

REPLACEMENT 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
(Cessation of Temporary Funding Increases) 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 (Cessation of Temporary Funding Increases) 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 cease from 1 September 2020 temporary aged care funding increases payable to approved aged care providers announced by the Australian Government on 20 March 2020. These temporary aged care funding increases were implemented by the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (Workforce Continuity Funding) Determination 2020*.

The temporary aged care funding increases provide additional support from 1 March 2020 to 31 August 2020 inclusive for the residential and home care sectors, including flexible care, in response to pressures on workforce supply resulting from COVID-19.

COVID-19 is an infectious disease that has entered Australian territory and is fatal in some cases. The Australian Government implemented temporary aged care funding increases in recognition that aged care is a critical sector facing staffing challenges, as existing staff were either subject to self-isolation requirements due to COVID-19 or were unable to attend work.

The additional funding helped ensure the viability of residential and home care providers during the initial stages of the COVID-19 pandemic through temporary increases in aged care subsidies and supplements from 1 March 2020 to 31 August 2020 inclusive.

The temporary aged care funding increases that the Amending Determination will cease from 1 September 2020 are the:

- Home care basic subsidy increase of 1.2 per cent (rounded);
- Residential care basic subsidy increase of 1.2 per cent (rounded); and
- Homeless supplement in residential care increase of 30 per cent (rounded).

The temporary 30 per cent (rounded) increase in the viability supplement in residential and home care will be ceased from 1 September 2020 by the *Aged Care (Subsidy, Fees and Payments) Amendment (Cessation of Temporary Funding Increases) Determination 2020*.

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

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 amount	subsection 44-3(2)
Other supplement amount	subsection 44-27(3)
Home care	
Basic subsidy amount	subsection 48-1(3)
Other supplement amount	subsection 48-1(3)

Section 96-1 of the Act provides that the Minister has the power to make instruments providing for matters required or permitted, or necessary or convenient, in order to give effect to the relevant Part or section of the 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 September 2020.

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 was increasing rapidly, no specific consultation was undertaken with respect to the amount of the temporary increases to the aged care subsidies and supplements that are being ceased in this Amending Determination.

No consultation was undertaken on ceasing the temporary increases because communication to approved providers on 31 March 2020 about the increases clearly stated that the additional funding was temporary and would have effect from 1 March 2020 to 31 August 2020.

The communication to approved providers on 31 March 2021 also made clear that this temporary increase in funding formed part of a package of measures to support senior Australians, and recognised the particular cost and service delivery pressures eligible

providers experience given their geography and/or the particular client groups they care for.

In addition, significant additional funding has been provided to the sector at the same time as these temporary increases.

Regulation Impact Statement (RIS)

Due to truly urgent and unforeseen events related to the spread of COVID-19, the Prime Minister granted an exemption from the need to complete regulatory impact analysis in the form of Regulation Impact Statements for all Australian Government measures made in response to COVID-19.

The Office of Best Practice Regulation (OBPR) was consulted on 23 March 2020 regarding the implementation of the temporary aged care funding increases and confirmed that a Regulation Impact Statement was not required (OBPR ID 26422). The Prime Minister's exemption covers both the implementation and the cessation of the temporary funding increases.

Details of the Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (Cessation of Temporary Funding Increases) Determination 2020

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

Section 2 states that the instrument commences on 1 September 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 – changed amounts

This item provides for changes 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 change 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 new amounts.

Item 3 – Subsection 10(3) (table)

This item provides for the change 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 new amounts.

Item 4 – Section 83 (table)

This item provides for the change 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 new 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 (Cessation of Temporary Funding Increases) Determination 2020

The *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (Cessation of Temporary Funding Increases) 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 (Cessation of Temporary Funding Increases) Determination 2020* (the Amending Determination) amends the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014* and ends temporary additional funding increases payable to approved providers of aged care services from 1 March 2020 to 31 August 2020 inclusive.

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 ends temporary additional aged care funding increases announced by the Government on 20 March 2020. The temporary additional funding was in recognition that aged care is a critical sector facing staffing challenges as staff were either subject to self-isolation requirements due to COVID-19 or were unable to attend work.

For the period 1 March 2020 to 31 August 2020 inclusive, the temporary additional funding increased the amount of aged care 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 aged care subsidies and supplements ended by the Amending Determination have given additional support towards the viability of the residential and home care sectors, including flexible care, due to the impact of COVID-19 during the initial stages of the pandemic. They were part of a package of measures that provided additional funding to strengthen the aged care industry.

The Australian Government is spending a record amount on aged care in Australia including an additional COVID-19 specific support package totaling \$205 million for residential aged care providers under targeted measures announced on 1 May 2020.

Legislation requires Australian Government-subsidised aged care homes meet standards to ensure quality care and services are provided to all residents.

The Australian Government's continued 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**