to ensure their contributions are consistent with the original agreement made with the provider at the commencement of the process and ensure the person does not have unexpected costs. Where the outcome of the means testing results in a reduction in the consumer contribution amounts these would be reflected immediately resulting in a reduction in costs for the older person.

Item 5 – Subsections 318(5) and (6)

Item 5 repeals subsections 318(5) and (6) and substitutes them with new subsection.

New subsection (5) provides that, subject to subsection (6), if the variation results in an increase to the individual contribution rate and the individual has the classification type ongoing for the service group for home support, then the variation takes effect on the day after the end of the quarter in which the variation is made. This is consistent with the existing provision in paragraph 318(5)(a) of the Act but clarifies that it applies to increases in individual contribution rate for individual with the classification type ongoing for the service group home support.

New subsection (5A) provides that, subject to subsection (6), if the variation results in an increase to the individual contribution rate and the individual has the classification type ongoing for the service group assistive technology, then the variation takes effect at the start of the next anniversary of the entry day for the individual for the classification type for the service group. This modification clarifies that if the individual has ongoing assistive technology, the increase in their individual contribution rate will take effect at the next anniversary of the individual's entry day for ongoing assistive technology.

New subsection (5B) provides that, subject to subsection (6), if the variation results in an increase to the individual contribution rate and the individual has the classification type short-term for the service group home support, assistive technology or home modifications, then the variation takes effect at the start of the next period of effect (if any) for that classification type for the service group. This modification clarifies that for short-term classification types that operate based on periods of effect, rather than quarters, an increase takes effect from the start of the next episode of short-term care.

New subsection (5C) provides that, subject to subsection (6), if the variation results in a decrease to the individual contribution rate, the variation takes effect on the day the event or change in the individual's circumstances occurred. This applies to all support at home classification types.

New subsection (6) provides that the rules may prescribe that, in specified circumstances, the variation takes effect on a specified day (which must not be earlier than the day the event or change in individual's circumstances occurred).

Similar to modifications made to subsections 317(4) and (5), these modifications are required to allow for variations that result in a decrease in an individual contribution rate to take effect on the day the event or change in the individual's circumstances occurred. In addition, the original provisions for dates of effect of variations do not differentiate between ongoing and short-term classification types. For short-term classification types, a variation that results in an increased individual contribution rate should take effect from the beginning of the next episode of short-term care, and not at the start of the day after the end of the quarter in which the determination is made. For home support ongoing classifications, a variation that results in an increase is intended to apply on the first day of the following quarter which aligns with the current legislation.

The following are examples of how the dates of effect in the provisions in this instrument apply where a variation results in an increased individual contribution rate.

John is receiving ongoing Support at Home services. Based on his income and assets his contributions towards his Independence services is 10%. On 11 February 2026 his income increases, and the calculated contribution would rise to 12%. This increase will not take effect until 1 April 2026, the beginning of the next quarter.

On 27 December Jolene begins receiving short-term services through the Restorative Care Pathway. Based on her income and assets her contribution towards her Independence services is 10%. On 3 February her income increases, and the calculation contribution increases to 12%. Instead of this increase commencing on 1 April as with the ongoing classes, this increase will not apply during this episode of care and will take effect the next time she accesses the Restorative Care Pathway.

The following is an example of how the dates of effect in the provisions in this instrument apply where a variation results in a decreased individual contribution rate.

Adriana is receiving ongoing Support at Home services. Based on her income and assets her contributions towards her Independence services is 10%. On the 11 February 2026 she informs Services Australia that her income decreased as of 15 January. The calculated contribution would decrease to 8%. This decrease will be backdated to 15 January as that is the date Adriana's financial circumstances changed.

Item 6 – Subsection 324(2A)

Item 6 modifies subsection 324(2A) to omit "Subdivision D" and substitute with "section 336".

