

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

Aged Care (Transitional Provisions) Act 1997

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

The *Aged Care (Transitional Provisions) Act 1997* (the Transitional Provisions Act), in conjunction with the *Aged Care Act 1997*, provides for the funding of aged care services in operation before 1 July 2014 that are providing care to continuing care recipients.

Persons who are approved under the *Aged Care Act 1997* to provide aged care services (approved providers) can be eligible to receive subsidy payments under the Transitional Provisions Act in respect of the care they provide to continuing care recipients. Continuing care recipients are those who entered an aged care service before 1 July 2014 and since that time have not left the service for a continuous period of more than 28 days (other than because the person is on leave) or before moving to another service, made a written choice to be subject to new rules relating to fees and payments that take effect on 1 July 2014.

Section 96-1 of the Transitional Provisions Act allows the Minister to make principles providing for various matters such as the eligibility requirements for the payment of subsidies and supplements in respect of continuing care recipients in residential care and home care. To this end the Minister has made the *Aged Care (Transitional Provisions) Principles 2014* (the Transitional Provisions Principles).

The Transitional Provisions Act also allows the Minister to determine, by legislative instrument, the amounts of subsidy and supplements.

The purpose of the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014* (the Determination) is to set out the amount, or in some cases the method for calculating the amount, of residential care subsidy, home care subsidy and flexible care subsidy that is payable for continuing care recipients who are eligible in accordance with the Transitional Provisions Act and Transitional Provisions Principles.

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

Consultation

In April 2012, the former Government launched a major program of aged care reforms. The reform agenda was developed in close consultation with the aged care sector, including consumers, industry and professional bodies.

As part of the consultation on the proposed changes to the *Aged Care Act 1997*, and to

delegated legislation, arising from the reforms, the former Government communicated its intention to examine the delegated legislation and, where possible, simplify it.

This intent was communicated in November 2012, with the public release of a paper providing an overview of the proposed legislative changes. A video presentation detailing the proposed reforms was also made available online to assist members of the public to understand these changes.

During late 2012 and in the first half of 2013, briefing sessions were held across Australia to provide information and to explain, in detail, the proposed legislative changes included in the package of Bills introduced into Parliament on 13 March 2013. As part of these consultations, the intention to make related changes to delegated legislation was again discussed. For those interested members of the public unable to attend the briefings, the presentation, supporting handouts, a detailed Question and Answer document and an information video were made available online.

In early 2014 consultation was undertaken on those aged care principles that reflected significant policy changes. As this Determination does not include any substantial policy issues (because it focuses on prescribing amounts of subsidy) an exposure draft of the Determination was not released for public comment.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that no RIS is required (OBPR ID 16682).

Commencement

This Determination commences on 1 July 2014.

Details of the Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014

Chapter 1 – Preliminary

Section 1 – Name of determination

This section states that the name of the determination is the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014*.

Section 2 – Commencement

This section states that the Determination commences on 1 July 2014.

Section 3 – Authority

This section provides that the authority for making the Determination is the *Aged Care (Transitional Provisions) Act 1997*.

The authority for making specific determinations is set out in the following table:

Subsidy, supplement or reduction in subsidy	Authority in Transitional Provisions Act
Residential care—basic subsidy amount	subsection 44-3(2)
Accommodation supplement	subsection 44-5A(3)
Concessional resident supplement	subsection 44-6(4)
Charge exempt resident supplement	subsection 44-8A(3)
Respite supplement	subsection 44-12(3)
Oxygen supplement	subsection 44-13(6)
Enteral feeding supplement	subsection 44-14(6)
Payroll tax supplement	subsection 44-16(3)
Transitional supplement	subsection 44-16(3)
Accommodation charge top-up supplement	subsection 44-16(3)
Transitional accommodation supplement	subsection 44-16(3)
Basic daily fee supplement	subsection 44-16(3)
Dementia and severe behaviours supplement	subsection 44-16(3)
Adjusted subsidy reduction	subsection 44-19(2)
Pensioner supplement	subsection 44-28(7)
Viability supplement	subsection 44-29(8)
Hardship supplement	subsection 44-30(5)

Veterans' supplement	section 61 of Transitional Provisions Principles
Homeless supplement	section 64 of Transitional Provisions principles
Home care subsidy (including supplements)	subsection 48-1(3)
Flexible care subsidy	section 52-1

Section 4 – Determination applies to continuing care recipients

This section provides that the Determination applies only in relation to continuing care recipients. The amounts of subsidy and supplements that are applicable to non-continuing care recipients (that is, those who enter care on or after 1 July 2014) are described in the *Aged Care (Subsidy, Fees and Payments) Determination 2014*.

Section 5 – Definitions

This section defines terms used in the determination:

low-means care recipient has the same meaning as in the Transitional Provisions Principles.

new resident has the meaning given by section 4 of the Transitional Provisions Principles.

Transitional Provisions Act means the *Aged Care (Transitional Provisions) Act 1997*.

Transitional Provisions Principles means the *Aged Care (Transitional Provisions) Principles 2014*.

A note included in this section reminds readers that a number of expressions used in the Determination are defined in the Transitional Provisions Act and in the *Aged Care Act 1997*.

Chapter 2 – Residential care subsidy

Part 1 – Basic subsidy amount

Section 6 – Purpose of this Part

The purpose of this Part is to describe the basic subsidy amount for a day for a care recipient who is being provided with residential care other than as respite care.

Section 7 – Definitions

This section defines terms used to determine the basic subsidy amount.

ACFI amount, for a care recipient, has the meaning given by subsection 8(3).

ACFI classification means a classification, or renewal of a classification, of a care recipient under the *Aged Care Act 1997* and relevant principles. The definition refers to both the *Classification Principles 1997*, as in force on or after the commencement

of Schedule 1 to the *Aged Care Amendment (Residential Care) Act 2007* and the *Classification Principles 2014*. The relevant principles will be determined based on the date of the Aged Care Funding Instrument (ACFI) classification.

RCS classification means a classification, or renewal of a classification, of a care recipient under the *Aged Care Act 1997* and the *Classification Principles 1997* as in force immediately before 20 March 2008.

