

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Aged Care

Aged Care Act 1997 Aged Care (Transitional Provisions Act) 1997

Aged Care Legislation Amendment (Residential Aged Care Funding) Instrument 2022

The *Aged Care Act 1997* (the Aged Care Act) and the *Aged Care (Transitional Provisions) Act 1997* (the Transitional Provisions Act) and the *Aged Care Quality and Safety Commission Act 2018* (the ACQSC Act) provide for the regulation and funding of aged care services. Providers who are approved under the ACQSC 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 Aged Care Act and the Transitional Provisions Act provide that for each type of aged care, the Minister may determine the amount of subsidy and supplements payable to an approved provider for the provision of that type of aged care.

Purpose

The *Aged Care Legislation Amendment (Residential Aged Care Funding) Instrument 2022* (the Amending Instrument) amends subordinate legislation following amendment to the Aged Care Act and the Transitional Provisions Act by the *Aged Care and Other Legislation (Royal Commission Response) Act 2022* (Royal Commission Response Act) that have effect on and from 1 October 2022.

The amendments in the Amending Instrument have the effect of replacing the Aged Care Funding Instrument (ACFI) with the Australian National Aged Care Classification (AN-ACC) as the residential aged care subsidy calculation model from 1 October 2022. Introducing the AN-ACC funding model responds to Recommendation 120 of the Final Report of the Royal Commission into Aged Care Quality and Safety.

The new AN-ACC funding model will link calculation of a variable amount of residential aged care subsidy to each care recipient's AN-ACC classification level. It will also link calculation of a fixed amount of subsidy to the characteristics of residential aged care services. This fixed component will be the same for all residents at a residential care service and will be higher for services in remote locations and certain specialist services, in recognition of higher fixed operating costs.

Specifically, the following instruments are being amended to give effect to the Royal Commission Response Act amendments and to establish the new AN-ACC funding model as the basis of residential aged care funding from 1 October 2022:

Accountability Principles 2014

Aged Care (Subsidy, Fees and Payments) Determination 2014

Aged Care (Transitional Provisions) Principles 2014

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

Allocation Principles 2014

Approval of Care Recipients Principles 2014

Classification Principles 2014

Quality of Care Principles 2014
Records Principles 2014
Subsidy Principles 2014
User Rights Principles 2014.

A significant part of this instrument is the inclusion of a new Chapter 2A in the *Aged Care (Subsidy, Fees and Payments) Determination 2014* and a new Chapter 3 in the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014*. The determinations are where the amounts or methods for calculating the components of funding amounts are specifically set out. These amounts were previously determined as set out in Chapter 2 of each instrument, which following these amendments continues to operate only for payment periods before 1 October 2022.

Other consequential amendments have also been necessary to the other subordinate instruments listed above as set out in the Attachment.

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

Authority

Under section 96-1 of the Aged Care Act and 96-1 of the Transitional Provisions Act, the Minister may, by legislative instrument, make Principles (as specified in the table in the Aged Care Act by reference to the provisions specified in column 3 of the table). Section 96-1 of both Acts further specifies that the Principles may provide for matters required or permitted by Act, or necessary or convenient, in order to give effect to that relevant Part or section of that 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 Instrument commences on 1 October 2022.

Consultation

The aged care sector and the general public were consulted extensively between 2017 and 2020 on the development of the AN-ACC system. This consultation process included the elements of the system that are embodied in the Amending Principles. The AN-ACC system is consistent with Recommendation 120 ('Casemix-adjusted activity based funding in residential aged care') of the final report of the Royal Commission into Aged Care Quality and Safety.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation (OBPR) was consulted during development of the Amending Act on the regulatory costs of implementing the assessment and classification elements of the AN-ACC system that these Amending Principles will further enable. OBPR advised that a RIS was not required (OBPR ID 25927).

Details of the Aged Care Legislation Amendment (Residential Aged Care Funding) Instrument 2022

Section 1 provides that the name of the instrument is the *Aged Care Legislation Amendment (Residential Aged Care Funding) Instrument 2022* (Amending Instrument).

Section 2 states that the whole instrument commences on 1 October 2022.

Section 3 provides the authority for making the instrument is the *Aged Care Act 1997* (Aged Care Act) and the *Aged Care (Transitional Provisions) Act 1997* (Transitional Provisions Act).

Section 4 provides that each instrument in a Schedule is amended or repealed as set out in a Schedule and other items have effect according to its terms.

SCHEDULE 1 - Residential care subsidy paid under the Aged Care Act 1997

Schedule 1 amends the following 3 legislative instruments:

- *Aged Care (Subsidy, Fees and Payments) Determination 2014* (Subsidy, Fees and Payments Determination)
- *Classification Principles 2014* (Classification Principles)
- *Subsidy Principles 2014* (Subsidy Principles).

Aged Care (Subsidy, Fees and Payments) Determination 2014

Item 1 - Chapter 2 (at the end of the heading)

This item amends the heading of Chapter 2 to add ‘for payment periods beginning before 1 October 2022’. This change will mean that Chapter 2 will relate only to the subsidies under the current funding Aged Care Funding Instrument (ACFI) model that apply until the end of the September 2022 payment period. This is because Chapter 2A deals with the Australian National Aged Care Classification (AN-ACC) funding model, as introduced by Schedule 1 to the Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022 (Royal Commission Response Act), which commences on 1 October 2022.

Item 2 – Before Part 1 of Chapter 2

This item inserts Part 1A – Application of this Chapter. This includes section 4A which states that this Chapter applies in relation to a payment period that begins before 1 October 2022.

This is a consequential amendment to item 1 and item 5 of Schedule 1 of this Amending Instrument.

Item 3– Section 6 (definition of ACFI classification)

This item amends the definition of ACFI classification to restrict that definition to a classification under Part 2.4 of the *Aged Care Act 1997* (Aged Care Act). Part 2.4 restricts the operation of those classifications to days before 1 October 2022.

Item 4 – Section 49 (definition of relevant resident)

This item repeals and substitutes the definition of relevant resident. The previous definition provided that the term had the same meaning as in the Subsidy Principles. Item 21 of

Schedule 1 to the Amending Instrument repeals that definition from the Subsidy Principles. The substituted definition inserts the repealed definition from the Subsidy Principles in substantially the same form, with only minor clarifications.

Item 5 – After Chapter 2

This item creates Chapter 2A dealing with residential care subsidy for payment periods beginning on or after 1 October 2022. Arrangements under Chapter 2 continue to apply historically to days before 1 October 2022, for example for subsidy claims adjustments.

