

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 (Adjusted Subsidy Reduction Multi-purpose Services) Determination 2020

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 (Adjusted Subsidy Reduction Multi-purpose Services) Determination 2020* (the Amending Determination) amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014* (the Subsidy, Fees and Payments Determination) to remove adjusted subsidy reduction multi-purpose services from the Subsidy, Fees and Payments Determination.

Background

Flexible care is care provided in a residential or community setting through an aged care service that addresses the needs of care recipients in alternative ways to the care provided through residential care services and home care services (see section 49-3 of the Act). A multi-purpose service (MPS) is a flexible care service which provides residential care as well as one of a range of additional services, such as a dental service, a home care service, or other services as set out in section 104 of the *Subsidy Principles 2014*.

Some MPS were allocated adjusted subsidy reduction places and are defined as an 'adjusted subsidy reduction multi-purpose service'. These adjusted subsidy reduction multi-purpose services are listed in section 100 of the Subsidy, Fees and Payments Determination, and are located in New South Wales, Victoria, Western Australia and South Australia.

The MPS with high care places that the adjusted subsidy reduction applies to are paid the standard high care daily rate of subsidy and supplements. This amount is then reduced by the amount specified in the Subsidy, Fees and Payments Determination (multiplied by the proportion of adjusted subsidy places to total high care places) per place, per day.

Approved providers applied to change adjusted subsidy places to standard high care places as part of the 2019-20 Multi-Purpose Services Flexible Aged Care Places Allocations Round.

A total of 262 adjusted subsidy reduction places were changed to standard high care places across 27 MPS in South Australia, New South Wales, Victoria and Western Australia. As a result, there will be no remaining adjusted subsidy reduction multi-purpose services. The

amendments introduced by the Amending Determination will effect this change to allow the allocated high places to be paid at the high care rate determined.

These are beneficial amendments to the Subsidy, Fees and Payments Determination as they are designed to improve funding equality between MPS.

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 section 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.

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

Consultation

The Department engaged in extensive consultation about the continued appropriateness of adjusted subsidy reduction multi-purpose services through direct engagement with providers and through the independent Multi-Purpose Services Program Review. This Review was completed in October 2019 and consulted with all MPS stakeholders, including service providers, clients, communities and state and territory health departments. All stakeholders advocated strongly for the removal of adjusted subsidy places from multi-purpose services to improve funding equity and the financial viability of services.

Consultation on the draft Amending Determination was considered unnecessary as the effect of the Amending Determination achieves the outcome that was sought by stakeholders, being the removal of adjusted subsidy places from multi-purpose services.

Commencement

The Amending Determination commences on 1 July 2020.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation (OBPR) was consulted on 6 May 2020 and confirmed that the Amending Determination has been granted an exemption from Regulatory Impact Statement requirements (OBPR ID 42500).

Details of the *Aged Care (Subsidy, Fees and Payments) Amendment (Adjusted Subsidy Reduction Multi-purpose Services) Determination 2020*

Section 1 states that the name of the Amending Determination is the *Aged Care (Subsidy, Fees and Payments) Amendment (Adjusted Subsidy Reduction Multi-purpose Services) Determination 2020*.

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

Section 3 provides that the authority for the making of the instrument is section 52-1 of 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 – Section 87

This item repeals the definition of adjusted subsidy reduction multi-purpose service in section 87.

Item 2 – Section 92

This item repeals the existing section 92 and replaces it with a new section 92.

The existing section 92 sets out two different formulae to determine the applicable amount for a day for a high care place. The first formula calculates the applicable amount for an allocated high care place for a MPS that is not an adjusted subsidy reduction multi-purpose service. The second formula calculates the applicable amount for an allocated high care place for a MPS that is an adjusted subsidy reduction multi-purpose service.

New section 92 inserted by this item provides a formula to calculate the amount for a day for a high care place allocated in respect of a multi-purpose service. Only a single formula is necessary under the new section 92 because of the removal of adjusted subsidy reduction multi-purpose services.

Item 3 - Division 5 of Part 1 of Chapter 4

This item repeals Division 5 of Part 1 of Chapter 4. In effect, this item repeals section 100 of the Subsidy Fees and Payments Determination in its entirety, which includes the table that lists adjusted subsidy reduction multi-purpose services.

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 (Adjusted Subsidy Reduction Multi-purpose Services) Determination 2020

The *Aged Care (Subsidy, Fees and Payments) Amendment (Adjusted Subsidy Reduction Multi-purpose Services) 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) Act 2011*.

Overview of the legislative instrument

The *Aged Care (Subsidy, Fees and Payments) Amendment (Adjusted Subsidy Reduction Multi-purpose Services) Determination 2020* (the Amending Determination) amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014*, and removes the concept of adjusted subsidy multi-purpose 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*.

Multi-purpose services are flexible care services (see section 49-3 of the *Aged Care Act 1997*) which provides residential care as well as one of a range of additional services, such as a dental service, a home care service, or other services as set out in section 104 of the *Subsidy Principles 2014*.

Some multi-purpose services are allocated adjusted subsidy reduction places and are defined as an ‘adjusted subsidy reduction multi-purpose service’. In effect, this reduces the amount of subsidy a multi-purpose service will receive.

The Amending Determination removes the concept of adjusted subsidy multi-purpose services. This will increase the amount of flexible care subsidies payable to multi-purpose service approved providers, which will enable the provision of a high level of care and services to care recipients, including people with a condition of frailty or disability who require assistance. Providing this additional funding will assist care recipients to achieve and maintain the highest attainable standard of physical and mental health.

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**