Section 8 – Basic subsidy amount for a day on or after date of effect of ACFI classification – general

This section describes how to calculate the basic subsidy amount (for a day) in respect of a care recipient who has an ACFI classification that is in effect.

In summary, the basic subsidy amount for a day for a care recipient is the ACFI amount for the care recipient, which is calculated by adding up the applicable domain category amounts, as set out in the table in section 8.

A note in this section refers readers to Division 26 of the *Aged Care Act 1997* to determine when a classification of a care recipient takes effect.

Section 9 – Basic subsidy amount for day before date of effect of ACFI classification – late receipt of appraisal or reappraisal

Subsection 25-1(4) of the *Aged Care Act 1997* provides that if there is no classification of the care recipient, the care recipient is taken to be classified at the lowest applicable classification level under the *Classification Principles 2014*.

This section shows how to calculate the basic subsidy amount in respect of a care recipient who has been classified at the lowest applicable ACFI classification level and for whom an appraisal or reappraisal is not received for the appropriate period

Different subsidy amounts apply depending on when the Secretary receives an appraisal or reappraisal. In particular, where an appraisal or reappraisal has been received by the Secretary more than 3 months after the end of the appraisal or reappraisal period, the basic subsidy amount in respect of a care recipient will be nil.

Section 10 – Basic subsidy amount for day on or after date of effect of ACFI classification - care recipients whose RCS classification ceased to have effect on or after 20 March 2008

This section shows how to calculate the basic subsidy amount for a day for a care recipient:

- who had an RCS classification before the day;
- whose most recent RCS classification ceased to have effect on or after 20 March 2008; and
- who has an ACFI classification that is in effect on the day.

If the ACFI amount for the day is at least \$15 more than the RCS amount, the basic subsidy amount is the ACFI amount. In any other case, it is the RCS amount.

The RCS amount, for a care recipient, is the amount specified in the item of the table in this section.

A note in this section refers readers to Division 26 of the *Aged Care Act 1997* to determine when a classification for a care recipient takes effect.

Section 11 – Basic subsidy amount for care recipients on extended hospital leave

This section shows how to calculate the basic subsidy amount in respect of a care recipient who has an ACFI classification that is in effect and who is on extended hospital leave.

Different amounts apply depending on the duration of the care recipient's extended hospital leave.

For the first 28 days that the care recipient is on leave, the basic subsidy amount is the amount calculated under section 8, 9 or 10 (whichever is applicable). For any other day, the basic subsidy amount is half that amount.

Section 12 – Basic subsidy amount for care recipients on pre-entry leave

This section states that the basic subsidy amount for a day for a care recipient who is on pre-entry leave is 30 per cent of the amount calculated under section 8, 9 or 10 (whichever is applicable). The section also refers readers to section 44-5E of the Transitional Provisions Act to determine the circumstances where a care recipient is on pre-entry leave.

Part 2 – Amounts of primary supplements

Division 1 – Accommodation supplement

Section 13 - Purpose of this Division

The purpose of this Division is to set out the daily amount of the accommodation supplement that is payable to an approved provider of residential care for an eligible supported resident.

Notes in this section remind readers that if the value of a person's assets exceeds the maximum asset threshold determined under paragraph 44-5B(1)(c) of the Transitional Provisions Act, the person will not be eligible for an accommodation supplement because they are not a supported resident (unless a hardship determination is in force under section 57-14 or section 57A-9 of the Transitional Provisions Act and the person is a post-2008 reform resident).

Readers are referred to Subdivision A of Division 3 of Part 3 of Chapter 2 of the Transitional Provisions Principles, which specifies other matters that relate to the determination of the amount of accommodation supplement payable for a care recipient for a day.

Section 14 – Definitions

This section includes definitions used to determine the accommodation supplement.

applicable maximum amount, for a day for an eligible supported resident, means the maximum amount of accommodation supplement that applies for the day for the supported resident under section 15.

eligible supported resident means a supported resident who is eligible for an accommodation supplement on a day under section 44-5A of the Transitional Provisions Act.

minimum permissible asset value, for a supported resident, means the minimum permissible asset value for the resident under subsection 57-12(3) of the Transitional Provisions Act.

newly built residential care service has the same meaning as in Division 1 of Part 4 of Chapter 2 of the *Aged Care (Subsidy, Fees and Payments) Determination 2014*.

relevant residential care service, means the residential care service through which the supported resident is being provided with residential care on that day.

significantly refurbished residential care service means a residential care service in relation to which a determination under subsection 52(1) or 53(1) of the *Subsidy Principles 2014* is in effect.

Section 15 – Maximum amount of accommodation supplement

This section states the maximum amount of accommodation supplement. Different supplement amounts apply, depending on whether the service in question fulfils the definition of newly built residential care service or significantly refurbished service, and whether the service meets or does not meet building requirements specified in Schedule 1 to the Transitional Provisions Principles.

Section 16 – Amount of accommodation supplement - accommodation bond or accommodation bond not charged etc.

This section applies to eligible supported residents if a financial hardship determination is in force under paragraphs 57-14(1)(a) or 57A-9(1)(a) of the Transitional Provisions Act and the value of the supported resident's assets is less than the minimum permissible asset value.

The section outlines the amount of the accommodation supplement for a day for such residents.

The amount of the accommodation supplement is the applicable maximum amount for the day for the supported resident where:

- more than 40 per cent of the care recipients to whom the residential care service provides residential care (other than respite care), who are both post-2008 reform residents and new residents, are supported residents; or
- more than 40 per cent of the new residents to whom the service provides residential care (other than respite care) are assisted residents, concessional residents, low-means care recipients or supported residents.

The term 'new residents' is defined in section 4. This term does not relate to residents who entered on or after 1 July 2014. It is an historical term that refers to care recipients who entered on or after 1 October 1997 or, if the service was not certified until after 1 October 1997, on or after the day the service was certified. As this terminology existed prior to 1 July 2014 it is being preserved for the purpose of the

transitional provisions. The effect of this provision is that care recipients who entered prior to 1 October 1997, or prior to the service being certified, are not counted when calculating the 40 per cent ratio of specified classes of care recipients to total number of care recipients.

