EXPLANATORY STATEMENT

**Issued by the authority of the Minister for Mental Health and Ageing**

***Aged Care Act 1997***

***Aged Care (Residential Care Subsidy – Adjusted Subsidy Reduction) Determination 2013 (No. 1)***

The *Aged Care Act 1997* (the Act) provides for the regulation and funding of aged care services. Persons who are approved under the Act to provide residential aged care services (approved providers), can be eligible to receive residential care subsidy payments in respect of the care they provide to approved care recipients.

Subsection 44-19(2) of the Act provides that the Minister may determine by legislative instrument the amount of the adjusted subsidy reduction.

Under the *National Health Act 1953*, nursing homes that had transferred from state government funding to Commonwealth nursing home funding were known as “adjusted fee government nursing homes”. They were paid a discounted rate of standard infrastructure funding on the basis of an agreement between the Commonwealth and the states that the Commonwealth would not pay the state governments an amount representing a return on the state governments’ capital investment in these nursing homes.

The discounted subsidy was translated into the Act as the adjusted subsidy reduction. This is a reduction to the daily subsidy per resident equivalent to the discount that applied before 1 October 1997. It only applies to services that were approved as “adjusted fee government nursing homes” under the previous arrangements.

The purpose of the *Aged Care (Residential Care Subsidy – Adjusted Subsidy Reduction) Determination 2013 (No. 1)* (the Determination) is to set the adjusted subsidy reduction amount with effect from 1 July 2013. This Determination also revokes the *Aged Care (Residential Care Subsidy – Adjusted Subsidy Reduction) Determination 2012 (No. 1).*

The difference between the Determinations is that the daily amount of adjusted subsidy reduction has been increased in accordance with increases in the consumer price index (CPI) as a measure of movements in the non-labour costs of providers, and the decisions of the Fair Work Commission as a measure of non-productivity based movements in the wage costs of providers.

*Revocation of previous determinations under paragraph 44-19(1)(b) of the Act*

Paragraph 44-19(1)(b) of the Act provides for the Minister to determine in writing that a residential care service, or part of a residential care service through which the care is provided, is an adjusted subsidy residential care service. Since 2003, three determinations under paragraph 44-19(1)(b) of the Act have been made – one in May 2003, one in September 2006 and one in June 2007.

The Minister’s Determination under paragraph 44-19(1)(b) of the Act (F2007L01960 also known as ACA Ch 3 No. 5/2007) was updated on 13 June 2007 to remove those adjusted subsidy places that are now owned by the non-government sector. However, it failed to correctly revoke the previous determinations. This Determination rectifies that error by revoking both the previous determinations - the *Aged Care Act 1997* - Determination of Adjusted Subsidy Residential Care Services under paragraph 44-19(1)(b) (ACA Ch. 3 No. 4/2003), and the *Aged Care Act 1997* - Determination under paragraph 44-19(1)(b) (ACA Ch. 3 No. 22/2006).

The intention was always that the subsequent determination would revoke its predecessor, rather than operating in concert with it. Departmental practice has reflected that intention.

Consultation

Indexation of the adjusted subsidy reduction uses a well-established formula based on the CPI as a measure of the movements in the non-labour costs of providers and the decisions of the Fair Work Commission as a measure of non-productivity based movements of the wage costs of providers. As this is in accordance with policy upon which extensive consultation was undertaken, no specific consultation was undertaken with respect to this instrument.

Information about the increase in the amount of the adjusted subsidy reduction will be disseminated via electronic media to approved providers.

No consultation was undertaken in relation to the revocation of previous determinations under paragraph 44-19(1)(b) of the Act as this approach corrects previous errors and reflects previous Departmental practice and industry expectations.

This Determination commences on 1 July 2013.

The Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003.*

**Statement of Compatibility with Human Rights**

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

**Aged Care (Residential Care Subsidy – Adjusted Subsidy Reduction) Determination 2013 (No. 1)**

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*.

**Overview of Legislative Instrument**

Under the *National Health Act 1953*, nursing homes that had transferred from state government funding to Commonwealth nursing home funding were known as “adjusted fee government nursing homes”. They were paid a discounted rate of standard infrastructure funding on the basis of an agreement between the Commonwealth and the states that the Commonwealth would not pay the state governments an amount representing a return on the state governments’ capital investment in these nursing homes.

The discounted subsidy is translated into the *Aged Care Act 1997* (the Act) as the adjusted subsidy reduction. This is a reduction to the daily subsidy per resident equivalent to the discount that applied before the transition from funding under the *National Health Act 1953* to funding under the Act on 1 October 1997. It only applies to services that were approved as “adjusted fee government nursing homes” under the previous arrangements.

The purpose of the *Aged Care (Residential Care Subsidy – Adjusted Subsidy Reduction) Determination 2013 (No. 1)* (the Determination) is to set the adjusted subsidy reduction amount with effect from 1 July 2013 in accordance with standard indexation practice.

The Determination also revokes previous determinations of adjusted subsidy services under paragraph 44-19(10(b) of the Act.

**Human Rights Implications**

This Legislative Instrument is compatible with the human rights to an adequate standard of living and to the enjoyment of the highest attainable standard of physical and mental health contained in articles 11 and 12 of the International Covenant on Economic Social and Cultural Rights. Although this instrument increases the dollar amount of the reduction in residential care subsidy for state governments that operate residential care services, this increase is in accordance with standard indexation practice. The reduction in subsidy is in accordance with an intergovernmental agreement that the Commonwealth’s contribution to the cost of operating state government residential care services should not include an amount representing a return on the state governments’ capital investment.

**Conclusion**

This Determination is compatible with human rights because, although it reduces the amount of subsidy payable to state government operators of residential care services, the amount by which the subsidy is reduced is an amount representing return on capital investment. State governments, along with non-government providers, continue to receive increases in line with indexation to the remaining components of residential care subsidy to enable them to provide quality care to care recipients.

**The Hon. Mark Butler MP, Minister for Mental Health and Ageing**