This modification is required to clarify that a mandatory variation of an income determination under subsection 324(2A) is only required if the System Governor is notified by the individual, rather than by a registered provider, of an event or change in the individual's circumstances under section 336. Under section 336 of the Act, an individual accessing residential care services must notify the System Governor of any event or change in their financial circumstances as this change might affect the amount of person-centred subsidy or provider-based subsidy payable to the registered provider or the individual.

Item 7 – After subsection 324(2A)

Item 7 inserts subsection 324(2B) after subsection 324(2A). Subsection (2B) provides that the income determination must be varied following the making of certain decisions, the taking of certain actions, the operation of certain laws or programs or on the basis of certain information (see section 325A).

This modification is required to provide that an income determination may also be varied following the making of certain decisions, the taking of certain actions, the operation of certain laws or programs or on the basis of certain information, similar to section 317 of the Act as modified by Items 3 to 4 of Schedule 1 of this instrument.

Item 8 – Section 325 (heading)

Item 8 modifies the heading of section 325 to add “by individual” at the end.

This is a technical modification.

Item 9 – Subsection 325(1)

Item 9 modifies subsection 325(1) to omit “Subdivision D” and substitute with “section 336”.

This is a technical modification to align with the modification to subsection 324(2A) made by Item 7 of Schedule 1 of this instrument.

Item 10 – After section 325

Item 10 inserts section 325A after section 325. Section 325A provides for the varying of income determinations following certain decisions, actions, operation of laws or programs or information.

New subsection (1) provides this section applies if an income determination is in force for an individual, and the determination is no longer correct because of a decision made under, an administrative action taken under, or the operation of, the a law or program referred to in new subparagraph 317(1)(b)(i) or on the basis of information referred to in subsection 317(1A) and if any requirements prescribed by the rules are met.

New subsection (2) provides that if this section applies, the System Governor must, with in the period prescribed by the rules (if any), vary the determination.

This modification is required to provide that an income determination may also be varied following the making of certain decisions, the taking of certain actions, the operation of certain laws or programs or on the basis of certain information, similar to section 317 of the Act as modified by Items 3 to 4 of this instrument. This ensures that individuals are only required to report changes to the Government once, rather than for each program they receive services from.

Item 11 – Paragraph 331(2)

Item 11 repeals subsection 331(2) and substitute it with new subsections (1A) and (2) which clarify the bases on which an asset determination may be varied or revoked.

New subsection (1A) provides that the asset determination may be varied or revoked on the application of the individual, and points the reader to see section 333.

New subsection (2) provides that the asset determination may be varied or revoked in accordance with a decision required by section 334, being a decision required in certain circumstances if the System Governor has been notified of the occurrence of an event or a change in the individual’s circumstances under section 337.

This modification is required to clarify that the variation to the asset determination under section 334 is required if the System Governor is notified by the registered provider of an event or change in circumstances under section 337 and that the information provided by the provider does not match the information held in the individual asset determination and the conditions outlined in section 334-1 of the Rules do not apply (see Item 8 in Schedule 2 of this instrument).

Item 12 – Subsection 331(2A)

Item 12 modifies subsection 331(2A) to omit "Subdivision D" and substitute with "section 336".

This modification is required to clarify that a mandatory variation of an asset determination under subsection 331(2A) is only required if the System Governor is notified by the individual, rather than by a registered provider, of an event or change in the individual's circumstances under section 336. This is similar to the modification made by Items 6 and 9 of Schedule 1 of this instrument.

Item 13 – After subsection 331(2A)

Item 13 inserts subsection 331(2B) after subsection 331(2A). Subsection 331(2B) provides that the asset determination must be varied following the making of certain decisions, the taking of certain actions, the operation of certain laws or programs or on the basis of certain information (see section 332A).

This modification is required to provide that an asset determination may also be varied following the making of certain decisions, the taking of certain actions, the operation of certain laws or programs or on the basis of certain information, similar to section 317 of the Act as modified by Items 3 to 4 of Schedule 1of this instrument.

Item 14 – Section 332 (heading)

Item 14 modifies the heading of section 332 to add "by individual" at the end.

This is a technical modification.