Chapter 2A—Residential care subsidy for payment periods beginning on or after 1 October 2022

This item inserts Chapter 2A – Residential care subsidy for payment periods beginning on or after 1 October 2022. With Schedule 1 to the Royal Commission Response Act, the effect of this amendment is to introduce the new AN-ACC funding model.

Part 1 - Preliminary

This item inserts a Part 1 into Chapter 2A that deals with preliminary matters for residential care subsidy for payment periods beginning on and after 1 October 2022.

Section 64G Application of this Chapter

Section 64 provides that Chapter 2A applies to payment periods beginning on or after 1 October 2022.

As a payment period is a calendar month (see section 43-2 of the Aged Care Act), the first applicable payment period for the provisions in Chapter 3 will be the month of October 2022.

Section 64H - Definitions

Section 64H sets out the following definitions:

applicable amount for a day for a care recipient has the meaning given by section 64J below.

ATSI care percentage for a residential care service has the meaning given by subsection 64X(2) below.

ATSI transition period for a residential care service has the meaning given by subsection 64N(2) below.

classification means a classification of a care recipient made under Part 2.4A of the Aged Care Act.

The effect is that that “ACFI” classifications made under Part 2.4 of the Aged Care Act do not fall within the meaning of classification for the purposes of the Subsidy, Fees and Payments Determination.

has specialised ATSI status on a day has the meaning given by subsections 64N(1) and (3) below.

has specialised homeless status on a day has the meaning given by subsections 64R(1), (2) and (4) below.

homeless care percentage for a residential care service has the meaning given by subsection 64Y(2) below.

homeless supplement means the homeless supplement set out in Subdivision E of Division 5 of Part 3 of Chapter 2 of the Subsidy Principles or Subdivision D of Division 8 of Part 3 of Chapter 2 of the *Aged Care (Transitional Provisions) Principles 2014* (Transitional Provisions Principles).

homeless transition period for a residential care service is defined in subsection 64R(3) below.

MM category means a category for an area provided for by the Modified Monash Model and known as MM 1, MM 2, MM 3, MM 4, MM 5, MM 6 or MM 7.

Modified Monash Model means the model known as the Modified Monash Model (MMM) 2019 developed by the Department of Health and Aged Care to categorise areas according to geographical remoteness and population size, as the model exists on 1 October 2022.

At the making of this instrument, the Modified Monash Model could be freely accessed by members of the public on the Department of Health and Aged Care's website (<https://www.health.gov.au/health-topics/rural-health-workforce/classifications/mmm>).

national efficient price means the national efficient price for residential care activity as determined by the Minister and is the amount of \$216.80. This is the amount at 1 October 2022, and may change through future determinations.

newly built residential care service has the meaning in section 50 of the Subsidy, Fees and Payments Determination.

non-respite classification amount for a care recipient for a day has the meaning provided in section 64K, as discussed below.

NWAU is short for National Weighted Activity Unit and means a measure of residential care activity, expressed as a common unit, against which the national efficient price is set.

An effect of the definition is that the national efficient price is also the “value” of 1 NWAU.

operational places has the meaning in subsection 64M(2), as discussed below.

residential care percentage for a residential care service has the meaning provided in subsection 64ZP(3), as discussed below.

respite classification amount for a care recipient for a day has the meaning provided by section 64L, as discussed below.

service amount for a care recipient for a day has the meaning provided in section 64M, as discussed below.

significantly refurbished residential care service has the same meaning as in section 4 of the Subsidy Principles.

specialist ATSI programs are specialist programs for Aboriginal or Torres Strait Islander persons and include, but are not limited to:

- programs to deliver care and services that are culturally safe for, and tailored to meet the particular needs of, the Aboriginal or Torres Strait Islander persons being provided with residential care through the residential care service in question;
- programs to promote social and cultural engagement and participation of Aboriginal or Torres Strait Islander persons;
- any other relevant programs that the Secretary considers appropriate.

specialist homeless programs are specialist programs for persons with a background as a homeless person and include, but are not limited to:

- programs and interventions to manage complex behavioural needs of persons with that background;
- programs to promote social engagement and participation of persons with that background;
- any other relevant programs that the Secretary considers appropriate.

Section 64J Meaning of *applicable amount* for a day for a care recipient

Section 64J defines the meaning of the **applicable amount** for a day for a care recipient being provided with residential care through a residential care service. Different applicable amounts will apply depending on the age of the residential care service in which the care recipient is receiving care and whether the residential care service meets the privacy and space requirements set out in Schedule 1 to the Transitional Provisions Principles.

The amounts at 1 October 2022 are:

- \$63.14 for residential care provided in a residential care service that meets the building requirements and is a newly built or significantly refurbished residential care service.
- \$41.17 for residential care provided in a residential care service that meets the building requirements but is not newly built or significantly refurbished residential care service.
- \$34.58 for residential care provided in a residential care service that does not meet the building requirements.

The building requirements are specified in Schedule 1 to the Transitional Provisions Principles.

Example 1

Robert is a respite care recipient at the Pink Flamingo Residential Care Service (Pink Flamingo). Pink Flamingo was built in 2020 and plans for the construction were submitted and approved in 2015. Robert, like all of the care recipients at the Pink Flamingo, has his own room and a private ensuite.

Pink Flamingo satisfies the privacy and space requirements in Schedule 1 to the Transitional Provisions Principles for a residential care building of its age. Pink Flamingo is a newly built residential care service within the meaning defined in section 50 of the Subsidy, Fees and Payments Determination.

Consequently, the applicable amount for a day for Robert is \$63.14.

Example 2

Angus is a non-respite care recipient at Elysian Fields Residential Care Service (Elysian Fields). Elysian Fields was built in 2010 and plans for the construction were submitted and approved in 2005. Angus has his own room at Elysian Fields and has an ensuite bathroom which is shared with one other resident. All care recipients residing at Elysian Fields have their own room and share an ensuite bathroom with one other resident. Elysian Fields has not been refurbished since it was built, and the Secretary has not made a determination under subsections 52(1) or 53(1) of the Subsidy Principles.

Elysian Fields satisfies the privacy and space requirements in Schedule 1 to the Transitional Provisions Principles for a residential care building of its age. Elysian Fields is not a newly built residential care service within the meaning defined in section 50 of the Subsidy, Fees and Payments Determination and it is not a significantly refurbished residential care service as defined in the Subsidy Principles.

Consequently, the applicable amount for a day for Angus is \$41.17.

