

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Aged Care

Aged Care (Transitional Provisions) Act 1997

*Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment
(September Indexation) Determination 2022*

The *Aged Care (Transitional Provisions) Act 1997* (Transitional Provisions Act), in conjunction with the *Aged Care Act 1997* (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 *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (September Indexation) Determination 2022* (Amending Determination) amends the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014*. The purpose of the Amending Determination is to increase the dollar amount of the supplements payable to approved providers of aged care services in line with the change to the Australian consumer price index (CPI) over 6 months to the June 2022 quarter. Routine indexation of supplements in this determination is calculated using a well-established formula based on the CPI as a measure of the movements in the non-labour costs of providers.

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

Authority

The Transitional Provisions Act allows the Minister to determine, by legislative instrument, the amount of subsidy and supplements payable to an approved provider for the provision of a 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 and type of payment	Section
Residential Care	
Accommodation supplement	subsection 44-5A(3)
Concessional resident supplement	subsection 44-6(4)
Charge exempt resident supplement	subsection 44-8A(3)
Respite supplement	subsection 44-12(3)
Transitional supplement	subsection 44-16(3)
Transitional accommodation supplement	subsection 44-16(3)
Pensioner supplement	subsection 44-28(7)

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 20 September 2022.

Consultation

Routine indexation of supplements in this determination is calculated through the use of a well-established formula based on the CPI 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 Amending Determination.

Information about the increase in the dollar amount of supplement payable to approved providers from 20 September 2022 will be disseminated by the Department of Health and Aged Care 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) (Subsidy and Other Measures) Amendment (September Indexation) Determination 2022

Section 1 states that the name of the instrument is the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (September Indexation) Determination 2022*.

Section 2 states that the instrument commences on 20 September 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 the 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 – indexation of amounts of supplements

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

- the accommodation supplement;
- the concessional resident supplement;
- the charge exempt resident supplement;
- the respite supplement;
- the transitional supplement;
- the transitional accommodation supplement; and
- the pensioner supplement.

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 (September Indexation) Determination 2022

The *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (September Indexation) Determination 2022* 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

This legislative instrument amends the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014* and increases the dollar amount of particular supplements payable to approved providers of aged care services in line with changes to the consumer price index (CPI).

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 CRPD); 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 CRPD).

This legislative instrument increases the amount of residential care funding 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.

This indexation of supplements increases the dollar amount of additional payments in the form of supplements that are payable to approved providers to assist with the costs of caring for certain groups including people who are financially disadvantaged. This helps to 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.

The Hon Anika Wells MP
Minister for Aged Care