

EXPLANATORY STATEMENT

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

Aged Care Act 1997

Aged Care (Subsidy, Fees and Payments) Amendment (Cessation of Temporary Home Care Viability Supplement Funding Increases) Determination 2021

The *Aged Care Act 1997* (Act) provides for the regulation and funding of aged care.

Persons who are approved under the Act to provide aged care services (approved providers) may be eligible to receive subsidy payments under the Act.

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 Home Care Viability Supplement Funding Increases) Determination 2021* (Amending Determination) amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014* (Subsidy, Fees and Payments Determination).

The purpose of the Amending Determination is to cease, from 1 March 2021, temporary home care viability supplement funding increases payable to approved aged care providers, which were announced by the Australian Government on 31 August 2020. The temporary home care viability supplement funding increases were implemented by the *Aged Care Legislation Amendment (Subsidies-COVID-19 Support Supplement and Workforce Continuity Funding Measures No. 2) Instrument 2020*.

The viability supplement helps with the higher cost of providing aged care services in rural and remote areas. In home care, eligibility for the viability supplement is based on the location where the consumer receives home care services. Higher rates of viability supplement apply in more remote locations. The temporary home care viability supplement funding increases provide additional support from 1 September 2020 to 28 February 2021 for the home care sector, including home care delivered through flexible care services, in response to increased cost pressures during initial stages of the COVID-19 pandemic. Aged care providers in areas that had not been directly affected by COVID-19 outbreaks experienced additional costs and pressures as they prepared for and tried to avoid outbreaks. The increases were a continuation of the temporary aged care funding increases that had been applied from 1 March 2020 to 31 August 2020.

The temporary aged care funding increases that the Amending Determination will cease from 1 March 2021 is the viability supplement in home care increase of 30 per cent (rounded).

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
Home care	
Other supplement amount	subsection 48-9(3)
Flexible care	
Flexible care subsidy	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.

Commencement

The Amending Determination commences on 1 March 2021.

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 home care viability supplement that is being ceased in this Amending Determination.

A temporary 30 per cent increase to the home care viability supplement was announced by the Australian Government on 20 March 2020. That temporary increase formed part of a package of measures to support the aged care sector. That temporary 30 per cent home care viability supplement increase ended on 31 August 2020.

On 31 August 2020 the Australian Government announced that the 30 per cent increase to the home care viability supplement would be extended for another six months. This six month extension was also part of a package of measures providing financial support to the aged care sector.

No consultation was undertaken on ceasing the temporary home care viability supplement increases because the communication to approved providers on 31 August 2020 about the temporary increases clearly stated that the additional funding was temporary and would be for a further six months.

The communication to approved providers on 31 August 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)

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 Home Care Viability Supplement Funding Increases) Determination 2021

Section 1 states that the name of the instrument is the *Aged Care (Subsidy, Fees and Payments) Amendment (Cessation of Temporary Home Care Viability Supplement Funding Increases) Determination 2021*.

Section 2 states that the instrument commences on 1 March 2021.

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 – 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 2 – 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 3 – 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 4 – 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.

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 (Cessation of Temporary Home Care Viability Supplement Funding Increases) Determination 2021

The *Aged Care (Subsidy, Fees and Payments) Amendment (Cessation of Temporary Home Care Viability Supplement Funding Increases) Determination 2021* 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 Home Care Viability Supplement Funding Increases) Determination 2021* (the Amending Determination) amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014*, and ends additional temporary funding increases payable to approved providers of home care services from 1 September 2020 to 28 February 2021 inclusive.

Human rights implications

The Amending Instrument engages the following human rights as contained in article 11(1) and article 12(1) of the *International Convention on Economic, Social and Cultural Rights* and articles 25 and 28 of the *Convention of the Rights of Persons with Disabilities*:

- the right to an adequate standard of living, including with respect to food, clothing and housing, and to the continuous improvement of living conditions; and
- the right to the enjoyment of the highest attainable standard of physical and mental health.

The Amending Determination ends temporary home care viability supplement funding increases announced by the Australian Government on 31 August 2020. The temporary funding increase was in response to increased cost pressures during initial stages of the COVID-19 pandemic.

Home care providers experienced additional costs during the initial stages of the COVID-19 pandemic. The temporary increase to the rate of the home care viability supplement increased the funding payable to approved home care 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 home care funding increase was part of a package of measures that provided additional funding to strengthen the aged care industry during the initial stages of the COVID-19 pandemic.

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 Senior Australians and Aged Care Services