

EXPLANATORY STATEMENT

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

Aged Care (Transitional Provisions) Act 1997

*Aged Care (Transitional Provisions) Amendment (March Indexation)
Principles 2022*

The *Aged Care (the Transitional Provisions) Act 1997* (Transitional Provisions Act), in conjunction with the *Aged Care Act 1997* (the Act), provides for the funding of aged care services that are providing care to continuing care recipients.

Persons who are approved under the Act to provide aged care services (approved providers) may be eligible to receive subsidy payments under the Transitional Provisions Act in respect of the care they provide to continuing care recipients. Under section 1 of Schedule 1 of the Act, 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 purpose of the *Aged Care (Transitional Provisions) Amendment (March Indexation) Principles 2022* (the Amending Principles) is to amend the *Aged Care (Transitional Provisions) Principles 2014* (the Transitional Provisions Principles) to update the specified amount of maximum accommodation charge for a post-2008 reform resident as a result of routine indexation.

Section 44-5C of the Transitional Provisions Act provides that a person is a post-2008 reform resident if they are being provided with care through a residential care service and the person is not a pre-2008 reform resident (as defined in section 44-5D of the Transitional Provisions Act).

Section 57A-6 of the Transitional Provisions Act sets out the maximum daily amount at which an accommodation charge accrues for the entry of a person as a care recipient to a residential care service. An accommodation charge is an amount of money that accrues daily and is paid or payable to an approved provider by a person for the person's entry to a residential care service or flexible care service through which care is, or is to be, provided by the approved provider (see section 1 of Schedule 1 of both the Transitional Provisions Act and the Act). Paragraph 57A-6(1)(c) of the Transitional Provisions Act provides that the maximum daily amount may be the amount as is specified in, or worked out in accordance with, the Transitional Provisions Principles (if that amount is lower than either of the amounts calculated under paragraph 57A-6(1)(a) or (b)).

Section 118 of the Transitional Provisions Principles sets out, for the purpose of paragraph 57A-6(1)(c), specified amounts for the maximum daily accommodation charge in tables for different categories of post-2008 reform residents. These tables are updated regularly to ensure that the value of the accommodation charge aligns with the change to the Australian consumer price index over 6 months to the December 2021 quarter.

The Amending Principles are a legislative instrument for the purposes of the *Legislation Act 2003*.

Authority

Section 96-1 of the Transitional Provisions Act allows the Minister to make Aged Care (Transitional Provisions) Principles providing for matters required or permitted, or necessary or convenient, to carry out or give effect to the Transitional Provisions Act.

The Transitional Provisions Principles are made under section 96-1 of the Transitional Provisions 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 Principles commence on 20 March 2022.

Consultation

Routine indexation of the amounts of accommodation charge in this instrument is calculated using a well-established formula based on the Consumer Price Index as a measure of the movements in the non-labour costs of providers. Accordingly, no specific consultation was undertaken with respect to the amounts to which routine indexation has been applied in this instrument.

Information about the increase in rates from 20 March 2022 will be disseminated by the Department of Health via electronic media to approved providers.

Regulatory Impact Statement (RIS)

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

Details of the Aged Care (Transitional Provisions) Amendment (March Indexation) Principles 2022

Section 1 states that the name of the instrument is the *Aged Care (Transitional Provisions) Amendment (March Indexation) Principles 2022*.

Section 2 states that the instrument commences on 20 March 2022.

Section 3 provides that the authority for the making of the instrument is section 96-1 of the *Aged Care (Transitional Provisions) Act 1997* (the Transitional Provisions Act).

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 the instrument has effect according to its terms.

Schedule 1 – Amendments

***Aged Care (Transitional Provisions) Principles 2014* (the Transitional Provisions Principles)**

Item 1 – Subsection 118(1) (after table item 28)

This item inserts a new item (item 29) to the table in subsection 118(1) of the Transitional Provisions Principles to specify the amount of maximum daily accommodation charge for a post-2008 reform resident who first entered residential care before 1 July 2004 and re-enters care on or after 20 March 2022 and before 20 September 2022.

The effect of this amendment is to specify, for the purpose of paragraph 57A-6(1)(c) of the Transitional Provisions Act, an amount of maximum daily accommodation charge for these care recipients

The new amount is \$21.52.

Item 2 – Subsection 118(2) (after table item 28)

This item inserts a new item (item 29) to the table in subsection 118(2) of the Transitional Provisions Principles to specify the amount of maximum daily accommodation charge for a post-2008 reform resident who first entered residential care on or after 1 July 2004, receives an income support payment and enters care on or after 20 March 2022 and before 20 September 2022.

The effect of this amendment is to specify, for the purpose of paragraph 57A-6(1)(c) of the Transitional Provisions Act, an amount of maximum daily accommodation charge for these care recipients.

The new amount is \$39.60.

Item 3 – Subsection 118(3) (after table item 24)

This item inserts a new item (item 25) to the table in subsection 118(3) of the Transitional Provisions Principles to specify the amount of maximum daily accommodation charge for a post-2008 reform resident who first entered residential care on or after 1 July 2004, does not

receive an income support payment and is receiving care through a service that meets the building requirements referred to in Schedule 1 to the Transitional Provisions Principles, and enters a residential care service on or after 20 March 2022 and before 20 September 2022.

The effect of this amendment is to specify, for the purpose of paragraph 57A-6(1)(c) of the Transitional Provisions Act, an amount of maximum daily accommodation charge for these care recipients.

The new amount is \$39.60.

Item 4 – Subsection 118(4) (after table item 28)

This item inserts a new item (item 29) to the table to subsection 118(4) of the Transitional Provisions Principles to specify the amount of maximum daily accommodation charge for a post-2008 reform resident who first entered residential care on or after 1 July 2004, does not receive an income support payment and is receiving care through a service that does not meet the building requirements referred to in Schedule 1 to the Transitional Provisions Principles, and enters a residential care service, on or after 20 March 2022 and before 20 September 2022.

The effect of this amendment is to specify, for the purpose of paragraph 57A-6(1)(c) of the Transitional Provisions Act, an amount of maximum daily accommodation charge for these care recipients.

The new amount is \$33.26.

Statement of Compatibility with Human Rights

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

Aged Care (Transitional Provisions) Amendment (March Indexation) Principles 2022

The *Aged Care (Transitional Provisions) Amendment (March Indexation) Principles 2022* (the Amendment Principles) are 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 Amendment Principles amend the *Aged Care (Transitional Provisions) Principles 2014* to update the specified amount of maximum accommodation charge for a post-2008 reform resident in a residential care service because of routine indexation.

Human Rights Implications

This legislative instrument engages the following human rights as contained in articles 11(1) and 12(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and articles 25 and 28 of the *Convention of the Rights of Persons with Disabilities* (CRPD):

- the right to an adequate standard of living, including with respect to food, clothing and housing, and to the continuous improvement of living conditions (article 11(1) of ICESCR and article 28 of the CPRD); and
- the right to the enjoyment of the highest attainable standard of physical and mental health; (article 12(1) of ICESCR and article 25 of the CPRD).

This legislative instrument includes matters relating to the payment of aged care subsidies and supplements 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.

Indexation of the maximum accommodation charge for post-2008 reform residents increases the maximum amount certain residents can be asked to pay for their accommodation to take account of movements in the consumer price index. This helps ensure that aged care providers continue to receive sufficient funds in order to provide care recipients with a high standard of living and care.

Conclusion

This legislative instrument 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 by maintaining the value of these payments.

Senator the Hon Richard Colbeck

Minister for Senior Australians and Aged Care Services