Example 3

Brian is a non-respite care recipient at the Plain View Residential Care Service (Plain View). Plain View was built in 1990. Brian has his own room at Plain View but shares a bathroom with 8 other people – as do all the care recipients residing at Plain View.

Plain View does not satisfy the privacy and space requirements in Schedule 1 to the Transitional Provisions Principles for residential care buildings of its age.

Consequently, the applicable amount for a day for Brian is \$34.58.

Section 64K Meaning of *non-respite classification amount* for a care recipient for a day

Section 64K defines the **non-respite classification amount** for each class as the amount worked out by multiplying the national efficient price (\$216.80 at 1 October 2022) by the specified NWAU attributable to each classification as set out in the following table:

AN-ACC class	NWAU
Class 1	1.00
Class 2	0.19
Class 3	0.31
Class 4	0.21
Class 5	0.37
Class 6	0.35
Class 7	0.49
Class 8	0.54
Class 9	0.54
Class 10	0.87
Class 11	0.83
Class 12	0.81
Class 13	1.00

The note explains that the classification levels for classifications for non respite care are those provided for by section 40 of the Classification Principles.

The non-respite classification amount reflects a core feature of the new funding arrangements introduced by the Amending Instrument being that subsidy varies with the specific characteristics of both care recipients and residential care services. These varying amounts are consistent with research that has found there is a need for different amounts of subsidy in different circumstances to meet the care needs of care recipients. The different non-respite classification amounts for different classes of care recipients are based on the actual cost of providing care to care recipients in the different non-respite classes.

For subsidy linked to residential care service characteristics, see section 64M.

Example 4

Amanda is a non-respite care recipient in Still Waters Residential Care Service. Nancy has a Class 8 classification that is in effect on a day.

The non-respite classification amount for Amanda for the day is:

= National efficient price	x	NWAU
= \$216.80	x	0.54
= \$ 117.07		

Section 64L - Meaning of *respite classification amount* for a care recipient for a day

The **respite classification amount** for a care recipient is an amount that for a particular day that the care recipient receives respite care.

It is calculated by multiplying the national efficient price by the NWAU for the relevant Respite Class according to the following table:

Respite Class	NWAU
Respite Class 1	0.304
Respite Class 2	0.404
Respite Class 3	0.864

Respite Class classifications are determined in accordance with section 31 of the Classification Principles. The different respite classification amounts for different classes of care recipients are based on the actual cost of providing care to care recipients in the different respite classes.

The respite classification amount for a care recipient for a day is one of the components of the **basic subsidy amount** for a care recipient for a day. See Part 3 – Basic subsidy amount below.

Example 5

Wendy is a respite care recipient at the Northern Lights Residential Care Service. Wendy has been classified with Respite Class 1 that is in effect on the day.

The **respite classification amount** for Wendy for the day is:

= National efficient price	x	NWAU
= \$216.80	x	0.304

= \$ 65.90

Section 64M - Meaning of *service amount* for a care recipient for a day

Section 64M defines the meaning of **service amount** for a care recipient for a day. The service amount is an amount of subsidy that is determined by the specific characteristics of the residential care service where the care recipient receives residential care.

The service amount is another core feature of the new funding arrangements introduced by the Amending Instrument. Similar to the non-respite classification amount, the service amount varies depending on the specific characteristics of residential care services that research has found indicates a need for different amounts of subsidy to meet the costs of delivering that meets the care needs of care recipients.

Characteristics of residential care services that result in different subsidy rates include geographic location, number of operational places (see subsection 64M(2)), whether a service has specialised homeless status and whether a service has specialised ATSI status.

For subsidy linked to care recipient characteristics, see sections 64K and 64L.

Subsection 64M(1) specifies that the service amount for a care recipient for a day is the amount worked out in accordance with what is specified in column 2 of the relevant item in a table, provided that:

- the care recipient is provided with residential care on a day through a residential care service; and
- on the day, the service also meets the requirements set out in column 1 of an item of the table.

For those residential care services that meet the requirements of items 5 to 7 of the table in subsection 64M(1) the service amount per care recipient per day is the amount worked out by multiplying the national efficient price by the relevant NWAU.

Subsection 64M(2) specifies that for those residential care services with a MM6 (remote) or MM7 (very remote) street address (that is, that meet the requirements in items 1 to 4 of the table in subsection 64M(1)), the service amount is calculated through the following formula:

$$\text{National efficient price} \times \text{NWAU} \times \frac{\text{Operational places}}{\text{Occupied places}}$$

The effect is that these residential care services effectively receive subsidy that varies with the national efficient price, NWAU and the number of “operational places” – whether or not those “operational places” are occupied by a care recipient (subject, however, to otherwise meeting the general requirements to be eligible for subsidy in Part 3.1 of the Aged Care Act and Part 3.1 of the Transitional Provisions Act).

For each day, this funding is then split out across the care recipients in such a residential care service who are eligible to attract subsidy by dividing the amount by the number of “occupied places” to create a per-care recipient subsidy amount.

For the purpose of the formula in subsection 64M(2):

Occupied places is defined to mean the total number of places allocated under Part 2.2 of the Aged Care Act to a person (that is, an approved provider) in respect of the relevant residential care service to which all of the following apply:

- the places are not provisionally allocated on the relevant day;
- the places are places in respect of which:
 - residential care is provided through the service to a care recipient on the relevant day; and
 - subsidy is payable for the provision of that care under Part 3.1 of the Aged Care Act or Part 3.1 of the Transitional Provisions Act.

The note to this definition explains that a care recipient who is on leave from the service is taken to be provided with residential care by the approved provider operating the service (see section 42-2 of the Aged Care Act and section 42-2 of the Transitional Provisions Act).

This clarifies that care recipients on leave from the residential care service are still to be counted in the number of places in respect of which residential care is provided through the service to a care recipient (see subparagraph 64M(2)(b)(i)).

operational places is defined to mean the total number of places allocated under Part 2.2 of the Aged Care Act to a person (that is, an approved provider) in respect of the relevant residential care service to which all of the following apply:

- the places are not provisionally allocated on the relevant day;
- if a notice relating to the service has been given under subsection 27B(2) of the Accountability Principles — the places are not places specified in the notice as offline places (within the meaning of paragraph 27B(3)(b) of those principles) for a period in which the relevant day occurs;
- the places are places in respect of which subsidy would be payable under Part 3.1 of the Aged Care Act, or Part 3.1 of the Transitional Provisions Act, if a care recipient were provided with residential care through the service on the relevant day.

