

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Aged Care

Aged Care (Transitional Provisions) Act 1997

Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (July Indexation) Determination 2018

The *Aged Care (Transitional Provisions) Act 1997* (the TP 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 subsidy payments under the TP 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.

The *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (July Indexation) Determination 2018* (the Amending Determination) amends the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014*. The purpose of 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 2018. The Amending Determination also gives effect to the measure announced on 6 December 2016 by the (then) Assistant Minister for Health and Aged Care, of a 50 per cent indexation pause to the Aged Care Funding Instrument (ACFI) residential care Complex Health Care domain during 2018-19. This indexation pause follows the pause in the indexation of the ACFI basic subsidy amounts during 2017-18 in order to ensure the sustainability of the existing funding arrangements.

Authority

The authority in the TP Act to make specific determinations in the Amending Determination is set out in the following table:

Residential	Section
Basic subsidy	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)(b)
Oxygen supplement	subsection 44-13(6)
Enteral feeding supplement	subsection 44-14(6)
Additional primary supplements	subsection 44-16(3)
Adjusted subsidy reduction	subsection 44-19(2)
Hardship supplement	subsection 44-30(5)
Veterans' supplement	subsection 44-27(3)

Homeless supplement	subsection 44-27(3)
Home care	
Basic subsidy amount	subsection 48-1(3)
Top-up supplement	subsection 48-1(3)
Viability supplement	subsection 48-1(3)

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. Accordingly, no specific consultation was undertaken with respect to the amounts to which routine indexation has been applied in this Amending Determination.

The 50 per cent indexation pause to the ACFI Complex Health Care domain which was announced on 6 December 2016 by the (then) Assistant Minister for Health and Aged Care was made after consultation with the aged care sector over their concerns about savings measures that had previously been announced in Budget 2016. The 50 per cent indexation pause to the ACFI Complex Health Care domain was part of a number of changes made by the Government following consultation with the aged care sector to ensure the impacts of the original Budget 2016 measures were more evenly distributed.

Commencement

The Amending Determination commences on 1 July 2018.

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

Details of the Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (July Indexation) Determination 2018

Section 1 states that the name of the instrument is the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (July Indexation) Determination 2018*.

Section 2 sets out the commencement date for the instrument.

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

Section 4 provides that each instrument that is specified in a Schedule to the 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 – Indexation

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 oxygen supplement;
- the enteral feeding supplement;
- the veterans' supplement;
- the homeless supplement
- the adjusted subsidy reduction; and
- the top-up supplement.

Item 2 – Subsection 8(3) (table)

This item provides for the indexation of amounts in relation to the aged care funding instrument (ACFI) amounts, including giving effect to the 50 per cent indexation pause to the ACFI Complex Health Care domain announced by the (then) Assistant Minister for Health and Aged Care on 6 December 2016, by repealing the table to subsection 8(3) and substituting a new table with the indexed amounts.

Item 3 – Subsection 10(3) (table)

This item provides for the indexation of amounts in relation to the resident classification scale (RCS) amounts by repealing the table to subsection 10(3) and substituting a new table with the indexed amounts.

Item 4 – Section 83 (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 83 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 (Transitional Provisions) (Subsidy and Other Measures) Amendment (Indexation) Determination 2018

The *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (July Indexation) Determination 2018* 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 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 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 aged 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.

A 50 per cent indexation pause has been applied to increase in the aged care funding instrument (ACFI) residential care Complex Health Care domain subsidy amount during 2018-19. The 50 per cent indexation pause is a reasonable, necessary and proportionate action taken by the Government as part of a range of measures in response to the \$3.8 billion increase in residential care expenditure over the forward estimates up to 2019-20. The increase in residential care expenditure was caused by higher than estimated growth in aged care funding instrument (ACFI) claiming.

The 50 per cent indexation pause in the Complex Health Care domain subsidy amount, along with the 2016-17 ACFI indexation pause, is designed to bring ACFI expenditure back in line with estimates. As a responsible fiscal manager, Government has a legitimate objective in ensuring that future growth in expenditure occurs at a sustainable rate.

The ACFI measures help protect the integrity of the residential aged care sector and the providers delivering high quality care every day. At the same time they will ensure residents get the care they need, with the highest levels of funding going to the residents with the highest needs.

The Australian Government remains the principal funder of aged care, providing estimated funding of \$19.8 billion in 2018-19 to support aged care consumers and the sector.

Legislation requires Government-subsidised aged care homes meet standards to ensure that quality care and services are provided to all residents. The Government's spending on aged care will protect residential aged care recipient's rights to an adequate standard of living.

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 Ken Wyatt
Minister for Aged Care**