

# **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 (July Indexation) 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.

The TP 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 (Transitional Provisions) (Subsidy and Other Measures) Amendment (July Indexation) 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 apply routine indexation to the amount of subsidies and supplements payable to approved providers of aged care services in respect of a day from 1 July 2020.

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

## **Authority**

The TP Act provides that for each type of aged care, the Minister may determine, by legislative instrument, the amount of subsidy and supplements payable to an approved provider for the provision of that type of aged care. Specifically, the authority in the TP Act for making specific determinations in the Amending Determination is set out in the following table:

<b>Type of Care</b>	<b>Section</b>
<b>Residential care</b>	
Basic subsidy amount	subsection 44-3(2)
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)
Other supplements (such as the homeless supplement and the veterans' supplement)	subsection 44-27(3)
<b>Home care</b>	
Home care subsidy amount	subsection 48-1(3)

Section 96-1 of the TP Act provides that the Minister has the power to make Aged Care (Transitional Provisions) Principles providing for matters required or permitted, or necessary or convenient, in order to give effect to the TP Act.

**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 July 2020.

**Consultation**

The 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.

**Regulation Impact Statement (RIS)**

The Office of Best Practice Regulation (OBPR) has previously advised that a Regulation Impact Statement is not required for legislative instruments in order to implement routine indexation (**OBPR ID 11719**).

**Details of the Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (July Indexation) Determination 2020**

**Section 1** states that the name of the instrument is the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (July Indexation) 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 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 – indexation of amounts**

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

- the oxygen supplement;
- the enteral feeding supplement;
- the veterans' supplement;
- the homeless supplement
- the adjusted subsidy reduction for residential care; 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 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 (July Indexation) Determination 2020***

The *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (July Indexation) 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 Legislative Instrument**

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

The Amending Determination 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.

Legislation requires government-subsidised aged care homes meet standards to ensure that quality care and services are provided to all residents. The Australian Government's spending on aged care will protect 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**