This term does not relate to residents who entered or aIf those circumstances do not apply, the amount of the accommodation supplement is 75 per cent of the applicable maximum amount for the day for the supported resident.

Section 17 – Amount of accommodation supplement - reduced accommodation bond or accommodation bond charged etc.

This section applies to eligible supported residents if a financial hardship determination is in force under paragraphs 57-14(1)(b) or 57A-9(1)(b) of the Transitional Provisions Act and the value of the supported resident's assets (when the person entered the service or at such other time specified in the Transitional Provisions Principles) is less than the minimum permissible asset value.

This section provides a formula to work out the notional amount of the accommodation supplement for such supported residents.

The actual amount of the accommodation supplement that is payable will be the notional accommodation supplement amount if:

- more than 40 per cent of the care recipients to whom the residential care service provides residential care (other than respite care), who are both post-2008 reform residents and new residents, are supported residents; or
- more than 40 per cent of the new residents to whom the service provides residential care (other than respite care) are assisted residents, concessional residents, low-means care recipients or supported residents.

As noted above, the term 'new residents' is defined in section 4. This term does not relate to residents who entered on or after 1 July 2014. It is an historical term that refers to care recipients who entered on or after 1 October 1997 or, if the service was not certified until after 1 October 1997, on or after the day the service was certified. As this terminology existed prior to 1 July 2014 it is being preserved for the purpose of the transitional provisions. The effect of this provision is that care recipients who entered prior to 1 October 1997, or prior to the service being certified, are not counted when calculating the 40 per cent ratio of specified classes of care recipients to total number of care recipients.

If those circumstances do not apply, the amount of accommodation supplement is 75 per cent of the notional amount of accommodation supplement for the day.

Section 18 – Amount of accommodation supplement for supported residents on pre-entry leave

This section states that the amount of accommodation supplement for a day for a supported resident who is on pre-entry leave is nil. Pre-entry leave is defined in section 44-5E of the Transitional Provisions Act.

Division 2 - Concessional resident supplement

Section 19 – Purpose of this Division

The purpose of this Division is to set out the amount of the concessional resident supplement for a particular day, payable to an approved provider of residential care, for an eligible care recipient.

A note in this section refers readers to Subdivision B of Division 3 of Part 3 of Chapter 2 of the Transitional Provisions Principles which specifies rules relating to the concessional resident supplement.

Section 20 – Definitions

This section includes definitions used to determine the concessional resident supplement.

eligible assisted resident means an assisted resident who is eligible for a concessional resident supplement on a day under section 44-6 of the Transitional Provisions Act.

eligible concessional resident means a concessional resident who is eligible for a concessional resident supplement on a day under section 44-6 of the Transitional Provisions Act.

newly built residential care service has the same meaning as in Division 1 of Part 4 of Chapter 2 of the *Aged Care (Subsidy, Fees and Payments) Determination 2014*.

relevant residential care service, means the residential care service that provides residential care (other than respite care) to the concessional resident or assisted resident on a day.

significantly refurbished residential care service means a residential care service in relation to which a determination under subsection 52(1) or 53(1) of the *Subsidy Principles 2014* is in effect.

Section 21 – Amount of concessional resident supplement – eligible concessional residents

This section states the concessional resident supplement for a day for an eligible concessional resident.

The amount payable for an eligible concessional resident varies depending on whether or not:

- care is provided in a newly built or significantly refurbished service; and
- more than 40 per cent of the new residents to whom the service provides residential care (other than respite care) are assisted residents, concessional residents, low-means care recipients or supported residents.

Section 22 – Amount of concessional resident supplement – eligible assisted residents

This section states the concessional resident supplement for a day for an eligible assisted resident.

The amount payable for an eligible assisted resident varies depending on whether or not:

- care is provided in a newly built or significantly refurbished service; and
- more than 40 per cent of the new residents to whom the service provides residential care (other than respite care) are assisted residents, concessional residents, low-means care recipients or supported residents.

Section 23 – Amount of concessional resident supplement for care recipients on pre-entry leave

This section states that the amount of concessional resident supplement for a day on which an eligible assisted resident or an eligible concessional resident is on pre-entry leave is nil. Pre-entry leave is defined in section 44-5E of the Transitional Provisions Act.

Division 3 – Charge exempt resident supplement

Section 24 – Purpose of this Division

The purpose of this Division is to set out the amount of the charge exempt resident supplement for a particular day, payable to an approved provider of residential care, for an eligible charge exempt resident.

A note in this section refers readers to Subdivision C of Division 3 of Part 3 of Chapter 2 of the Transitional Provisions Principles which specifies rules relating to the charge exempt resident supplement.

Section 25 – Definitions

This section defines *eligible charge exempt resident* as a charge exempt resident who is eligible for a charge exempt resident supplement on a day under section 44-8A of the Transitional Provisions Act.

Section 26 – Amount of charge exempt resident supplement

This section sets out the amount of charge exempt resident supplement for a day. The amount differs depending on whether or not the charge exempt resident is also a pre-2008 reform resident.

Section 27 – Amount of charge exempt resident supplement for care recipients on pre-entry leave

This section states that the charge exempt resident supplement for a day on which an eligible charge exempt resident is on pre-entry leave is nil. Pre-entry leave is defined in section 44-5E of the Transitional Provisions Act.

Division 4 – Respite supplement

Section 28 – Purpose of this Division

This purpose of this Division is to outline the amount of the respite supplement that is payable to residential care services for each eligible care recipient being provided with respite care through the service on that day.

The respite supplement is described in more detail in Subdivision D of Division 3 of Part 3 of Chapter 2 of the Transitional Provisions Principles.

Section 29 – Definitions

This section includes definitions used to determine the respite supplement.

allocation of places, in relation to a residential care service, means an allocation of places to the approved provider of the residential care service under Division 14 of the *Aged Care Act 1997*.

certified residential care service means a residential care service that is certified under Part 2.6 of the *Aged Care Act 1997*.

conditions, in relation to a residential care service, means conditions under section 14-5 or 14-6 of the *Aged Care Act 1997* attached to an allocation of places to the approved provider of the service.

