**EXPLANATORY STATEMENT**

**Select Legislative Instrument No. 81, 2014**

***Human Services (Medicare) Act 1973***

***Human Services (Medicare) Regulations 1975***

***Human Services (Medicare) Amendment (Aged Care) Regulation 2014***

Section 44 of the *Human Services (Medicare) Act 1973* (the Act) provides that the Governor‑General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Regulation amends the *Human Services (Medicare) Regulations 1975* (the Principal Regulations) to take account of legislative changes made by the *Aged Care (Living Longer Living Better) Act 2013* (Living Longer Living Better Act).

From 1 July 2014, as a result of the Living Longer Living Better Act*,* the following two Acts operate side by side:

* the *Aged Care Act 1997* (Aged Care Act) as amended; and
* the new *Aged Care (Transitional Provisions) Act 1997* (Transitional Provisions Act).

The Department of Human Services manages the delivery of aged care payments on behalf of the Department of Social Services, whose Minister administers the Aged Care Act. The Chief Executive Medicare is a statutory office to which only an SES officer in the Department of Human Services can be appointed under paragraph 4(2)(b) of the Act. Part 2 of the Principal Regulations prescribe functions of the Chief Executive Medicare under the Aged Care Act.

The Regulation ensures that the Chief Executive Medicare is authorised to perform all necessary functions under the Aged Care Act and the Transitional Provisions Act. For example, the Regulation authorises the Chief Executive Medicare to make payments under the Transitional Provisions Act for care provided to continuing care recipients who were in care on, or prior to, 30 June 2014. The Regulation also authorises payments under the Aged Care Act for care provided to care recipients who enter care on or after 1 July 2014.

Additionally, the Regulation amends the Principal Regulations to take account of machinery of government changes. The Principal Regulations prescribe the Aged Care Act functions of the Chief Executive Medicare as being on behalf of the Secretary of the Department of Health. The former Department of Health and Ageing previously administered the Aged Care Act. As a result of the Administrative Arrangements Order made by the Governor-General on 12 December 2013, the Aged Care Act is now administered by the Minister for Social Services. The Regulation reflects this change.

Details of the Regulation are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA).

It was not necessary or appropriate to undertake consultation under section 17 of the LIA as the Regulation is of a minor and machinery nature.

The Regulation commences on 1 July 2014 to coincide with the commencement of the Transitional Provisions Act and relevant amendments to the Aged Care Act.

**Statement of Compatibility with Human Rights**

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

*Human Services (Medicare) Amendment (Aged Care) Regulation 2014*

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 the Legislative Instrument**

This Legislative Instrument amends the *Human Services (Medicare) Regulations 1975*. These regulations prescribe various functions of the Chief Executive Medicare, a statutory office holder in the Department of Human Services. This Legislative Instrument ensures that the Chief Executive Medicare is authorised to perform all necessary functions under amendments to the *Aged Care Act 1997* commencing on 1 July 2014 and the new *Aged Care (Transitional Provisions) Act 1997* also commencing 1 July 2014. This Legislative instrument also amends the *Human Services (Medicare) Regulations 1975* to take into account machinery of government changes which came into effect on 12 December 2013. These changes resulted in responsibility for the administration of the *Aged Care Act 1997* being transferred from the former Department of Health and Ageing to the Department of Social Services.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**ATTACHMENT**

**Details of the *Human Services (Medicare) Amendment (Aged Care) Regulation 2014***

**Section 1 Name of regulation**

Section 1 provides that the title of this regulation is the *Human Services (Medicare) Amendment (Aged Care) Regulation 2014*.

**Section 2 Commencement**

Section 2 provides that the regulation commences on 1 July 2014.

**Section 3 Authority**

Section 3 provides that the regulation is made under *the Human Services (Medicare) Act 1973*.

**Section 4 Schedule(s)**

Section 4 provides that each instrument that is specified in a Schedule to the regulation is amended or repealed as set out in the applicable items in the Schedule, and any other item in a Schedule to the regulation has effect according to its terms.

**Schedule 1 Amendments**

**Item 1 - Regulation 3**

This item amends regulation 3 to insert definitions for Aged Care Department, Aged Care Minister, Aged Care Secretary and Aged Care Transitional Act.

**Item 2 - Regulation 3**

This item repeals the definition of Health Secretary in regulation 3. The previous regulation 3 defined this term as ‘Secretary of the Health Department’. ‘Health Department’ is defined as ‘the Department administered by the Minister administering the National Health Act’. The *National Health Act 1973* is administered by the Minister for Health; however the *Aged Care Act 1997* is administered by the Minister administering the Department of Social Services. As the Chief Executive Medicare’s prescribed functions were expressed in Part 2 of the Principal Regulations as functions on behalf of the Health Secretary, but in fact the Chief Executive Medicare performs functions on behalf of the Secretary of the Department of Social Services, this definition is repealed.