The effect of this definition is to exclude from the count of operational places those allocated places through which an approved provider cannot offer subsidised care to care recipients. This ensures that the service amount is only paid in respect of the places for which they have the actual potential to provide care.

For provisionally allocated places, see also subsection 15-1(2) of the Aged Care Act.

For offline places, see also item 6 of Schedule 3 to the Amending Instrument.

Example 6

Cosy Caverns Residential Care Service is located at Holly Crescent, Coober Pedy, South Australia, 5723 and has **specialised ATSI status** under section 64N. Cosy Caverns has 20 allocated places that are not provisionally allocated and residential care can be provided through all of them (that, is none are offline and subsidy would be payable through them).

In November 2022 the service had 10 fulltime non-respite care recipients and 2 respite care recipients who received care for 8 days (respite care recipient 1) and 6 days (respite care recipient 2) respectively but not during the same period.

The service amount for Cosy Caverns Residential Care Service for November 2022 is the sum of the amount for each care recipient per day in November 2022 (30 days). As calculated in accordance with item 1 of the table to subsection 64M(1) using the following formula with an NWAU of 1.80:

$$\text{National efficient price} \times \text{NWAU} \times \frac{\text{Operational places}}{\text{Occupied places}}$$

The number of operational places is 20.

The number of occupied places in November is:

- 10 occupied days for 16 days in November; and
- 11 occupied places on 14 days in November.

The *service amount* for a care recipient for a day in Cosy Caverns Residential Care Service during the November 2022 payment period varies per day based on the number of residents in the facility.

$$= \$216.80 \times 1.80 \times \frac{20}{10}$$

= \$780.48 per day per care recipient on the days with 10 care recipients.

$$= \$216.80 \times 1.80 \times \frac{20}{11}$$

= \$709.53 per day per care recipient on the days with 11 care recipients.

Example 7

Using the facts from Example 6 – assume that the Cosy Caverns Residential Care Service has the same address but does not have **specialised ATSI status**. In this case, item 3 of the table to subsection 64M(1) prescribes how the service amount will be calculated for a care recipient for a day. The NWAU is 0.68.

$$\text{National efficient price} \times \text{NWAU} \times \frac{\text{Operational places}}{\text{Occupied places}}$$

The number of operational places is 20.

The number of occupied places in November is:

- 10 occupied days for 16 days in November; and
- 11 occupied places on 14 days in November.

The *service amount* for a care recipient for a day in Cosy Caverns Residential Care Service during the November 2022 payment period varies per day based on the number of residents in the facility.

$$= \$216.80 \times 0.68 \times \frac{20}{10}$$

= \$294.85 per day per care recipient for the days in the payment period that there are 10 care recipients.

$$= \$216.80 \times 0.68 \times \frac{20}{11}$$

= \$268.04 per day per care recipient for the days in the payment period that there are 11 care recipients.

Part 2—Specialised ATSI or homeless status

Part 2 deals with which residential care services have specialised ATSI status or specialised homeless status.

Division 1—Specialised ATSI status

Division 1 of Part 2 deals with which residential care services that have specialised Aboriginal and Torres Strait Islander status.

Section 64N - Specialised ATSI status

Section 64N identifies when a residential care service has *specialised ATSI status*.

Specialised ATSI status during the ATSI transition period

Subsection 64N(1) provides that a residential care service has specialised ATSI status on each day during the ATSI transition period (as defined in subsection 64N(2) below) if the following criteria are met:

- the service meets the MM requirements on a day during the payment period beginning on 1 June 2022 (**test day**);
- the service meets the requirement that 50% of care recipients (including continuing care recipients) provided with residential care as non-respite care were Aboriginal or Torres Strait Islander persons on either the test day or on a day during a payment period for at least 8 of the payment periods between 1 July 2021 and 30 June 2022; and
- in relation to the service, the approved provider has not elected to have specialised homeless status.

Subsection 64N(2) defines the **ATSI transition period** as beginning on 1 October 2022 and ending at the earliest of the following:

- the end of 31 March 2023;
- the date the specialised ATSI status is revoked under Division 3 of Part 2 (see below); or
- the date immediately before the first day of the first payment period after an election has been given to the Secretary by the approved provider in relation to the service that they have elected to have specialised homeless status.

If an approved provider of a residential care service wishes to retain the specialised ATSI status in respect of the service after the ATSI transition period, they can apply to the Secretary for a determination of specialised ATSI status under section 64P (see below).

Determination of specialised ATSI status

Subsection 64N(3) provides that a residential care service has specialised ATSI status on a day if a determination had been made by the Secretary under section 64Q (see below) in relation to the service and the determination is in force on that day.

The note explains that the period specified in the notice of determination may end earlier if the specialised ATSI status of the service is revoked under Division 3 of this Part 2.

Section 64P - Application for determination that residential care service has specialised ATSI status

Section 64P sets out the requirements for an approved provider to apply to the Secretary for a determination of **specialised ATSI status** in respect of a residential care service.

Subsection 64P(2) specifies that the application must be made in writing and be in a form approved by the Secretary (if any). The application must also be accompanied by any documents or information specified by the Secretary, for example, evidentiary documents required for the Secretary to satisfy themselves of the factors set out in subsection 64Q (see below).

Request for further information

Subsection 64P(3) allows the Secretary to request further information from the approved provider in order to make a decision on their application for specialised ATSI status. The request must be made by written notice and specify that information must be given to the Secretary within 28 days after the notice is given.

Subsection 64P(4) provides that if the approved provider does not give the requested further information to the Secretary within the period specified in the notice, the application is taken to be withdrawn at the end of the period of the notice.

Subsection 64P(5) specifies that a notice requesting further information must set out the effect of subsection 64P(4)—that is, that the application will be taken to be withdrawn in certain circumstances.

Subsection 64P(6) prevents an approved provider from re-applying for specialised ATSI status in relation to a residential care service for 3 months after revocation if the approved provider had specialised ATSI status in relation to the service and the status has been revoked under section 64X below.

Subsection 64P(7) specifies that if an approved provider submits an application in respect of a residential care service within the 3 month period after revocation, the Secretary is not required to consider the application and the application is taken to be withdrawn.

Section 64Q - Determination that residential care service has specialised ATSI status

Section 64Q deals with a determination that a residential care service has specialised ATSI status where an application has been made in accordance with section 64P above.