Section 30 - Care recipients whose classification level is low level residential respite care

This section states the daily amount of the respite supplement in respect of a care recipient who is being provided with low level residential respite care. Different amounts apply based on whether or not the respite care is being provided through a certified residential care service.

Section 31 - Care recipients whose classification level is high level residential respite care

This section states the daily amount of the respite supplement in respect of a care recipient who is being provided with high level residential respite care. Different amounts apply for residential care services that are certified and are not certified.

If the actual proportion of respite care provided by the residential care service is equal to or more than 70 per cent of the specified proportion of respite care for the approved provider of the service for the relevant year, the section specifies an increased daily amount of the respite supplement.

Section 32 - How to work out the actual proportion of respite care provided through a residential care service for a relevant year

This section sets out the steps to follow when calculating the actual proportion of respite care provided through a residential care service for a relevant year for the purposes of section 31.

The actual proportion of respite care is worked out as follows:

- Step 1 - Work out, for the relevant year and for each care recipient to whom the residential care service provided residential care in the relevant year, the total number of respite bed days provided by the residential care service.
- Step 2 - Add together each of the total numbers of respite bed days worked out under step 1.
- Step 3 - Identify, for each care recipient in step 1, the total number of respite bed days provided in the relevant year that exceeded the maximum number of days (as specified in section 25 of the Transitional Provisions Principles) on which

residential care as respite care could be provided to the care recipient during the relevant financial year.

- Step 4 - Add together each of the total numbers of respite bed days identified under step 3.
- Step 5 - Identify each respite bed day provided by the residential care service in the relevant year that exceeded the proportion of care for recipients of respite care that was specified in the conditions that applied in respect of the residential care service at the time the respite care was provided.
- Step 6 - Add together all the respite bed days identified under step 5.
- Step 7 - Add the total number of respite bed days worked out under step 4 to the total number of respite bed days worked out under step 6.
- Step 8 - Subtract the sum worked out under step 7 from the total number of respite bed days worked out under step 2.

This section defines *respite bed day* as a day on which the residential care service provided the care recipient with residential care as respite care.

Section 33 - How to work out the specified proportion of respite care provided through a residential care service for a relevant year

This section sets out the steps to follow when calculating the specified proportion of respite care provided through a residential care service for a relevant year for the purposes of section 31.

The specified proportion of respite care is worked out as follows:

- Step 1 - Work out the proportion of care for recipients of respite care, expressed as a number of notional respite bed days, as specified in the conditions that applied in respect of the residential care service at the start of the relevant year.
- Step 2 - Work out the applicable period of time in relation to the proportion of care worked out under step 1.
- Step 3 - Multiply the number worked out in step 1 by the number worked out in step 2.
- Step 4 - If the basis for the calculation of the proportion of care in relation to the residential care service changes during the relevant year, work out the proportion of care for recipients of respite care, expressed as a number of notional respite bed days, as specified in the conditions that applied at the time the change took effect.
- Step 5 - Work out the applicable period of time in relation to the proportion of care worked out under step 4.
- Step 6 - Multiply the proportion of care worked out under step 4 by the applicable period of time worked out under step 5.
- Step 7 - Repeat steps 4 to 6 in respect of each further change to the basis for the calculation of the proportion of care in relation to the residential care service in the relevant year.
- Step 8 - Add the amount worked out under step 3 to any amount or amounts worked out under step 6.

The section states that a proportion of care is taken to have been in effect for a residential care service for the period that:

- commences on the first day of the relevant year or the first day on which the basis for the calculation of the proportion of care changed; and

- ends on the last day of the relevant year or the last day before the day on which the basis for calculation of the proportion of care changed.

The section includes the following definitions:

applicable period of time in relation to a proportion of care worked out under step 1 or 4 (as applicable) of the method statement (described above), means the number of days during which the proportion of care was in effect in the relevant year in relation to the residential care service.

basis for the calculation of the proportion of care means any factor that is relevant to the calculation of the proportion of care through the residential care service, including the number of places allocated in respect of the service and the conditions of allocation.

notional respite bed day means a day on which the residential care service is required to provide a care recipient with residential care as respite care.

Section 34 - Number of days or proportion of specified care exceeded

This section states that a respite care supplement will be nil in respect of:

- a care recipient who has already been provided the maximum number of days of respite care for the relevant financial year; and
- a care recipient that is beyond the proportion of respite care as specified in the conditions attached to the allocation of places to the approved provider.

A note in this section refers readers to section 25 of the Transitional Provisions Principles, which sets out the maximum number of days on which a care recipient may be provided with residential care as respite care during a financial year. The maximum number of days is 63 unless the number of days has been increased by the Secretary.

Division 5 – Oxygen supplement

Section 35 - Purpose of this Division

The purpose of this Division is to outline the method for calculating the amount of the oxygen supplement for a particular day that is payable to an approved provider of residential care in respect of an eligible care recipient.

The eligibility criteria for the oxygen supplement are outlined in Subdivision E of Division 3 of Part 3 of Chapter 2 of the Transitional Provisions Principles.

Section 36 - Amount of oxygen supplement

This section states the daily amount of the oxygen supplement in respect of an eligible care recipient.

The section also outlines how to calculate the amount of oxygen supplement to be payable where the actual cost to the approved provider of administering oxygen to the care recipient is equal to, or more than, 125 per cent of the daily rate.

Division 6 – Enteral feeding supplement

Section 37 - Purpose of this Division

The purpose of this Division is to outline the method for calculating the amount of the enteral feeding supplement for a particular day, payable to an approved provider of residential care in respect of an eligible care recipient.

The eligibility criteria for the enteral feeding supplement are outlined in Subdivision F of Division 3 of Part 3 of Chapter 2 of the Transitional Provisions Principles.

Section 38 - Amount of enteral feeding supplement

This section states the daily amount of the enteral feeding supplement in respect of an eligible care recipient. Different amounts apply for bolus and non-bolus feeding.

The section also outlines how to calculate the amount of enteral feeding supplement payable where the actual cost to the approved provider of providing enteral feeding to the care recipient is equal to, or more than, 125 per cent of the daily rate.