Item 15 – Subsection 332(1)

Item 15 modifies subsection 332(1) to omit "Subdivision D" and substitute with "section 336".

This is a technical modification to align with changes in this instrument.

Item 16 – After section 332

Item 16 inserts section 332A after section 332. Section 332A provides for the varying asset determination following certain decisions, actions, operation of laws or programs or on the basis of certain information as follows.

New subsection 332A(1) provides this section applies if an asset determination is in force for an individual, and the determination is no longer correct because of a decision made under, an administrative action taken under, or the operation of, a law or program referred to in new subparagraph 317(1)(b)(i) or on the basis of information collected by the System Governor under or for the purposes of a law or program referred to in subsection 317(1A), and if any requirements prescribed by the rules are met.

New subsection 332A(2) provides that if this section applies, the System Governor must, within the period prescribed by the rules (if any), vary the determination.

This modification is required to provide that an asset determination may also be varied following the making of certain decisions, the taking of certain actions, the operation of certain laws or programs or on the basis of certain information, similar to section 317 of the Act as modified by Items 3 to 4 of this instrument.

Item 17 – Subsection 333(1)

Item 17 amends subsection 333(1) by omitting 'paragraph 331(2)(b)' and replacing it with 'subsection 331(1A)'.

This is a technical modification to align with new section references.

Item 18 – Section 334

Item 18 repeals section 334 and substitutes it with new section 334.

New subsection (1A) provides that this section applies if:

- there is an asset determination in force for an individual; and
- the System Governor has been notified of the occurrence of an event or a change in the individual's circumstances under section 337 (i.e. by a provider); and
- the event or change in circumstances is not set out in the notice of the asset determination (see subsection 329(8) or a notice of a decision to vary the asset determination (see subsection 335(1); and
- the asset determination is no longer correct because of the occurrence of the event or change in the individual's circumstances; and
- any circumstances prescribed by the rules do not apply.

New subsection (1) provides that the System Governor must give the individual a written notice (the ***initial notice***).

Subsection (2) provides for things that must be included in the initial notice, including:

- inform the individual that the System Governor has been notified of the occurrence of an event or a change in the individual's circumstances under section 337;
- set out the event or change in the individual's circumstances;
- inform the individual that the event or change in individual's circumstances may be a reason to vary or revoke the asset determination, and what the effect of the variation or revocation would be; and
- invite the individual to make a submission, in writing, to the System Governor in relation to the matter within the period specified in the initial notice (which must not be less than 28 days after giving the initial notice); and
- inform the individual that the System Governor may decide to vary or revoke the asset determination:
    - if no submission is made within the specified period; or
    - after considering any submission made by the individual within the specified period.

New subsection (2A) provides that if the individual does not make a submission within the specified period, the System Governor must give the individual a written notice (the ***further notice***).

New subsection (2B) provides for things that must be included in the initial notice, including:

- contain the information referred to in paragraphs (2)(aa), (ab) and (a) contained in the initial notice; and
- invite the individual to make a submission, in writing, to the System Governor in relation to the matter within the period specified in the further notice (which must not be less than 28 days after giving the further notice); and
- inform the individual that the System Governor may decide to vary or revoke the asset determination:
    - if no submission is made within the specified period; or
    - after considering any submission made by the individual within the specified period.

New subsection (3) provides that the System Governor may also request, in either the initial notice or the further notice, that the individual give the System Governor the information specified in the notice. The information must be given within the period specified in the notice for the purposes of paragraph (2)(b) or (2B)(b). This information is to assist the System Governor in deciding whether to vary or revoke the asset determination.

The note clarifies that the individual is not obliged to give the information.

New subsection (4) provides that if the individual makes a submission in accordance with the invitation under paragraph (2)(b) or (2B)(b), the System Governor may, by written notice, request the individual to give the System Governor further information, within the period specified in the notice (which must not be less than 28 days after giving the notice), to assist the System Governor to decide whether to vary or revoke the asset determination.

