

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Aged Care and Senior Australians

Aged Care Act 1997

Aged Care (Subsidy, Fees and Payments) Amendment (July Indexation) Determination 2019

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.

Purpose

The *Aged Care (Subsidy, Fees and Payments) Amendment (July Indexation) Determination 2019* (the Amending Determination) amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014*. The purpose of the Amending Determination is to set the amount of subsidies and supplements payable to approved providers of aged care services in respect of a day from 1 July 2019.

The Amending Determination gives effect to the measure announced on 17 December 2018 by the Prime Minister, of an increase of up to \$400 per year for the level one home care basic subsidy, \$200 per year for the level two home care basic subsidy, and \$100 per year for the level three home care basic subsidy. The increases to the level one, level two and level three home care basic subsidy amounts are in addition to routine indexation. These increases ensure that the overall value of the level one, level two and level three home care packages is not reduced by the reduction to the maximum daily fees payable by the recipients of these home care package levels that applies from 1 July 2019.

The new ACFI and RCS basic subsidy amounts to apply from 1 July 2019 are based on the routine indexation of the subsidy rates that applied at 1 July 2018.

The two temporary subsidy increases that applied in final quarter of 2018-19 cease on 30 June 2019. These were the \$320 million temporary general subsidy boost announced on 10 February 2019 and the \$50 million temporary increase to support the transition to new quality standards that was announced on 8 May 2018.

The Amending Determination also applies indexation of the amount of flexible care subsidy for care provided through an innovative care service from 1 July 2019. Indexation of the innovative care service flexible care subsidy had been paused for five years from 1 July 2014 to 30 June 2019 under the Administered Grants Indexation Pause introduced in the 2014-15 Budget and then extended for another two years in the 2015-16 Budget.

The Amending Determination also increases the additional amount payable for eligible care recipients provided with care through an innovative care service. Care recipients in innovative care services are eligible care recipients for the additional amount if they would have been eligible for either the dementia and cognition supplement or for the veterans' supplement if they were receiving home care. For paragraph 104(1)(b) of the *Aged Care (Subsidy, Fees and Payments) Determination 2014* the additional amount is increased so it continues to be equivalent to the amount of dementia and cognition supplement or veterans' supplement that would be payable for a recipient of level 4 home care. For paragraph 104(2)(b) of the *Aged Care (Subsidy, Fees and Payments) Determination 2014* the additional amount is increased so it continues to be equivalent to the amount of dementia and cognition supplement or veterans' supplement that would be payable for a recipient of level 2 home care.

The Amending Determination applies only in respect of care recipients who are not 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 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 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. Specifically, the authority for making specific determinations in the Amending Determination is set out in the following table:

| Residential | Section |
|-------------------------------|----------------|
| 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) |
| Home care | |
| Basic subsidy amount | 48-2(3) |
| Amount of primary supplements | 48-3(3) |
| Amount of other supplements | 48-9(3) |
| Flexible care | |
| 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. Accordingly, no specific consultation was undertaken with respect to the amounts to which routine indexation has been applied in this Amending Determination.

Commencement

The Amending Determination commences on 1 July 2019.

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 2019

Section 1 states that the name of the instrument is the *Aged Care (Subsidy, Fees and Payments) Amendment (July Indexation) Determination 2019*.

Section 2 states that the instrument commences on 1 July 2019.

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

Section 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 supplement 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 Aged Care Funding Instrument (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 60A (table)

This item provides for the indexation of amounts in relation to the amount of viability supplement for residential care through a 2017 scheme service by repealing the table to section 60A and substituting a new table with the indexed amounts.

Item 7 – 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 8 – Section 84A (table to definition of *ARIA value viability supplement amount*)

This item provides for the indexation of amounts in relation to the amount of viability supplement for home care by repealing the table to the definition of *ARIA value viability supplement amount* in section 84A and substituting a new table with the indexed amounts.

Item 9 – Section 84A (table to definition of *MMM classification viability supplement amount*)

This item provides for the indexation of amounts in relation to the amount of viability supplement for home care by repealing the table to the definition of *MMM classification viability supplement amount* in section 84A and substituting a new table with the indexed amounts.

Item 10 – Section 87 (table to definition of *ARIA value additional amount*)

This item provides for the indexation of amounts in relation to the amount of viability supplement for home care by repealing the table to the definition of *ARIA value additional amount* in section 87 and substituting a new table with the indexed amounts.

Item 11 – Section 87 (table to definition of *MMM classification additional amount*)

This item provides for the indexation of amounts in relation to the amount of viability supplement for home care by repealing the table to the definition of *MMM classification additional amount* in section 87 and substituting a new table with the indexed amounts.

Item 12 – 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 13 – 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 14 – 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 15 – 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 16 – Section 99A (table)

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

Item 17 – 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.

Item 18 – Subsection 104(1) (table)

This item provides for the indexation of amounts in relation to the amount of flexible care subsidy for care through an innovative care service by repealing the table to subsection 104(1) and substituting a new table with the indexed amounts. One service that has closed has been removed from the new table.

Item 19 – Subsection 104(2) (table)

This item provides for the indexation of amounts in relation to the amount of flexible care subsidy for care through an innovative care service by repealing the table to subsection 104(1) and substituting a new table with the indexed amount. The change of approved provider name in this subsection effects a transfer of allocated places from the previous approved provider.

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 2019

The *Aged Care (Subsidy, Fees and Payments) Amendment (July Indexation) Determination 2019* 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.

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.

**Senator the Hon Richard Colbeck
Minister for Aged Care and Senior Australians**