Division 7 – Payroll tax supplement

Subdivision A - Preliminary

Section 39 - Purpose of this Division

This purpose of this Division is to outline the method for calculating the amount of the payroll tax supplement for a particular day, payable to an approved provider of residential care in respect of an eligible care recipient. Subdivision A of Division 4 of Part 3 of Chapter 2 of the Transitional Provisions Principles provides for a payroll tax supplement.

The section notes that a care recipient is only eligible for a payroll supplement in a payment period ending on or before 31 December 2014.

The section also provides that this Division (which includes provisions relating to the payroll tax supplement) expires on 1 April 2015 as if it had been repealed by another legislative instrument.

Leaving the provisions on the face of the legislation for a period of time after cessation of the supplement ensures transparency. This provision then enables the redundant provisions to be removed from the Principles without the need for further repeal.

Section 40 – Definitions

This section defines terms used in this Division.

direct provider means an approved provider of a residential care service that is taken, under subsection 41(2), to have a direct payroll tax liability in relation to the residential care provided to eligible care recipients through the service during a relevant payment period.

eligible care recipient means a care recipient in respect of whom an approval is in effect under Part 2.3 of the *Aged Care Act 1997* as a recipient of residential care and who is not classified at the lowest applicable classification level.

indirect provider means an approved provider of a residential care service that is taken, under subsection 41(3), to have an indirect payroll tax liability in relation to the residential care provided to eligible care recipients through the service during a relevant payment period.

Section 41 – How to work out the amount of the payroll tax supplement - general

This section sets out the method for calculating the amount of the payroll tax supplement for a particular day. The amount varies depending on whether the approved provider is taken to have a direct, or an indirect, payroll tax liability in relation to the residential care provided to the eligible care recipient.

The section states that an approved provider is taken to have:

- a direct payroll tax liability in relation to the residential care provided to eligible care recipients during the relevant payment period, if under the eligibility criteria referred to in Subdivision A of Division 4 of Part 3 of Chapter 2 of the Transitional Provisions Principles, the Secretary is satisfied that the provider is a registered entity that has incurred a payroll tax liability; and
- an indirect payroll tax liability in relation to the residential care provided to eligible care recipients during the relevant payment period, if under the eligibility criteria referred to in Subdivision A of Division 4 of Part 3 of Chapter 2 of the Transitional Provisions Principles, the Secretary is satisfied that the provider is a non-registered entity that has incurred a payroll tax liability.

Subdivision B – Amount of payroll tax supplement - direct providers

Section 42 – Purpose of this Subdivision

This section explains that Subdivision B sets out how to work out the amount of the payroll tax supplement for a day in a payment period for an approved provider who is taken to have a direct payroll tax liability in relation to the residential care service in question.

Section 43 – How to work out the amount of the payroll tax supplement

This section sets out the steps to follow when calculating the amount of the payroll tax supplement for a particular day, payable to an approved provider with a direct payroll tax liability.

The payroll tax supplement is worked out as follows:

- Step 1 - Work out the total amount of Commonwealth subsidy payments for the relevant residential care service using section 44.
- Step 2 - Subtract the approved provider's prescribed tax free threshold amount (worked out using section 45) from the amount worked out under step 1.
- Step 3 - Multiply the amount worked out under step 2 by the approved provider's prescribed rate of payroll tax worked out using section 46.
- Step 4 - Work out the number of days (*resident days*) on which eligible care recipients were provided with residential care during the payment period through a

residential care service in relation to which the approved provider has accreditation.

- Step 5 - Divide the amount worked out under step 3 by the number of resident days worked out under step 4.

Section 44 – How to work out the total amount of Commonwealth subsidies paid

For step 1 of the method statement in section 43, this section states that the total amount of Commonwealth subsidy payments is the sum of all payments made by the Commonwealth to the approved provider in respect of residential care provided to care recipients by the approved provider through that service, including:

- all subsidies and supplements (other than the amount of any payroll tax supplement to which this Division applies) worked out in accordance with steps 1 and 2 as set out in the residential care subsidy calculator in subsection 44-2(2) of the *Aged Care Act 1997*; and
- all subsidies and supplements (other than the amount of any payroll tax supplement to which this Division applies) worked out in accordance with steps 1 and 2 (and, if applicable, step 3 in relation to extra service reductions) as set out in the residential care subsidy calculator in subsection 44-2(2) of the *Transitional Provisions Act*.

Section 45 – How to work out the approved provider’s prescribed tax free threshold amount

For step 2 of the method statement in section 43, this section specifies how to work out the approved provider’s prescribed tax free threshold amount.

The prescribed tax free threshold amount is worked out as follows. Work out the approved provider’s tax free threshold in accordance with the laws of the relevant State or Territory and either:

- divide the approved provider’s prescribed tax free threshold by the number of payment periods to which the prescribed tax free threshold applies; or
- if the approved provider is treated by the revenue office of the relevant State or Territory as a member of a business group of accredited residential care services, divide the approved provider’s prescribed tax free threshold by the product of the number of members in that business group and the number of payment periods to which the prescribed tax free threshold applies.

Section 46 – How to work out the approved provider’s prescribed rate of payroll tax

For step 3 of the method statement in section 43, this section states that the approved provider’s prescribed rate of payroll tax is to be worked out in accordance with the applicable State or Territory law for calculating the amount of payroll tax paid or payable by the approved provider in that State or Territory.

Subdivision C – Amount of payroll tax supplement - indirect providers

Section 47 – Purpose of this Subdivision

This section explains that Subdivision C describes how to work out the amount of the payroll tax supplement for a day in a payment period for an approved provider who is taken to have an indirect payroll tax liability in relation to the residential care service in question.

Section 48 – How to work out the amount of the payroll tax supplement

This section sets out the steps to follow when calculating the amount of the payroll tax supplement for a particular day, payable to an approved provider of residential care service who is an indirect provider.

The payroll tax supplement is worked out as follows:

- Step 1 - Work out the total amount of Commonwealth subsidy payments for the relevant residential care service using section 49.
- Step 2 - Multiply the amount worked out under step 1 by the approved provider's prescribed rate of payroll tax worked out using section 50.
- Step 3 - Work out the number of days (*resident days*) on which eligible care recipients were provided with residential care during the payment period through a residential care service in relation to which the approved provider has accreditation.
- Step 4 - Divide the amount worked out under step 2 by the number of resident days worked out under step 3.
- Step 5 - Multiply the amount worked out under step 4 by the applicable portion for the approved provider set out in the table in section 51.