**Item 3 - Regulation 5**

This item repeals previous regulation 5 and substitutes a new regulation 5. Regulation 5 provides that it is a prescribed function of the Chief Executive Medicare, on behalf of the Aged Care Secretary, to request an approved provider to give the Chief Executive Medicare information relating to payments made under the Aged Care Act or Aged Care Transitional Act. New regulation 5 gives the Chief Executive Medicare power to request information relating to payments under both of these Acts, whereas previously the Chief Executive Medicare could only request information relating to payments under the Aged Care Act.

**Item 4 - Regulations 6 and 7**

This item amends regulations 6 and 7 to omit all references to ‘Health Secretary’ and substitutes these for ‘Aged Care Secretary’. This ensures that the Chief Executive Medicare’s functions are expressed as being performed on behalf of the Secretary of the Department administering the Aged Care Act.

**Item 5 - Regulations 9 to 11**

This item repeals regulations 9, 10 and 11 and substitutes new regulations 9, 9A, 10 and 11.

Subregulation 9(1) provides that it is a prescribed function of the Chief Executive Medicare, on behalf of the Aged Care Secretary, to perform the functions conferred on the Aged Care Secretary by Parts 3.1, 3.2 and 3.3 of the Aged Care Act, and Parts 3.1, 3.2 and 3.3 of the Aged Care Transitional Act. In addition, it is a prescribed function of the Chief Executive Medicare, on behalf of the Commonwealth, to make payments of subsidies or anything necessary for the purposes of making such payments in accordance with these provisions. Previous regulation 9 only referred to powers under the Aged Care Act.

Subregulation 9(2) provides that it is also a prescribed function of the Chief Executive Medicare to make a record of information obtained in performing a function under subregulation (1); and to disclose that information to the Aged Care Minister, Aged Care Secretary or an officer of the Aged Care Department for use by that person in the exercise of powers under the Aged Care Act or the Aged Care Transitional Act.

Subregulation 9(3) expands the prescribed functions of the Chief Executive Medicare to include certain functions under the Aged Care Transitional Act. Subregulation 9(3) provides that it is not a prescribed function of the Chief Executive Medicare to approve a form that the Aged Care Secretary is required to approve under Part 3.1 or 3.2 of the Aged Care Act or
Part 3.1 or 3.2 of the Aged Care Transitional Act; make a determination under section 42-5 of the Aged Care Act; revoke a determination under section 42-6 of the Aged Care Act; make a determination under subsection 44-20(5) or (6) of the Aged Care Act or subsection 44-20(5) or (6) of the Aged Care Transitional Act; make a determination under section 44-20A of the Aged Care Act or require a person to give information or produce a document under that section; perform a function or exercise a power of the Aged Care Minister in relation to the determination or payment of a subsidy under Part 3.1, 3.2 or 3.3 of the Aged Care Act or
Part 3.1, 3.2 or 3.3 of the Aged Care Transitional Act; and enter into an agreement in relation to the payment of flexible care subsidy, in accordance with Part 2 of Chapter 4 of the *Subsidy Principles 2014.*

Regulation 9A gives the Chief Executive Medicare functions in relation to financial hardship determinations. These new functions include the functions conferred on the Aged Care Secretary by Division 52K of the Aged Care Act; the functions conferred on the Aged Care Secretary by sections 57-14 and 57-15 of the Aged Care Transitional Act; and the functions conferred on the Aged Care Secretary by sections 57A-9 and 57A-10 of the Aged Care Transitional Act. However, the Chief Executive Medicare’s functions do not include approving forms that the Aged Care Secretary is required to approve under these provisions.

Regulation 10 is newly named ‘Notification of start of care’. Subregulation 10(1) prescribes two new functions of the Chief Executive Medicare to be carried out on behalf of the Aged Care Secretary. These functions are to receive notice under subsection 63-1B(2) of the Aged Care Act of a care recipient who enters a residential care service; and to receive notice under Division 2 of Part 3 of the *Accountability Principles 2014* of a care recipient who starts to be provided with home care. Subregulation 10(2) makes clear that the functions in subregulation 10(1) do not include approving the form in which notice is to be given.

