

## **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) Amendment (March 2015 Indexation) Determination 2015*

The *Aged Care (Transitional Provisions) Act 1997* (the Transitional Provisions Act), in conjunction with the *Aged Care Act 1997* (the Act), 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 Act to provide aged care services (approved providers) can be eligible to receive 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, have not made a written choice to be subject to new rules relating to fees and payments that came into 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.

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) Amendment (March 2015 Indexation) Determination 2015* (the Amending Determination) is to increase the amount of certain supplements payable to approved providers of aged care services in line with the changes to the consumer price index (CPI).

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

### **Commencement**

The amendments commence on 20 March 2015.

### **Reliance on subsection 33(3) of the *Acts Interpretation Act 1901***

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

### **Consultation**

Routine indexation of subsidies and supplements in this determination is calculated through the use of a well-established formula based on the consumer price index (CPI) as a measure of the movements in the non-labour costs of providers. As this is in accordance with the

general policy for indexation of aged care payments upon which extensive consultation was undertaken, no specific consultation was undertaken with respect to this indexation.

Information about the increase in the amount of the subsidies and supplements payable to approved providers from 20 March 2015 will be disseminated via electronic media to approved providers.

**Regulation Impact Statement**

The Office of Best Practice Regulation (OBPR) has advised that no Regulation Impact Statement is required (OBPR ID 11719).

**Details of the Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (March 2015 Indexation) Determination 2015**

**Clause 1** states that the name of the determination is the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (March 2015 Indexation) Determination 2015*.

**Clause 2** sets out the commencement date of the Amending Determination.

**Clause 3** provides that the authority for the making of the determination is the *Aged Care (Transitional Provisions) Act 1997*.

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

<b>Subsidy, supplement or reduction in subsidy</b>	<b>Authority in Transitional Provisions Act</b>
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)
Transitional supplement	subsection 44-16(3)
Transitional accommodation supplement	subsection 44-16(3)
Pensioner supplement	subsection 44-28(7)

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

**Schedule 1 – Amendments**

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

**Item 1 – Amendment of listed provisions – indexation of amounts of supplements**

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

- the accommodation supplement;
- the concessional resident supplement;
- the charge exempt resident supplement;
- the respite supplement;
- the transitional supplement;
- the transitional accommodation supplement; and
- the pensioner supplement.

## **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) Amendment (March 2015 Indexation) Determination 2015***

The *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (March 2015 Indexation) Determination 2015* 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**

This legislative instrument amends the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014* and increases the amount of particular supplements payable to approved providers of aged care services in line with changes to the consumer price index (CPI).

#### **Human Rights Implications**

This legislative instrument is compatible with the right to an adequate standard of living and the right to 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.

This legislative instrument concerns the amount of residential care 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.

Specifically, the legislative instrument increases the amount of additional payments in the form of supplements that are payable to approved providers to assist with the costs of caring for certain groups including people who are financially disadvantaged.

#### **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**