Determination by Secretary

Subsection 64Q(2) specifies that the Secretary must make a determination that a residential care service has specialised ATSI status if they are satisfied that:

- on the day before the application was made, the service met the MM category requirement;
- on the day before the application was made, at least 50% of care recipients (including continuing care recipients) provided with residential care as non-respite care were Aboriginal or Torres Strait Islander persons;
- the approved provider, or an individual who is one of its key personnel, has demonstrated experience in providing, or the capacity to provide, specialist ATSI programs (as defined above); and
- either:
 - the service is providing specialist ATSI programs; or
 - the provider has given a written undertaking that the service will begin providing specialist ATSI programs within 3 months after the application is made.

Subsection 64Q(3) specifies that the Secretary may have regard to any information that the Secretary considers relevant (including information that has become available since the application was made) in order to make the determination. This means that in order to be satisfied for the purposes of subsection 64Q(2), the Secretary is not limited to considering only information in the approved provider's application. Information that could be considered by the Secretary includes but is not limited to information that has been requested under subsection 64P(3) or other information otherwise made available to the Secretary.

Notice of making determination

Subsection 64Q(4) specifies that if the Secretary makes a determination that a residential care service has specialised ATSI status, the Secretary must give the approved provider written notice of the decision and the period that the specialised ATSI status applies. The determination must make clear that the specialised ATSI status applies on each day during the period beginning on the first day of the payment period after the date of the notice for three years after that date unless the status is revoked at an earlier date under Division 3 of Part 2.

Notice of decision not to make determination

Subsection 64Q(5) requires that if the Secretary decides not to make a determination that a service has specialised ATSI status, they must give the approved provider written notice of their decision and the reasons for the decision. The notice must also advise that the approved provider may seek reconsideration of the decision under section 64Z (see below).

Division 2—Specialised homeless status

Division 2 of Part 2 deals with which residential care services have specialised homeless status.

Section 64R - Specialised homeless status

Section 64R deals with identifying residential care services that have **specialised homeless status** (see also item 6 of the table to subsection 64M(1)).

Specialised homeless status during the homeless transition period

Subsection 64R(1) provides that a residential care service has specialised homeless status on each day during the homeless transition period (as defined in subsection 64R(3) below) if:

- the homeless supplement applied to a care recipient for a day (the **test day**) during the payment period beginning 1 June 2022 or during at least 8 of the payment periods

between 1 July 2021 and 30 June 2022, and the care recipient was provided with residential care through the service on that test day or days.

Subsection 64R(2) alternatively provides that a residential care service has specialised homeless status on each day during the homeless transition period (as defined in subsection 64R(3) below) if in relation to the service, the approved provider has elected to have specialised homeless status in accordance with section 64S (discussed below).

Subsection 64R(3) sets out the period for the **homeless transition period** being from either 1 October 2022 or the first day of the first payment period after an election is made under section 64S, and ending on 31 March 2022 or earlier if the specialised homeless status is revoked before that date under Division 3 of Part 2 (see below).

Determination of specialised homeless status

Subsection 64R(4) provides that a residential care service has specialised homeless status on a day if a determination had been made by the Secretary under section 64U that applies to that day, and the determination has not been revoked. The effect of this subsection is that an approved provider will only have specialised homeless status after the end of the homeless transition period if a determination is made under section 64U.

The note explains that the period specified in the notice may end earlier if the specialised homeless status of the service is revoked under Division 3 of Part 2.

Section 64S - Circumstances in which residential care service may not have specialised homeless status

Section 64S deals with the situation of a residential care service that would otherwise have both specialised ATSI status and specialised homeless status at 1 October 2022 through the operation of sections 64N and 64R. The effect is that a residential care service in this situation defaults to specialised ATSI status, unless the approved provider for the residential care service elects that the residential care service have specialised homeless status instead.

Subsection 64S(1) provides that a residential care service will be taken to not have specialised homeless status if, on 1 October 2022, the residential care service would otherwise have both specialised ATSI status and specialised homeless status, and an election has not been made under subsection 64S(2).

Subsection 64S(2) provides that where the circumstances outlined in subsection 64S(1) exist, an approved provider may nevertheless elect to have specialised homeless status apply in relation to the service.

Subsection 64S(3) provides that an election made under subsection 64S(2) must be made in writing and given to the Secretary before the end of the ATSI transition period for the residential care service.

For clarity, the effect of section 64S and subsection 64R(3) taken together means that an election can only be made after 1 October 2022, and so the earliest day an election can affect service status is the beginning of the November 2022 payment period.

Section 64T - Application for determination that residential care service has specialised homeless status

Section 64T sets out the requirements for an approved provider to apply for specialised homeless status for a residential care service.

Subsection 64T(1) provides that an approved provider may apply to the Secretary for a determination that a residential care service operated by the provider has specialised homeless status.

Subsection 64T(2) specifies that the application must be made in writing, be in a form approved by the Secretary (if any), and be accompanied by any documents or information specified by the Secretary, for example, evidentiary documents required for the Secretary to satisfy themselves of the factors set out in subsection 64U (see below).

Request for further information

Subsection 64T(3) allows the Secretary to request further information from the approved provider in order to make a decision on their application for specialised homeless status. The request must be made by written notice and specify that information must be given to the Secretary within 28 days after the notice is given.

Subsection 64T(4) specifies that if the approved provider does not give the requested further information within the period mentioned in subsection 64T(3), the application is taken to be withdrawn at the end of that period.

Subsection 64T(5) specifies that a notice given under subsection 64T(3) must set out the effect of subsection 64T(4).

Subsection 64T(6) prevents an approved provider from re-applying for specialised homeless status in relation to a residential care service for 3 months after revocation if the approved provider had specialised homeless status in relation to the service and the status has been revoked under section 64X below.

Subsection 64T(7) specifies that if an approved provider submits an application in respect of a residential care service within the 3 month period after revocation, the Secretary is not required to consider the application and the application is taken to have been withdrawn.

Section 64U - Determination that residential care service has specialised homeless status

Section 64U deals with a determination that a residential care service has specialised homeless status where an application has been made in accordance with section 64T above.

Determination by Secretary

Subsection 64U(2) specifies that the Secretary must make a determination that a residential care service has specialised homeless status if they are satisfied that:

- on the day before the application was made, at least 50% of the care recipients (including continuing care recipients) provided with residential care as non-respite care through the service demonstrated complex behavioural needs and social disadvantage associated with their background as a homeless person; and
- the approved provider, or an individual who is one of its key personnel, has demonstrated experience in providing, or the capacity to provide, specialist homeless programs (as defined above); and
- either:

- the service is providing specialist homeless programs; or
- the provider has given a written undertaking that the service will begin providing specialist homeless programs within 3 months after the application is made.