Regulation 11 expands the prescribed functions of the Chief Executive Medicare to include functions for certain reviewable decisions under the Aged Care Transitional Act. Regulation 11 sets out that it is a prescribed function of the Chief Executive Medicare to exercise the powers and perform the functions of the Aged Care Secretary for a reviewable decision described in items 28 to 31, 39AA and 39AB, 45 to 49B, 53 to 53D, and 53F to 53H of the table in section 85-1 of the Aged Care Act. Regulation 11 also provides that it is a function of the Chief Executive Medicare to exercise the powers and perform the functions of the Aged Care Secretary under Part 6.1 of the Aged Care Transitional Act for a reviewable decision described in items 39AA to 41, 44 to 46, and 48 to 53C of the table in section 85-1 of the Aged Care Transitional Act. In addition, it is a function of the Chief Executive Medicare to act in any legal proceeding that concerns the exercise of powers or functions by the Chief Executive Medicare under regulation 11.

**Item 6 - Regulations 12 and 13**

This item amends regulations 12 and 13 to omit all references to ‘Health Secretary’ and substitutes these references with ‘Aged Care Secretary’. This ensures that the Chief Executive Medicare’s functions are expressed as being performed on behalf of the Secretary of the Department administering the Aged Care Act.

**Item 7 - Paragraph 14(1)(a)**

This item inserts ‘or Chapter 3 of the Aged Care Transitional Act’ after ‘Aged Care Act’ in paragraph 14(1)(a). It is a prescribed function of the Chief Executive Medicare to investigate whether the Commonwealth has paid to a person, by way of subsidy under Chapter 3 of the Aged Care Act or Aged Care Transitional Act, an amount that is a recoverable amount.

**Item 8 - Paragraph 14(1)(c)**

This item repeals and substitutes paragraph 14(1)(c). Paragraph 14(1)(c) provides that it is a function of the Chief Executive Medicare, on behalf of the Aged Care Secretary, to determine to do anything permitted by section 95-6 of the Aged Care Act in relation to a debt or class of debts arising, or an amount of a debt payable, under Chapter 3 of the Aged Care Act or Aged Care Transitional Act. Previous paragraph 14(1)(c) only referred to amounts of debt arising or payable under Chapter 3 of the Aged Care Act.

**Item 9 - At the end of paragraph 15(1)(a)**

This item adds ‘or the Aged Care Transitional Act’ to the end of paragraph 15(1)(a). Paragraph 15(1)(a) provides that it is a function of the Chief Executive Medicare to decide, for the purposes of section 95-3 of the Aged Care Act, if a recoverable amount (or any part of it) that an approved provider is liable to pay should be deducted from one or more other amounts payable to the approved provider under the Aged Care Transitional Act as well as the Aged Care Act.

**Item 10 - Paragraph 15(1)(b)**

This item repeals and substitutes paragraph 15(1)(b). Paragraph 15(1)(b) provides that it is a function of the Chief Executive Medicare to decide, for section 95-4 of the Aged Care Act, if a recoverable amount (or part of it) should be deducted from one or more other amounts payable under the Aged Care Act or the Aged Care Transitional Act to a transferee (within the meaning given by section 95-4 of the Aged Care Act). Previous paragraph 15(1)(b) only referred to amounts payable to a transferee under the Aged Care Act.

**Item 11 - Regulation 16**

This item amends regulation 16 to insert (1) before ‘It is’. Previous regulation 16 did not have subsection (1) or (2). (Note that item 13 adds subsection (2)).

**Item 12 - Regulation 16**

This item also amends regulation 16 to omit ‘Health Secretary’ and substitutes this phrase with ‘Aged Care Secretary’.

**Item 13 - At the end of regulation 16**

This item also amends regulation 16 to add a new subregulation (2). Subregulation 16(2) provides that it is a prescribed function of the Chief Executive Medicare, under
subsection 96-7(2) of the Aged Care Transitional Act, to receive and consider an applicant’s request to extend a period in which the applicant has been requested to give further information in relation to an application under that Act; and to extend the period if the Chief Executive Medicare considers it appropriate to do so.

**Item 14 - Subregulations 17(1) and (2)**

This item repeals and substitutes subregulations 17(1) and (2). New subregulations 17(1) and (2) refer to Principles made under section 96-1 of both the Aged Care Transitional Act and the Aged Care Act.

Subregulation 17(1) provides that regulation 17 applies if it is a prescribed function of the Chief Executive Medicare under Part 2 of the Regulations to perform a function, or exercise a power, of the Aged Care Secretary on behalf of the Aged Care Secretary; and the performance of that function or the exercise of that power by the Aged Care Secretary requires or permits the Aged Care Secretary to act under, or in accordance with, a provision of any Principles made under section 96-1 of the Aged Care Act or section 96-1 of the Aged Care Transitional Act.

Subregulation 17(2) provides that it is a prescribed function of the Chief Executive Medicare to act on behalf of the Aged Care Secretary under, or in accordance with, the relevant provision of the Principles.

**Item 15 - Regulation 22**

This item repeals regulation 22.