Note 1 clarifies that the System Governor may request further information under this subsection regardless of whether information was requested or given under subsection (3).

Note 2 clarifies that the individual is not obliged to give the information.

New subsection (5) provides that the System Governor may, at the request of the individual, extend the period specified for paragraph (2)(b) or (2B)(b) or subsection (4).

New subsection (6) provides that the System Governor must consider any submissions made in accordance with paragraph (2)(b) or (2B)(b) and any further information given in accordance with a request under subsection (3) or (4) and make a decision whether to vary or revoke the asset determination within the period specified in the rules.

The purpose of these modifications is to provide a clear and rigorous natural justice process for varying or revoking an individual's asset determination when the System Governor is notified of an event or change in circumstances by a registered provider under section 337 of the Act. The event or change in circumstances contemplated by these provisions is the payment of refundable deposit or a change in the individual's refundable deposit balance (see Item 9 in Schedule 2 of this instrument). These changes mean that an individual has the opportunity to provide a response to Services Australia – for example a more complete picture of their financial circumstances – before their means assessment is updated.

The modifications require the System Governor to send an initial notice informing the individual that the System Governor has been notified of an event or change in circumstances by a registered provider. The modifications also require the System Governor to send a follow up notice if the individual does not respond to the original notice. These notices provide an opportunity for the individual to make submissions and provide further information before the System Governor considers whether to vary or revoke the asset determination. The System Governor may also request further information in response to any submissions by the individual. The System Governor is required to consider any submissions made by the individual before deciding whether to vary or revoke the asset determination.

Item 19 – Before subsection 337(1)

Item 19 modifies section 337 to insert subsection 337(1A) before subsection 337(1). Subsection 337(1A) provides that a registered provider delivering funded aged care services through the service group residential care to an individual with the classification type ongoing must notify the System Governor of the occurrence of an event or a change in the individual's circumstances prescribed by the rules, and any information prescribed by the rules relating to the event or change in the individual's circumstances.

This modification provides that a registered provider must report the occurrence of an event or change in the individual's circumstances prescribed by the rules and any information prescribed by the rules relating to the event or change in the individual's circumstances. The event or change in the individual's circumstances to be prescribed in the rules for the purposes of subsection 337(1A) is the payment of a refundable deposit by the individual and a change in the individual's refundable deposit balance (see Item 9 in Schedule 2 of this instrument).

Item 20 – Subsection 337(1)

Item 20 modifies subsection 337(1) to omit "may notify the System Governor of the occurrence of any" and substitute with "must notify the System Governor of the occurrence of any other".

This is a technical modification to align with changes in this instrument.

Item 21 – Subsections 337(2) and (3)

Item 21 modifies subsections 337(2) and (3) to insert "(1A) or" after "subsection".

This is a technical modification to provide that any notification under subsection (1A) should be done in the period prescribed in the rules under subsection 337(2). The modification also requires the provider to notify the individual that the provider has notified the System Governor of an event or change in the individual's circumstances under subsection (1A).

Schedule 2—Modifications of the Aged Care Rules 2025

Item 1 – Section 315--10

Item 1 repeals section 315-10.

Section 315-10 has been repealed as individuals are not required to report an event or change in the individual's circumstances within 28 days of the event or change in circumstances occurring.

Item 2 – After section 316-5

Item 2 inserts section 317-1 after section 316-5.

New section 317-1 provides for the purposes of subparagraph 317(1)(b)(i) of the Act, the relevant laws and programs under which a decision made, an administrative action taken, or the operation of which, may result in a variation of the individual contribution rate determination. The laws and programs are:

- *A New Tax System (Family Assistance) Act 1999*;
- *A New Tax System (Family Assistance) (Administration) Act 1999*;
- *Farm Household Support Act 2014*;
- *Military Rehabilitation and Compensation Act 2004*;
- *Paid Parental Leave Act 2010*;
- *Safety, Rehabilitation and Compensation (Defence related claims) Act 1988;*
- *Student Assistance Act 1973*;
- *Veterans' Entitlements Act 1986*;
- the program specified in item 430.017 (F111 Payments) of Part 4 of Schedule 1AA to the *Financial Framework (Supplementary Powers) Regulations 1997*.