Section 49 – How to work out the total amount of Commonwealth subsidies paid

This section specifies how to work out the total amount of Commonwealth subsidy payments made to an indirect provider of a residential care service, to be used for the purposes of calculating the payroll tax supplement.

For step 1 of the method statement in section 48, this section states that the total amount of Commonwealth subsidy payments is the sum of all payments made by the Commonwealth to the approved provider in respect of residential care provided to care recipients by the approved provider through that service, including:

- all subsidies and supplements (other than the amount of any payroll tax supplement to which this Division applies) worked out in accordance with steps 1 and 2 as set out in the residential care subsidy calculator in subsection 44-2(2) of the *Aged Care Act 1997*; and
- all subsidies and supplements (other than the amount of any payroll tax supplement to which this Division applies) worked out in accordance with steps 1 and 2 (and, if applicable, step 3 in relation to extra service reductions) as set out in the residential care subsidy calculator in subsection 44-2(2) of the *Transitional Provisions Act*.

Section 50 – How to work out the approved provider's prescribed rate of payroll tax

For step 2 of the method statement in section 48, this section states that the prescribed rate of payroll tax is to be worked out in accordance with the applicable State or Territory law for calculating the amount of indirect payroll tax paid or payable by the approved provider in that State or Territory.

Section 51 – What is the applicable portion for an approved provider?

This section specifies how to work out the applicable portion for an indirect provider, to be used for the purposes of calculating the payroll tax supplement.

The applicable portion is the number specified in Column 2 of the item included in the table in section 51 that relates to the band specified in column 1 of the item that applies to the approved provider.

The section defines the following terms that are used in the section.

indirect salary and wages, means the amount of salary and wages:

- incurred by an organisation contracted by the approved provider to supply services for the purposes of a residential care service in relation to which the provider has accreditation; and
- identified, in addition to the payroll tax payable on that amount, in an invoice issued by the organisation for payment by the provider.

total payroll, in respect of a payment period, means the sum of:

- the amount of salary and wages paid or payable by the approved provider for services supplied directly by the provider for the purposes of a residential care service in relation to which the provider has accreditation; and
- the amount of indirect salary and wages paid or payable by the provider in connection with that residential care service.

Division 8 – Transitional supplement

Section 52 – Purpose of this Division

This purpose of this Division is to describe the amount of the transitional supplement for a particular day, payable to an approved provider of residential care in respect of an eligible care recipient. Subdivision B of Division 4 of Part 3 of Chapter 2 of the Transitional Provisions Principles provides for a transitional supplement.

Section 53 – Amount of transitional supplement

This section specifies the daily amount of the transitional supplement in respect of an eligible care recipient, payable to the approved provider.

This section also states that the amount of transitional supplement for a day for a care recipient who is on pre-entry leave is nil. Pre-entry leave is defined in section 44-5E of the Transitional Provisions Act.

Division 9 – Accommodation charge top-up supplement

Section 54 – Purpose of this Division

This purpose of this Division is to describe the amount of the accommodation charge top-up supplement for a particular day, payable to an approved provider of residential care in respect of an eligible care recipient. Subdivision C of Division 4 of Part 3 of Chapter 2 of the Transitional Provisions Principles provides for the accommodation charge top-up supplement.

Section 55 – Amount of accommodation charge top-up supplement

This section specifies the daily amount of the accommodation charge top-up supplement in respect of a care recipient, payable to the approved provider as the difference between:

- the maximum daily accommodation charge that would be payable by the care recipient if the care recipient was not receiving an income support payment on his or her date of entry, as calculated under section 57A-6 of the Transitional Provisions Act; and
- the maximum daily accommodation charge that is payable by a post-2008 reform resident who was receiving an income support payment on his or her date of entry, as specified under section 118(2) of the Transitional Provisions Principles.

If the amount worked out using the method described above is a negative amount or the care recipient is on pre-entry leave, no accommodation charge top-up supplement is payable. Pre-entry leave is defined in section 44-5E of the Transitional Provisions Act.

Division 10 – Transitional accommodation supplement

Section 56 – Purpose of this Division

This purpose of this Division is to describe the amount of the transitional accommodation supplement for a particular day, payable to an approved provider of residential care in respect of an eligible care recipient. Subdivision D of Division 4 of Part 3 of Chapter 2 of the Transitional Provisions Principles provides for the transitional accommodation supplement.

Section 57 – Amount of transitional accommodation supplement

The section provides that the daily amount of the transitional accommodation supplement in respect of a care recipient is the difference between:

- the amount specified in the table in the section for the day when the care recipient entered residential care; and
- the amount of accommodation supplement payable for the day for the care recipient under Division 1 of this Part.

This section also states that the amount of transitional accommodation supplement for a day for a care recipient is nil if, the amount worked out using the method described above is a negative amount, or the care recipient is on pre-entry leave. Pre-entry leave is defined in section 44-5E of the Transitional Provisions Act.

Division 11 – Basic daily fee supplement

Section 58 – Purpose of this Division

This purpose of this Division is to describe the amount of the basic daily fee supplement for a particular day, payable to an approved provider of residential care in respect of an eligible care recipient. Subdivision E of Division 4 of Part 3 of Chapter 2 of the Transitional Provisions Principles provides for the basic daily fee supplement.

Section 59 – Definitions

This section defines *eligible care recipient* as a care recipient who is eligible for a basic daily fee supplement on a day under Subdivision E of Division 4 of Part 3 of Chapter 2 of the Transitional Provisions Principles.

Section 60 – Amount of basic daily fee supplement

This section states that the amount of the basic daily fee supplement for an eligible care recipient is the amount worked out by rounding down to the nearest cent an amount equal to 1 per cent of the basic age pension amount (worked out on a per day basis).

A note reminds readers that basic age pension amount is defined in clause 1 to Schedule 1 to the Transitional Provisions Act.