Subsection 64U(3) specifies that the Secretary may have regard to any information that the Secretary considers relevant (including information that has become available since the application was made) in order to make the determination. This means that in order to be satisfied for the purposes of subsection 64U(2), the Secretary is not limited to considering only information in the approved provider's application. Information that could be considered by the Secretary includes, but is not limited to, information that has been requested under subsection 64T(3) or other information otherwise made available to the Secretary.

Notice of making decision

Subsection 64U(4) specifies that if the Secretary makes a determination that a residential care service has specialised homeless status, the Secretary must give the approved provider written notice of the decision and the period that the specialised homeless status applies. The determination must make clear that the specialised homeless status applies on each day during the period beginning on the first day of the payment period following the date of the notice for three years after that date unless the status is otherwise revoked at an earlier date under Division 3 of Part 2.

Notice of decision not to make determination

Subsection 64U(5) requires that if the Secretary decides not to make a determination that a service has specialised homeless status, they must give the approved provider written notice of their decision and the reasons for the decision. The notice must also advise the approved provider that they may seek reconsideration of the decision under section 64Z (see below).

Division 3 – Revocation of specialised ATSI or homeless status

Division 3 of Part 2 deals with revocation of specialised ATSI status or specialised homeless status.

Section 64V Automatic revocation of specialised ATSI or homeless status

Section 64V deals with circumstances in which a specialised ATSI status or specialised homeless status for a residential care service is automatically revoked.

Automatic revocation of specialised ATSI status

Subsection 64V(1) provides that if a residential care service has an existing specialised ATSI status and a determination is made under subsection 64U(2) that the service has a specialised homeless status on a day specified, the specialised ATSI status will end at the end of the day before the specialised homeless status starts.

Automatic revocation of specialised homeless status

Subsection 64V(2) provides that if residential care service has an existing specialised homeless status and a determination is made under subsection 64Q(2) that it will have a specialised ATSI status on a day specified, the specialised homeless status will end at the end of the day before the specialised ATSI status starts.

Subsections 64V(1) and (2) together have the effect that a residential care service cannot hold specialised ATSI status and specialised homeless status at the same time where the Secretary has made a determination under section 64U or section 64Q.

Section 64W Revocation of specialised ATSI or homeless status on request by the approved provider

Section 64W deals with the revocation of specialised ATSI status or specialised homeless status (as applicable) for a residential care service on request by the approved provider.

Subsection 64W(1) allows an approved provider to make a request in writing that the Secretary revoke the specialised ATSI status or specialised homeless status of a residential care service of the approved provider (as applicable).

Subsection 64W(2) provides that if a request is made under subsection 64W(1) above, the Secretary must revoke the specialised status, give the approved provider written notice of the revocation and confirm that the revocation takes effect from the beginning of the first payment period after the date of the revocation notice.

Section 64X Revocation of specialised ATSI status by the Secretary

Section 64X sets out the circumstances in which the Secretary may revoke specialised ATSI status of a residential care service at their own initiative.

Subsection 64X(1) provides that the Secretary may revoke a specialised ATSI status if they are satisfied that the service has not met the **ATSI care percentage** (see below) requirements for three consecutive payment periods or if, a determination has been made under section 64Q and the service did not provide specialist ATSI programs on any day 3 months after the application to which the determination relates was made.

Subsection 64X(2) sets out the formula for calculating the ATSI care percentage for a payment period, being the care for ATSI residents as a percentage of the care for all residents at a service. This subsection also defines the terms **care for all residents** and **care for ATSI residents** for the purposes of calculating the ATSI care percentage.

care for all ATSI residents is the total number of days in the payment period that non-respite residential care was provided to each care recipient who is:

- approved for non-respite residential care under Part 2.3 of the Aged Care Act; and
- the Secretary is satisfied is an Aboriginal or Torres Strait Islander person.

care for all residents is the total number of days in the payment period non-respite residential care was provided to each care recipient who is approved for non-respite residential care under Part 2.3 of the Aged Care Act.

Subsection 64X(3) provides that if the Secretary decides to revoke a specialised ATSI status at their own initiative, they must give the approved provider written notice of the decision, the reasons for the decision, the date on which the revocation takes effect, the period in which the approved provider is unable to reapply for specialised ATSI status and the effect of any application made during this period (see subsections 64P(6) and (7) above) and that the approved provider may apply for reconsideration of the revocation decision under subsection 64Z (discussed below).

Section 64Y Revocation of specialised ATSI status by the Secretary

Section 64Y sets out the circumstances in which the Secretary may revoke specialised homeless status of a residential care service at their own initiative.

Subsection 64Y(1) provides that the Secretary may revoke specialised homeless status if they are satisfied that the service has not met the **homeless care percentage** (see below) requirement for three consecutive payment periods or, if an application for a determination of specialist homeless status was made and the service did not provide specialist homeless programs on any day 3 months after the application to which the determination relates was made.

Subsection 64Y(2) sets out the formula for calculating the homeless care percentage for a payment period, being the care for homeless residents as a percentage of the care for all residents at a service. This subsection also defines the terms **care for all residents** and **care for homeless residents** for the purposes of calculating the homeless care percentage.

care for all homeless residents is the total number of days in the payment period non-respite residential care was provided to each care recipient who is:

- approved for non-respite residential care under Part 2.3 of the Aged Care Act; and
- the Secretary is satisfied demonstrates complex behavioural needs and social disadvantage associated with a background as a homeless person.

care for all residents is the total number of days in the payment period non-respite residential care was provided to each care recipient who is approved for non-respite residential care under Part 2.3 of the Aged Care Act.

Subsection 64Y(3) provides that if the Secretary decides to revoke a specialised homeless status at their own initiative, they must give the approved provider written notice of the decision, the reasons for the decision, the date on which the revocation takes effect, the period in which the approved provider is unable to reapply for specialised homeless status and the effect of any application made during this period (see subsections 64T(6) and (7) above) and that the approved provider may apply for reconsideration of the revocation decision under subsection 64Z (discussed below).

Division 4 – Reconsideration of decisions

Division 4 of Part 2 deals with reconsideration of decisions to revoke specialised ATSI or homeless status for a residential care service.