This modification is required to specify the other laws and programs under which a decision is made, an administrative is taken, or by the operation of which, which result in a mandatory variation of the individual's individual contribution rate determination, income determination or asset determination.

Item 3 – Sections 317-5 and 318-10

Item 3 repeals sections 317-5 and 318-10.

Regarding the repeal of section 317-5, variations done under section 317 of the Act are automated, and therefore a time period is not required to be prescribed by the rules.

Regarding the repeal of section 318-10, variations to an individual contribution rate determination following an event or change in circumstances will be determined by the dates of effect in subsections 318(5) to (6) of the Act (see Item 5 of Schedule 1 of this instrument).

Item 4 – Subsection 324-5(2)

Item 4 repeals subsection 324-5(2) and substitutes it with new provisions for variations that result in no change to, or a decreased, means tested amount. If the variation results in no change or a decrease to the individual's daily means tested amount, then the variation takes effect on the day the event or change in circumstances occurred.

Item 5 – Paragraph 324-5(3)(a)

Item 5 repeals paragraph 324-5(3)(a) and substitutes it with a new provision. This is a technical modification that clarifies that if a decision to vary the income determination is made because the individual notified the System Governor of an event or change in circumstances, and the individual gave the notification within 28 days of the day the event or change in circumstances occurred, then the variation takes effect on the day the notice of the decision is given.

Item 6 – Subsection 325-5 (heading)

Item 6 modifies the heading of section 325-5 by inserting "by individual" at the end of heading. This is a technical modification in line with modifications made to subsections 324(2A) and 332 of the Act in Items 13 to 14 in Schedule 1. These modifications link notifications by the individual of an event or change or circumstances under section 336 to mandatory variations of income determination under subsection 324(2A) and section 325 of the Act.

Item 7 – Subsection 331-5(2) and (3)

Item 7 repeals subsections 331-5(2) and (3) and inserts new provisions. The new subsection (2) will provide that if a variation results in no change or a decrease to the individual's daily means tested amount, then the variation takes effect on the day the event or change in circumstances occurred.

The new subsection (3) provides that if a variation is made because the individual notified the System Governor of an event or change in circumstances, and the individual gave the notification within 28 days of the day the event or change or circumstances occurred, the variation takes effect on the day the notice of the decision is given. If the variation is made under other circumstances, then the variation takes effect 28 days before the day the notice of the decision under subsection 331(1) of the Act is given.

Item 8 – Section 334-5

Item 8 repeals section 334-5 and substitutes it with new sections 334-1 and 334-5.

New section 334-1 provides, for the purposes of the new paragraph 334(1A)(e) of the Act, the circumstances in which section 334 of the Act does not apply. Subsection 334-1(1) provides that the circumstances are that the event or change in circumstances of which the registered provider notified the System Governor under section 337 of the Act is the payment of a refundable deposit balance or a change in the individual's refundable deposit balance and subsection (2) does not apply to the individual. Subsection (2) provides the circumstances in which section 334 does not apply for the purposes of paragraph 334(1A)(d)(e) of the Act. The circumstances are that:

- The difference between the amount of the individual's refundable deposit balance in the individual's asset determination and the amount of refundable deposit balance reported by the registered provider is less than $10,000;
- The individual has means not disclosed status;
- The individual's means tested care fee is zero under subsection 285A-14 of the Rules; or
- The non-clinical care contribution for the individual is zero under subsection 279(5) of the Act;
- The individual has died;

- The individual has ceased receiving funded aged care services in an approved residential care home without starting services in another home;
- The System Governor has given the individual an initial notice under subsection 334(1) of the Act in relation to another event or a change in the individual's circumstances and has not yet made a decision required by subsection 334(6) of the Act in relation to that event or change in circumstances.

