

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Aged Care

Aged Care (Transitional Provisions) Act 1997

Aged Care (Transitional Provisions) Amendment (July Indexation) Determination 2022

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) may 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, and 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) Amendment (July Indexation) Determination 2022* (the Amending Determination) amends the *Aged Care (Transitional Provisions) Principles 2014* and 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 2022.

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 provisions in the TP Act for making specific determinations in the Amending Determination is set out in the following table:

Type of Care	Section
Residential care	
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	subsection 44-27(3)
Home care	
Home care subsidy amount	subsection 48-1(3)

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 2022.

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 by the Department of Health 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) Amendment (July Indexation) Determination 2022

Section 1 provides that the name of the instrument is the *Aged Care (Transitional Provisions) Amendment (July Indexation) Determination 2022*.

Section 2 states that the instrument commences on 1 July 2022.

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) Principles 2014

Item 1 – Section 67E (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 67E and substituting a new table with the indexed amounts.

Item 2 – Section 67N

This item provides for the indexation of the amount of top-up supplement.

Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014

Item 3 – Amendment of listed provisions – indexation of amounts

This item provides for the indexation of amounts of various amounts in the *Aged Care (Transition Provision) (Subsidy and Other Measures) Determination 2014* (the Determination) in relation to the following as set out in the table:

- the oxygen supplement;
- the enteral feeding supplement;
- the veterans' supplement;
- the homeless supplement; and
- the adjusted subsidy reduction for residential care.

Item 4 – Subsection 8(3) (table)

This item provides for the indexation of amounts in relation to the Aged Care Funding Instrument amounts by repealing the table to subsection 8(3) of the Determination and substituting a new table with the indexed amounts.

Item 5 – Subsection 10(3) (table)

This item provides for the indexation of amounts in relation to the Resident Classification Scale amounts by repealing the table to subsection 10(3) of the Determination 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) Amendment (July Indexation) Determination 2022

The *Aged Care (Transitional Provisions) Amendment (July Indexation) Determination 2022* (the Amending Determination) 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 Amending Determination amends the *Aged Care (Transitional Provisions) Principles 2014* and 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.

Aged Care 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.

The Hon. Anika Wells MP
Minister for Aged Care