Section 64Z - Reconsideration of certain decisions on request

Request for reconsideration

Subsections 64Z(1) and (2) specify that an approved provider that operates a residential care service may request the Secretary to reconsider a decision (**reviewable decision**) to:

- not to make a determination of specialised ATSI status in relation to a service under subsection 64Q(2);
- not to make a determination of specialised homeless status in relation to a service under subsection 64U(2);
- revoke specialised ATSI status of a service under subsection 64X(1);
- revoke specialised homeless status of a service under subsection 64Y(1).

The request must be made in writing, set out the reasons for the request and be submitted to the Secretary within 28 days following the approved provider being notified of the reviewable decision.

Reconsideration by the Secretary

Where a request is made under subsection 64Z(1), subsection 64Z(3) requires the Secretary (or appropriate delegate as set out in paragraph 64Z(3)(b)) to reconsider a reviewable decision.

Subsection 64Z(4) makes clear that after reconsidering the reviewable decision, the Secretary (or their appropriate delegate) may affirm or vary the decision, or set it aside and replace the reviewable decision with a new decision.

Subsection 64Z(5) requires the Secretary (or their appropriate delegate) to provide the approved provider written notice of the decision made under subsection 64Z(4), the reason or the decision and the date the decision takes effect.

Subsection 64Z(6) specifies that if the Secretary (or their appropriate delegate) has not provided the approved provider with written notification of the decision within 28 days after receiving the approved provider's request for reconsideration, the reviewable decision is taken to have been affirmed.

Part 3 – Basic subsidy amount

Part 3 deals with the amount of basic subsidy, with effect on and after 1 October 2022.

For the amount of basic subsidy for a day before 1 October 2022, see Part 1 of Chapter 2 of the Subsidy, Fees and Payments Determination.

Division 1 Purpose of this Part

Section 64ZA Purpose of this Part

Section 64ZA specifies that Part 3 is made for the purposes of subsection 44-3(2) of the Aged Care Act.

Subsection 44-3(2) of the Aged Care Act has been amended by item 29 of Schedule 1 of the Royal Commission Response Act. As amended, section 44-3(2) requires that the basic subsidy amount for a care recipient for a day is the amount either determined by the Minister or worked out in accordance with a method determined by the Minister by a legislative instrument.

Division 2 and Division 3 of Part 2 of the Subsidy, Fees and Payments Determination (that is, sections 64ZB, 64ZC, 64ZD and 64ZE – see below) set out the method for determining the basic subsidy amount.

Division 2 — Basic Subsidy amount for care recipient provided with residential care as non-respite care

Division of Part 2 deals with the basic subsidy amount for a care recipient provided with residential care as non-respite care.

Section 64ZB Basic subsidy amount – classification of care recipient is in effect

Section 64ZB specifies the basic subsidy amount when a classification of a care recipient is in effect.

Subsection 64ZB(1) specifies that if a classification of a care recipient for non-respite care is in effect on a day then the basic subsidy amount for the recipient for that day is the amount equal to the sum of:

- the non-respite classification amount for the recipient for that day (see section 64K); and
- the service amount for the recipient for that day (see section 64M).

The note to the subsection explains that Part 11A of Chapter 3 of the Classification Principles deals with when a classification of a care recipient is in effect.

The effect of subsection 64ZB(1) is that the basic subsidy amount will vary with the specific characteristics of both care recipients and residential care services. This is a key feature of the new AN-ACC funding model that applies on and after 1 October 2022, which is designed to align funding with the cost of care provision.

Subsection 64ZB(2) specifies that if the care recipient is on extended hospital leave, and the classification which is in effect on a day is on or after the 29th day of the recipient's leave, then the basic subsidy amount for the recipient for that day is the service amount for the recipient for that day. Extended hospital leave is defined in Schedule 1 to the Aged Care Act.

The effect of subsection 64ZB(2) is that during an extended period in which a care recipient is on leave in the care of a hospital the amount of basic subsidy is reduced to the service amount.

Section 64ZC Basic Subsidy amount – care recipient not classified

Section 64ZC specifies the amount of basic subsidy when a care recipient has not yet been classified.

Subsection 64ZC(1) specifies that if, on a day (the **relevant day**) a care recipient has not yet been classified for non-respite care under Part 2.4A of the Aged Care Act, then, subject to section 64ZC, the basic subsidy amount for the recipient for that is the amount equal to the sum of:

- the amount equal to the non respite classification amount that would be worked out for the recipient for that day if it were assumed that a classification for non-respite care were in effect on that day and the classification level for the classification of the recipient were Class 8 (see section 64K); and
- the service amount for the recipient for that day (see section 64M).

The note explains that section 40 of the Classification Principles deals with the classification levels for non-respite care.

The effect of subsection 64ZC(1) is that for a care recipient who has not yet been classified the rate of subsidy paid is equivalent to the amount if the care recipient had a Class 8 classification (except as other provisions in this section apply instead). This will ensure all care recipients receive an amount of basic subsidy under the new AN-ACC funding model on and from 1 October 2022, and that care recipients who have not yet been classified receive an amount of subsidy that is equal to the average subsidy for resident who have a classification.

Entry for palliative care

Subsection 64ZC(2) specifies that if:

- on a day (the **relevant day**) a care recipient has not yet been classified for non-respite care under Part 2.4A of the Aged Care Act and the care recipient is provided with residential care as non-respite care in the form of palliative care through the residential care service in question; and
- the approved provider of the service notified, in accordance with section 63-1B of the Aged Care Act, the Secretary of the recipient's entry into that service for the provision of such care; and
- the recipient is not on extended hospital leave on the relevant day;

then the basic subsidy amount for the recipient for the relevant day is the amount equal to the sum of:

- the amount equal to the non-respite classification amount that would be worked out for the recipient for that day if it were assumed that:
 - a classification of the recipient for non-respite care were in effect on that day; and
 - the classification level for the classification of the recipient were Class 1; and
- the service amount for the recipient for that day.

The note explains that section 40 of the Classification Principles deals with the classification levels for non-respite care.

The effect of subsection 64ZC(2) is that if a care recipient has been admitted for palliative care but has not yet been classified the rate of subsidy which is paid is equivalent to the subsidy amount if the care recipient had a Class 1 classification (see section 64K) (except as other provisions in this section apply instead).

Extended hospital leave

Subsection 64ZC(3) specifies that if the care recipient is on extended hospital leave on a day when they have not yet classified (the **relevant day**) and the relevant day is on or after the 29th day of the recipient's leave, then the basic subsidy amount for the recipient for that day is the service amount for the recipient for that day, in line with the payment for care recipients that have a classification (see subsection 64ZB(2)).