Division 12 – Dementia and severe behaviours supplement

Section 61 – Purpose of this Division

This purpose of this Division is to describe the amount of the dementia and severe behaviours supplement for a particular day, payable to an approved provider of residential care in respect of an eligible care recipient. Subdivision F of Division 4 of Part 3 of Chapter 2 of the Transitional Provisions Principles provides for the dementia and severe behaviours supplement.

The section notes that a care recipient can only be eligible for a dementia and severe behaviours supplement for a day in a payment period ending on or before 31 July 2014.

Section 62 – Amount of dementia and severe behaviours supplement

This section states the amount of the dementia and severe behaviours supplement, for a day, for an eligible care recipient.

Section 63 – Expiry of this Division

This section provides that the Division expires on 1 November 2014 as if it had been repealed by another legislative instrument.

Part 3 – Reductions in subsidy

Section 64 – Purpose of this Part

The purpose of this Part is to set out the amount of the adjusted subsidy reduction for a particular day for a care recipient.

Section 65 – Amount of adjusted subsidy reduction

This section states the amount of adjusted subsidy reduction for a day for a care recipient.

Part 4 – Amounts of other supplements

Division 1 – Pensioner supplement

Section 66 – Purpose of this Division

The purpose of this Part is to set out the amount of the pensioner supplement for a day for a care recipient.

Section 67 – Amount of pensioner supplement

This section states the amount of the pensioner supplement for a day for a care recipient.

Division 2 – Viability supplement

Section 68 – Purpose of this Division

The purpose of this Division is to set out the amount of the viability supplement for a day for a care recipient.

A note refers readers to Subdivision A of Division 8 of Part 3 of Chapter 2 of the Transitional Provisions Principles that sets out other matters related to the viability supplement.

Section 69 – Amount of viability supplement

This section specifies that the amount of the viability supplement in respect of a care recipient is the amount that would apply under Division 3 of Part 4 of Chapter 2 of the *Aged Care (Subsidy, Fees and Payments) Determination 2014* if the care recipient were not a continuing care recipient and the viability supplement applied to the care recipient under the *Aged Care Act 1997*.

Division 3 – Hardship supplement

Section 70 – Purpose of this Division

The purpose of this Division is to set out the amount of the hardship supplement for a day for a care recipient.

Section 71 – Amount of hardship supplement – certain pre-2008 reform residents

This section specifies that the daily amount of the hardship supplement in respect of certain pre-2008 reform residents (that is, members of the class specified in paragraph 56(1)(a) of the Transitional Provisions Principles) is worked out in accordance with a formula described in this section.

Section 72 – Amount of hardship supplement – certain charge exempt residents

This section specifies that the daily amount of the hardship supplement in respect of certain charge exempt residents (that is, members of the class specified in paragraph 56(1)(b) of the Transitional Provisions Principles) is worked out in accordance with a formula described in this section.

Section 73 – Amount of hardship supplement – care recipients who occupied a place in a hostel on 30 September 1997

This section states the daily amount of the hardship supplement in respect of care recipients who occupied a place in a hostel on 30 September 1997 (that is, members of the class specified in paragraph 56(1)(c) of the Transitional Provisions Principles).

Section 74 – Amount of hardship supplement – care recipients in relation to whom a financial hardship supplement is in force

This section specifies that the daily amount of the hardship supplement for a care recipient in relation to whom a financial hardship determination is in force under section 44-31 of the Transitional Provisions Act is the difference between the

maximum daily amount of resident fees for the care recipient and the lesser amount specified in the financial hardship determination.

Section 75 – Amount of hardship supplement - care recipient on pre-entry leave

This section states that the amount of hardship supplement for a day for a care recipient who is on pre-entry leave is nil.

Division 4 – Veterans’ supplement

Section 76 – Purpose of this Division

The purpose of this Division is to set the amount of the veterans’ supplement for a particular day, payable to an approved provider of residential care in respect of an eligible care recipient.

The eligibility criteria for the veterans’ supplement are set out in Subdivision C of Division 8 of Part 3 of Chapter 2 of the Transitional Provisions Principles.

Section 77 – Amount of veterans’ supplement

This section states the daily amount of the veterans’ supplement for a care recipient.

Division 5 – Homeless supplement

Section 78 – Purpose of this Division

The purpose of this Division is to set the amount of the homeless supplement for a particular day, payable to an approved provider of residential care in respect of an eligible care recipient.

The eligibility criteria for the homeless supplement are set out in Subdivision D of Division 8 of Part 3 of Chapter 2 of the Transitional Provisions Principles.

Section 79 – Amount of homeless supplement

This section states the daily amount of the homeless supplement for a care recipient.

Chapter 3 – Home care subsidy

Part 1 - Preliminary

Section 80 – Purpose of this Part

This purpose of this Part is to set out the basic subsidy amounts for a day for a care recipient who is being provided with home care.

Section 81 – Definitions

This section includes definitions used to determine the amount of home care subsidy.

accepted mental health condition has the meaning given by section 4 of the *Subsidy Principles 2014*.

ARIA value has the meaning given by section 4 of the Transitional Provisions Principles.

enteral feeding supplement means the enteral feeding supplement referred to in section 44-14 of the Transitional Provisions Act and also referred to in Division 6 of Part 2 of Chapter 2 of this Determination.

extended aged care at home - dementia has the meaning given by section 15.8 of the *Flexible Care Subsidy Principles 1997* as in force immediately before 1 August 2013.

KICA-Cog has the meaning given by section 4 of the *Subsidy Principles 2014*.

oxygen supplement means the oxygen supplement referred to in section 44-13 of the Transitional Provisions Act and also referred to in Division 5 of Part 2 of Chapter 2 of this Determination.

Psychogeriatric Assessment Scales has the meaning given by section 4 of the *Subsidy Principles 2014*.

Rowland Universal Dementia Assessment Scale has the meaning given by section 4 of the *Subsidy Principles 2014*.

suspension period, in relation to the provision of home care, means the period for which the provision of home care is suspended under section 46-2 of the Transitional Provisions Act.

transition care has the meaning given by section 106 of the *Subsidy Principles 2014*.

veteran has the meaning given by section 4 of the *Subsidy Principles 2014*.