The modifications to subsection 334-1 prescribe circumstances in which the System Governor is not required to undertake the asset determination variation process in section 334. These include, for example, that the difference in the amount of the individual's refundable deposit included in the notice of the asset determination in force for the individual and the amount reported by the provider and is less than $10,000.

New section 334-5 provides that, for the purposes of paragraph 334(6)(b) of the Act, the period for making a decision under that paragraph is 28 days from one of the following:

- if no submission is made in accordance with the invitation in the initial notice under subsection 334(1) of the Act or the further notice under subsection 334(2A) of the Act—the end of the period specified in the further notice (including that period as extended (if applicable) under subsection 334(5) of the Act); or
- if a submission is made in accordance with the invitation in the initial notice under subsection 334(1) of the Act or the further notice (if any) under subsection 334(2A) of the Act, and no further information is requested under subsection 334(4) of the Act—the day the submission is made; or
- if a submission is made in accordance with the invitation in the initial notice under subsection 334(1) of the Act or the further notice (if any) under subsection 334(2A) of the Act, and further information is requested under subsection 334(4) of the Act—the day the individual gives the System Governor the further information.

This new provision takes into account the amendments made to the notification provisions in section 334 of the Act by this instrument.

Item 9 – After section 336-5

Item 9 inserts section 337-1 after section 336-5.

New section 337-1 relates to the notifications by registered providers for events and changes in circumstances and related information. For the purposes of subsection 337(1A) of the Act, an event or change in an individual's circumstances set out in an item of the following table, and the information relating to the event or change in the individual's circumstances set out in that item, are prescribed.

Item 1 of the table provides that when an individual pays a refundable deposit, the registered provider must notify the System Governor of the amount paid.

Item 2 of the table provides that when a change in the individual's refundable deposit balance occurs, the registered provider must notify the System Governor of the amount of the balance after the change.

This modification is required to ensure registered providers notify the System Governor of the payment of a refundable deposit by an individual or a change in the individual's refundable deposit balance. This payment of a refundable deposit or a change in a refundable deposit balance is important information that affects an individual's asset determination.

Item 10 – Section 337-5

Item 10 modifies section 337-5 to omit "251" (wherever occurring) and substitute with "257".

This is a technical modification that corrects a cross-referencing error in section 337-5 of the Rules. Claims for residential care subsidy are made under section 257 of the Act, and not section 251.

Statement of Compatibility with Human Rights

Overview of Legislative Instrument

This legislative 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 2011.*

This instrument modifies the operation of the *Aged Care Act 2024* (the Act) and the *Aged Care Rules 2025* (the Rules) to ensure the effective operation of the Act from 1 November 2025 and continuity of care for older people. Specifically, this instrument will:

- Modify the scope of section 317 of the Act, which provides for variations of individual contribution rates following social security decisions;
- Replicate section 317 (as modified) for the purposes of income and asset determinations for residential care means testing;
- Modify the dates of effect for variations of individual contribution rate determinations under sections 317 and 318 of the Act, and sections 315-10 and 318-10 of the Rules;
- Modify provisions for variation of asset determinations due to a notification from a registered provider of an event or change in the individual's circumstances in relation to the individual's refundable deposit balance or refundable accommodation contribution balance;
- Modify section 337 to make it mandatory for registered providers to report the individual's refundable deposit balance or refundable accommodation contribution balance.

These modifications will ensure that individuals accessing funded aged care services benefit promptly from relevant indexation changes and revaluations of income and assets and that contribution rates accurately reflect each individual's financial circumstances. In addition, they provide a process for procedural fairness and natural justice to the individual where a registered provider has notified the System Governor of an event or change in the individual's circumstances that impacts the individual's asset determination.

Human Rights Implications

The Instrument directly engages the following human rights:

- the right to an adequate standard of living in article 11(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and article 28(1) of the *Convention on the Rights of Persons with Disabilities* (CRPD);
- the right to social security in article 9 of the ICESCR and article 28(2) of CRPD;
- the right to privacy in article 17 of the *International Covenant on Civil and Political Rights* (ICCPR) and article 22 of the CRPD; and
- the right to equality and non-discrimination in article 26 of the ICCPR.

