

EXPLANATORY STATEMENT

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

Aged Care (Transitional Provisions) Act 1997

*Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment
(Workforce Continuity Funding) Determination 2020*

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.

Purpose

The *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (Workforce Continuity Funding) Determination 2020* (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 March 2020.

The Amending Determination gives effect to measures announced on 20 March 2020 by the Prime Minister of temporary increases in additional funding for both residential and home care providers. The increased funding is to support continuity of the aged care workforce due to the impacts from COVID-19.

COVID-19 is an infectious disease that has entered Australian territory and is fatal in some cases. There is no vaccine against, or antiviral treatment for, COVID-19 immediately before the commencement of this Amending Determination. COVID-19 is posing a severe and immediate threat on a nationally significant scale.

The Government recognizes that aged care is a critical sector that faces staffing challenges as existing staff are either subject to self-isolation requirements due to COVID-19 or are unable to attend work. The additional funding will help ensure the viability of residential and home care providers. This support to maintain workforce continuity will be provided through temporary increases in aged care payments from 1 March 2020 to 31 August 2020 inclusive.

The temporary increases in aged care funding will be amended as follows:

- Home care basic subsidy increased by 1.2 per cent (rounded)
- Residential care basic subsidy increased by 1.2 per cent (rounded)
- Homeless supplement in residential care temporarily increased by 30 per cent (rounded).

The viability supplement in residential and home care will be increased by 30 per cent (rounded) by the *Aged Care (Subsidy, Fees and Payments) Amendment (Workforce Continuity Funding) Determination 2020*.

Authority

The TP Act allows the Minister to determine, by legislative instrument, the amounts of subsidy and supplements. Specifically, the authority in the TP Act to make specific determinations in the Amending Determination is set out in the following table:

Type of Care	Section
Residential	
Basic subsidy	subsection 44-3(2)
Amount of other supplements	subsection 44-27(3)
Home care	
Basic subsidy amount	subsection 48-1(3)
Amount of other supplements	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.

Commencement

The Amending Determination commences on 1 March 2020. The retrospective commencement of the Amending Determination is a beneficial change which will not disadvantage either care recipients or approved providers. There will be no liabilities imposed on either care recipients or approved providers as a result of the retrospective commencement.

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

Consistent with subsection 12(4) of the *Legislation Act 2003*, the Act does not contain any provision contrary to retrospective commencement of the Amending Determination.

Consultation

As the transmission of COVID-19 increases rapidly, no specific consultation was undertaken with respect to the amount of the increases to the aged care subsidies and supplements applied in this Amending Determination.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation (OBPR) was consulted on 23 March 2020 and confirmed that the Amending Determination has been granted an exemption from Regulatory Impact Statement requirements (OBPR ID 26422).

Details of the Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (Workforce Continuity Funding) Determination 2020

Section 1 states that the name of the instrument is the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (Workforce Continuity Funding) Determination 2020*.

Section 2 states that the instrument commences on 1 March 2020.

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 – Amendments

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

Item 1 – Amendment of listed provisions – increased amounts

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

- the homeless supplement; and
- the top-up supplement.

Item 2 – Subsection 8(3) (table)

This item provides for the increase of amounts in relation to the aged care funding instrument (ACFI) amounts, by repealing the table to subsection 8(3) and substituting a new table with the increased amounts.

Item 3 – Subsection 10(3) (table)

This item provides for the increase 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 increased amounts.

Item 4 – Section 83 (table)

This item provides for the increase 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 increased 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 (Workforce Continuity Funding) Determination 2020

The *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (Workforce Continuity Funding) Determination 2020* 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 *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (Workforce Continuity Funding) Determination 2020* (the Amending Determination) 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

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

The Amending Determination gives effect to measures announced on 20 March 2020 by the Prime Minister of temporary increases in additional aged care funding. The Government recognizes that aged care is a critical sector that faces staffing challenges as existing staff are either subject to self-isolation requirements due to COVID-19 or are unable to attend work.

The Amending Determination 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.

The temporary increases to the amount of subsidies and supplements in this legislative instrument give additional support to supplement the viability of the residential and home care sectors, including flexible care due to the impact of COVID-19.

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

The Amending Determination 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**