Part 2 – Amount of home care subsidy

Division 1 – Amount of home care subsidy

Section 82 – Amount of home care subsidy

This section states that the total daily amount of home care subsidy payable to an approved provider for a care recipient is the sum of the following amounts:

- the basic subsidy amount worked out under Division 2;
- the amount of the viability supplement worked out under Division 3;
- the amount of the dementia and cognition supplement (if applicable) worked out under Division 4;
- the amount of the veterans' supplement (if applicable) worked out under Division 5;
- the amount of the top-up supplement (if applicable) worked out under Division 6;
- the amount of the oxygen supplement (if applicable) that would be payable in respect of a day if the care recipient were receiving residential care on that day; and
- the amount of the enteral feeding supplement (if applicable) if the care recipient were receiving residential care on that day.

This section also states the total daily amounts of home care subsidy payable if the provision of home care is suspended under section 46-2 of the Transitional Provisions Act.

Division 2 – Basic subsidy amount

Section 83 – Basic subsidy amount - general

This section states the daily amount of basic subsidy payable in respect of care recipients receiving home care. Different basic subsidy amounts apply depending on the level of care received by the care recipient.

Section 84 – Basic subsidy amount - during suspension period

This section specifies how to calculate the daily amount of the basic home care subsidy for a care recipient if the provision of home care to the care recipient is suspended on a temporary basis.

The section sets out the rules relating to the payment of subsidy under various circumstances for which the care recipient may suspend home care including:

- where home care is suspended because the care recipient is receiving transition care or is attending hospital for the purposes of receiving hospital treatment;
- where home care is suspended because the care recipient is receiving respite care; and
- where home care is suspended for any other reason.

The section also notes that a suspension period is calculated by financial year and the number of days restarts on 1 July each year.

Notes in this section remind readers that the home care agreement under which the home care is provided is taken to remain in force during the suspension period, and the care recipient is taken to have been provided with home care, as required by the agreement, on each day of the suspension period.

Division 3 – Viability supplement

Section 85 – Amount of viability supplement

This section states the daily amount of the viability supplement in respect of a care recipient. Different amounts apply depending on the ARIA value for the location where the care recipient resided on that day.

Division 4 – Dementia and cognition supplement

Section 86 – Eligibility for dementia and cognition supplement

This section outlines the eligibility criteria for the dementia and cognition supplement.

Section 87 – Amount of dementia and cognition supplement

This section states that the daily amount of the dementia and cognition supplement for a care recipient is 10 per cent of the basic subsidy amount payable in respect of a day for the care recipient (under section 83).

Division 5 – Veterans' supplement

Section 88 – Eligibility for veterans' supplement

This section outlines the eligibility criteria for the veterans' supplement.

Section 98 – Amount of veterans’ supplement

This section states that the daily amount of the veterans’ supplement for a care recipient is 10 per cent of the basic subsidy amount payable in respect of a day for the care recipient (under section 83).

Division 6 – Top-up supplement

Section 90 – Eligibility for top-up supplement

This section outlines the eligibility criteria for the top-up supplement.

Section 91 – Amount of top-up supplement amount

This section states the amount of the top-up supplement for a day for an eligible care recipient.

Chapter 4 – Flexible care subsidy

Section 92 – Purpose of this Chapter

There are three types of flexible care that the aged care legislation provides for - multi-purpose services, transition care and innovative care.

For multi-purpose services, the Commonwealth government pays subsidy based on the places held by the approved provider rather than in relation to individual care recipients. This is a cashed out model and the amount of subsidy payable depends on the conditions of allocation of place. For innovative care and transition care, subsidy is paid in accordance with conditions of allocation of places. In addition, for transition care, it is a legislative requirement that an agreement be entered into between the Secretary and the approved provider.

For this reason the payment of subsidy to providers of these kinds of flexible care does not differ based on whether or not the people receiving care are, or are not, continuing care recipients. However, for consistency with other care types, the *Aged Care Act 1997* enables matters relating to flexible care subsidy to be dealt with in the *Subsidy Principles 2014*, while the *Aged Care (Transitional Provisions) Act 1997* enables matters relating to subsidy for continuing care recipients to be dealt with in the *Transitional Provisions Principles*.

For completeness, this Chapter provides that for the purposes of the *Transitional Provisions Act and Principles*, the amount of flexible care subsidy payable for a day is the same as that described in the *Aged Care (Subsidy, Fees and Payments) Determination 2014*.

Section 93 – Amount of flexible care subsidy

The effect of this section is to apply the *Aged Care (Subsidy, Fees and Payments) Determination 2014* for the purposes of this Determination.

This ensures that flexible care providers continue to receive subsidy in the same way regardless of whether the care recipients they provide care to are continuing care recipients or care recipients who entered flexible care on or after 1 July 2014.

Statement of Compatibility with Human Rights

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

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

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

The purpose of the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014* (the Determination) is to:

- set the amount, or in some cases the method for calculating the amount, of residential care subsidy, home care subsidy and flexible care subsidy that is payable in respect of a day from 1 July 2014. This includes the amounts of basic subsidy and supplements; and
- describe the reductions to subsidy that may be made for care recipients in residential care.

This Determination applies only in respect of continuing care recipients. Continuing care recipients are those who entered an aged care service before 1 July 2014 and since that time have not left the service for a continuous period of more than 28 days (other than because the person is on leave) or, before moving to another service, made a written choice to be subject to new rules relating to fees and payments that take effect on 1 July 2014. The amount of subsidy and supplements payable in respect of care recipients who are not continuing care recipients are detailed in the *Aged Care (Subsidy, Fees and Payments) Determination 2014*.

Human Rights Implications

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

The Determination specifies the amount of subsidy 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.

The Determination also specifies the amounts of additional payments in the form of supplements that are payable to approved providers to ensure that people with special needs, including people who live in rural or remote areas, people who are financially or socially disadvantaged, people from Aboriginal and Torres Strait Islander communities and people who are homeless or at risk of becoming homeless, are provided with the aged care services they need.

Conclusion

This legislative 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.

Senator the Hon Mitch Fifield
Assistant Minister for Social Services