

# **EXPLANATORY STATEMENT**

**Issued by the authority of the Minister for Aged Care**

## ***Aged Care Act 1997***

### ***Aged Care (Subsidy, Fees and Payments) Amendment (July Indexation) Determination 2016***

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 aged care services (approved providers) can be eligible to receive subsidy and supplement payments in respect of the care they provide to approved care recipients.

The Act provides that for each type of aged care, the Minister may determine the amount of subsidy and supplement payable to an approved provider for the provision of that type of aged care.

The purpose of the *Aged Care (Subsidy, Fees and Payments) Amendment (July Indexation) Determination 2016* (the Amending Determination) is to increase the amount of subsidies and supplements payable to approved providers of aged care services in respect of a day from 1 July 2016.

The Amending Determination applies only in respect of care recipients who are not continuing care recipients. Continuing care recipients are those who entered a 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 the new rules relating to fees and payments that took effect on 1 July 2014. The amount of subsidy and supplements payable in respect of continuing care recipients is detailed in the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014*.

#### **Authority**

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

<b>Residential</b>	<b>Section</b>
Basic subsidy amount	44-3(2)
Amount of primary supplements	44-5(3)
Adjusted subsidy reduction	44-19(2)
Amount of other supplements	44-27(3)
<b>Home care</b>	
Basic subsidy amount	48-2(3)
Amount of primary supplements	48-3(3)
Amount of other supplements	48-9(3)
<b>Flexible care</b>	
Flexible care subsidy	52-1

**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 Amending Determination is calculated through the use of a well-established formula based on the relevant wage and price indices. This Amending Determination gives effect to routine indexation adjusted to reflect the Government's 2016-17 Budget announcement. Accordingly, no specific consultation was undertaken with respect to this indexation.

**Regulation Impact Statement**

The Office of Best Practice Regulation (OBPR) has advised that no Regulation Impact Statement is required to set routine indexation (OBPR ID 11719) or to make changes in line with the Amending Bill (OBPR 18406).

**Commencement**

The Amending Determination commences on 1 July 2016.

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

**Details of the Aged Care (Subsidy, Fees and Payments) Amendment (July Indexation) Determination 2016**

**Clause 1** states that the name of the determination is the *Aged Care (Subsidy, Fees and Payments) Amendment (July Indexation) Determination 2016*.

**Clause 2** states that the determination commences on 1 July 2016.

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

**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 (Subsidy, Fees and Payments) Determination 2014***

**Item 1 – Amendments of listed provisions – indexation of amounts**

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

- the basic subsidy amount for residential care and home care;
- the amount of oxygen supplements for residential care and home care;
- the amount of enteral feeding supplement for residential care and home care;
- the adjusted subsidy reduction;
- the amount of other supplements for residential care and home care; and
- the amount of flexible care subsidy.

**Item 2 – Subsection 7(3) (table)**

This item provides for the indexation of amounts in relation to the ACFI amounts by repealing the table to subsection 7(3) and substituting a new table with the indexed amounts.

**Item 3 – Section 57 (table)**

This item provides for the indexation of amounts in relation to the amount of viability supplement for residential care through a 1997 scheme service by repealing the table to section 57 and substituting a new table with the indexed amounts.

**Item 4 – Section 58 (table)**

This item provides for the indexation of amounts in relation to the amount of viability supplement for residential care through a 2001 scheme service by repealing the table to section 58 and substituting a new table with the indexed amounts.

**Item 5 – Section 59 (table)**

This item provides for the indexation of amounts in relation to the amount of viability supplement for residential care through a 2005 scheme service by repealing the table to section 59 and substituting a new table with the indexed amounts.

**Item 6 – Section 67 (table)**

This item provides for the indexation of amounts in relation to the basic subsidy amount for home care by repealing the table to section 67 and substituting a new table with the indexed amounts.

**Item 7 – Section 85 (table)**

This item provides for the indexation of amounts in relation to the amount of viability supplement for home care by repealing the table to section 85 and substituting a new table with the indexed amounts.

**Item 8 – Section 94 (table)**

This item provides for the indexation of amounts in relation to the respite supplement equivalent amount for a multi-purpose service by repealing the table to section 94 and substituting a new table with the indexed amounts.

**Item 9 – Section 96 (table)**

This item provides for the indexation of amounts in relation to the additional amount of home care subsidy for a multi-purpose service by repealing the table to section 96 and substituting a new table with the indexed amounts.

**Item 10 – Section 97 (table)**

This item provides for the indexation of amounts in relation to the viability supplement equivalent amount for Category A multi-purpose services by repealing the table to section 97 and substituting a new table with the indexed amounts.

**Item 11 – Section 98 (table)**

This item provides for the indexation of amounts in relation to the viability supplement equivalent amount for Category B multi-purpose services by repealing the table to section 98 and substituting a new table with the indexed amounts.

**Item 12 – Section 99 (table)**

This item provides for the indexation of amounts in relation to the viability supplement equivalent amount for Category C multi-purpose services by repealing the table to section 99 and substituting a new table with the indexed amounts.

**Item 13 – Section 101 (table)**

This item provides for the indexation of amounts in relation to the concessional resident equivalent amounts for multi-purpose services by repealing the table to section 101 and substituting a new table with the indexed amounts.

## **Statement of Compatibility with Human Rights**

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

### ***Aged Care (Subsidy, Fees and Payments) Amendment (July Indexation) Determination 2016***

The *Aged Care (Subsidy, Fees and Payments) Amendment (July Indexation) Determination 2016* 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) Act 2011*.

#### **Overview of Legislative Instrument**

This legislative instrument amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014*, and increases the amount of particular subsidies and supplements payable to approved providers of aged care services.

#### **Human Rights Implications**

This legislative instrument 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.

This legislative instrument increases the amount of subsidies and supplements 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.

#### **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.

**The Hon Sussan Ley  
Minister for Aged Care**