Right to an adequate standard of living

The right to an adequate standard of living, including adequate food, water and housing, and to the continuous improvement of living conditions is contained in article 11(1) of ICESCR. Article 28(1) of the CRPD also requires countries to take appropriate measures to ensure an adequate standard of living and social protection for persons with disabilities, including clean water services, access for older persons with disabilities to social protection programs, appropriate and affordable services, devices and other assistance and public housing programs.

This instrument promotes the right to an adequate standard of living by reducing or preventing excessive aged care contributions in Support at Home. When a variation results in an increase to the individual's individual contribution rate, this increase will take effect in the future (either on the first day of the next quarter or the first day of the next period of effect). When a variation results in a decrease, this decrease will be backdated to the day the individual's circumstances changed. As such, the instrument contributes to maintaining an adequate standard of living for older people by supporting their ability to meet essential living expenses.

Right to social security

The right to social security, including social insurance, is contained in article 9 of the ICESCR. Article 28(2) of the CRPD also recognises the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability.

The UN Committee has stated that the right to social security is of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realise their rights under the ICESCR. The UN Committee has stated that the right to social security, through its redistributive character, plays an important role in poverty reduction and alleviation. It has also stated that social security prevents social exclusion and promotes social inclusion.

The instrument promotes the right to social security by ensuring that older Australians' contribution rates in aged care reflect the current social security entitlements and indexation increases. This assists in maintaining the adequacy of support for individuals accessing funded aged care services and ensuring financial fairness.

Right to privacy

This instrument limits the right to privacy by allowing the disclosure of relevant information, which may also be protected information, in particular circumstances. This includes information relating to the expanded authority to collect and share information between the aged care and social security frameworks engages the right to privacy.

These limitations are connected to a legitimate objective and proportionate to the purpose of providing high quality funded aged care services to individuals, protecting individuals from exploitation, violence and abuse and providing equal recognition before the law.

The instrument limits the right to privacy by enabling the provision of information to other Commonwealth bodies including Services Australia for the purposes of aligning individual contribution rates with the operation of social security law. This includes registered providers collecting and disclosing personal information about refundable accommodation deposits and refundable accommodation contributions. The disclosure of information between these Commonwealth departments are proportionate, with safeguards against arbitrary interference with privacy in the following ways:

- the information shared must only be for the purpose of the performance of functions or exercise of powers of the receiving body;

- the information shared would be subject to the protected information provisions in the Act, as well as the general protections under the *Privacy Act 1988* as the information sharing is limited to what is necessary to determine accurate contribution rates; and
- any secondary disclosure of information, including protected information, is limited to the purpose of the exercise of the functions or powers of the receiving body.

Any interference with privacy involved in these disclosures is lawful and non-arbitrary and is necessary, reasonable and proportionate to achieve the legitimate objective of facilitating the sharing information about the RADs/RACs with Services Australia for the purposes of social security laws.

Right to equality and non-discrimination

The rights to equality and non-discrimination are contained in articles 2 and 26 of the ICCPR and article 2(2) of the ICESCR. The rights to equality and non-discrimination provide that all persons are equal before the law and entitled, without any discrimination, to the equal protection of the law. Non-discrimination is an integral part of the principle of equality. It ensures that no one is denied their rights because of factors such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or birth.

The Human Rights Committee has recognised that 'not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant'.

The modifications in this instrument operate uniformly across all individuals accessing funded aged care services and ensure access to the financial benefits of social security adjustments. They promote equality by ensuring that all individuals benefit from indexation in a timely and consistent manner.

Conclusion

This instrument is consistent with human rights because it advances the rights to social security and an adequate standard of living, and any limitation on the right to privacy is reasonable, necessary and proportionate to the legitimate objective of ensuring fair and accurate contribution assessments.

Sam Rae

Minister for Aged Care and Seniors