

REPLACEMENT 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 (Cessation of Temporary Funding Increases) 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 (Cessation of Temporary Funding Increases) Determination 2020* (the Amending Determination) amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014* (the Subsidy, Fees and Payments Determination). 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 (Subsidy, Fees and Payments) 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);
- Homeless supplement in residential care increase of 30 per cent (rounded); and
- Viability supplement in residential and home care increase of 30 per cent (rounded).

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*. This determination will be amended by the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (Cessation of Temporary Funding Increases) Determination 2020* to be consistent with the cessation of the temporary increases implemented by the Amending Determination.

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

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:

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 48-2(3)
Other supplement amount	subsection 48-9(3)
Flexible care	
Flexible care subsidy	section 52-1

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 2020 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 (Subsidy, Fees and Payments) Amendment (Cessation of Temporary Funding Increases) Determination 2020

Section 1 states that the name of the instrument is the *Aged Care (Subsidy, Fees and Payments) 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 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 – changed amounts

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

- the basic subsidy amount for residential respite care;
- 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 change 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 new amounts.

Item 3 – Section 57 (table)

This item provides for the change of amounts in relation to the amount of viability supplement for residential care through a 1997 scheme service (as defined in section 56 of the Subsidy, Fees and Payments Determination) by repealing the table to section 57 and substituting a new table with the new amounts.

Item 4 – Section 58 (table)

This item provides for the change of amounts in relation to the amount of viability supplement for residential care through a 2001 scheme service (as defined in section 56 of the Subsidy, Fees and Payments Determination) by repealing the table to section 58 and substituting a new table with the new amounts.

Item 5 – Section 59 (table)

This item provides for the change of amounts in relation to the amount of viability supplement for residential care through a 2005 scheme service (as defined in section 56 of the Subsidy, Fees and Payments Determination) by repealing the table to section 59 and substituting a new table with the new amounts.

Item 6 – Section 60A (table)

This item provides for the change of amounts in relation to the amount of viability supplement for residential care through a 2017 scheme service (as defined in section 56 of the Subsidy, Fees and Payments Determination) by repealing the table to section 60A and substituting a new table with the new amounts.

Item 7 – Section 67 (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 67 and substituting a new table with the new amounts.

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

This item provides for the change 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 new amounts.

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

This item provides for the change 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 new amounts.

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

This item provides for the change of amounts in relation to the amount of viability supplement for a home care place allocated in respect of a multi-purpose service by repealing the table to the definition of *ARIA value additional amount* in section 87 and substituting a new table with the new amounts.

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

This item provides for the change of amounts in relation to the amount of viability supplement for a home care place allocated in respect of a multi-purpose service by repealing the table to the definition of *MMM classification additional amount* in section 87 and substituting a new table with the new amounts.

Item 12 – Section 94 (table)

This item provides for the change 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 new amounts.

Item 13 – Section 97 (table)

This item provides for the change of amounts in relation to the viability supplement equivalent amounts for Category A multi-purpose services by repealing the table to section 97 and substituting a new table with the new amounts.

Item 14 – Section 98 (table)

This item provides for the change of amounts in relation to the viability supplement equivalent amounts for Category B multi-purpose services by repealing the table to section 98 and substituting a new table with the new amounts.

Item 15 – Section 99 (table)

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

Item 16 – Section 99A (table)

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

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Humans Rights (Parliamentary Scrutiny) Act 2011

Aged Care (Subsidy, Fees and Payments) Amendment (Cessation of Temporary Funding Increases) Determination 2020

The *Aged Care (Subsidy, Fees and Payments) 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) Act 2011*.

Overview of the legislative instrument

The *Aged Care (Subsidy, Fees and Payments) Amendment (Cessation of Temporary Funding Increases) Determination 2020* (the Amending Determination) amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014*, and ends additional temporary 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. The temporary increases 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**