The effect of subsection 64ZC(3) is that during an extended period in which a care recipient is on leave in the care of a hospital the amount of basic subsidy is reduced to the service amount for that day.

Care recipient classified after the relevant day

Subsection 64ZC(4) specifies that if the care recipient is classified for non-respite care under Part 2.4A of the Aged Care Act after the day the classification comes into effect, and the classification has effect on a day on which the care recipient was yet to be classified then section 64ZC is to be taken not to have applied in relation to the recipient in respect of that day.

The note explains that a classification may take effect on a day that is before the day a care recipient is classified (see Part 11A of Chapter 3 of the Classification Principles).

The effect of subsection 64ZC(4) is that once a care recipient becomes classified, their classification replaces the basic subsidy amount under section 64ZC(1) that has been paid up to the date the classification is made. This is realised through a payment adjustment process.

Division 3 – Basic subsidy amount for care recipient provided with residential care as respite care

Division of Part 3 deals with the basic subsidy amount for a care recipient provided with residential care as respite care.

64ZD Basic subsidy amount – classification of care recipient is in effect

Section 64ZD specifies the basic subsidy amount for a care recipient for a day who is receiving respite care and has a classification for respite care in effect on that day.

Subsection 64ZD(1) specifies that section 64ZD applies in relation to a care recipient for a day (the **relevant day**) if a classification of the recipient for respite care is in effect on the relevant day.

The note explains that Part 11A of Chapter 3 of the Classification Principles sets out when a classification of a care recipient is in effect.

Subsection 64ZD(2) specifies that if the care recipient has previously been provided with residential care as respite care on a number of days during the financial year that is less than a number set out in paragraph 23(1)(c) of the Subsidy Principles then the basic subsidy amount for the recipient for the relevant day is the amount equal to the sum of the respite classification amount (see section 64L) and the service amount (see section 64M) for the recipient for that day.

Subsection 64ZD(3) specifies that if the care recipient has previously been provided with residential care as respite care on a number of days during the financial year that is more than a number set out in paragraph 23(1)(c) of the Subsidy Principles then the basic subsidy amount for the recipient for the day is nil.

Section 64ZE Basic subsidy amount – [respite] care recipient not classified

Section 64ZE specifies the amount of basic subsidy when a respite care recipient has not yet been classified under Part 2.4A of the Aged Care Act.

Subsection 64ZE(1) specifies that if, on a day a care recipient has not yet been classified for respite care under Part 2.4A of the Aged Care Act, then, subject to section 64ZE, the basic subsidy amount for the recipient for that is the amount equal to the sum of:

- the amount equal to the respite classification amount that would be worked out for the recipient for that day if it were assumed that a classification of the recipient for non-respite care were in effect on that day and the classification level for the classification of the recipient were Respite Class 2 (see section 64L); and
- the service amount for the recipient for that day (see section 64M).

The note explains that section 39 of the Classification Principles deals with the classification levels for classifications for respite care.

The effect of subsection 64ZE(1) is that for a care recipient who has not yet been classified, the rate of subsidy that is paid is equivalent to the Respite Class 2 classification and the service amount for that day (except as other provisions in this section apply instead).

The effect of subsection 64ZE(2) is that once a care recipient becomes classified their classification replaces the basic subsidy amount calculated under section 63ZE(1) that had been paid up to the date the classification is made. This is realised through a payment adjustment process.

The note explains that a classification may take effect on a day that is before the day a care recipient is classified, under Part 11A of Chapter 3 of the Classification Principles.

Part 4 — Adjusted basic subsidy amount

Part 4 inserts the adjusted basic subsidy amount into the Subsidy, Fees and Payments Determination.

Part 4 is consequential to the amendment of section 44-21 of the Aged Care Act through item 40 of Schedule 1 to the Royal Commission Response Act.

Section 44-21(6A) of the Aged Care Act, as amended, specifies that an adjusted basic subsidy amount is an amount to be determined by the Minister or worked out in accordance with a method determined by the Minister. The adjusted basic subsidy amount is used in relation to the amount of care subsidy reduction (see subsections 44-21(2) and (3) of the Aged Care Act as amended by items 37, 38 and 39 of the Royal Commission Response Act).

Section 64ZF Purpose of this Part

Section 64ZF specifies that Part 4 is made for the purposes of subsection 44-21(6A) of the Aged Care Act.

Section 64ZG Adjusted basic subsidy amount – care recipient provided with residential care as non-respite care.

Section 64ZG specifies that the adjusted basic subsidy amount for a care recipient who is provided with residential care as non-respite care is calculated by adding the care recipient's classification subsidy amount (see section 64K) and the service amount for a residential care service that meets the requirements of column 1 of item 7 of the table in subsection 64M(1), and not the service amount that would otherwise apply based on the location and specialised status of the residential care service. The service amount associated with that type of residential care service attracts the lowest service amount among all service amounts.

The effect is that care recipients' care subsidy reduction and any related means tested care fees (being amounts provided for by section 44-21 of the Aged Care Act) will not differ because of the characteristics of the residential care service in which they receive care. Defining the adjusted basic subsidy amount in this way is equitable for care recipients, particularly regional, rural and remote care recipients, as it ensures that care recipients with similar means will pay similar means tested care fees regardless of the location of the residential care service in which they receive care.

Part 5 – Amounts of primary supplements

Part 5 deals with the amounts of primary supplements.

Primary supplements are provided for by Subdivision 44-C of Part 3.1 of Chapter 3 of the Aged Care Act.

Division 1 — Purpose of this Part

Section 64ZH - Purpose of this Part

Section 64ZH specifies that Part 5 of Chapter 2A is made for purposes of subsection 44-5(3) of the Aged Care Act.

Subsection 44-5(3) of the Aged Care Act provides that the Minister may determine by legislative instrument the amount of each primary supplement, or the way in which the amount of the supplement is to be worked out.

Division 2 — Respite supplement

64ZI Amount of respite supplement

Section 64ZI specifies that the amount of the respite supplement for a day for a care recipient is the applicable amount (as defined in section 64J above) for the day for the recipient.

The note explains that the respite supplement is set out in Subdivision A of Division 3 of Part 3 of Chapter 2 of the Subsidy Principles and that eligibility for the supplement is dealt with in that Subdivision.

The effect of this section is that from 1 October 2022 all respite care recipients will, while receiving respite care, receive a respite supplement that is equal to the maximum amount of the accommodation supplement and to the maximum amount of the concessional resident supplement (which is an alternative to the accommodation supplement for certain continuing care recipients).

Taken with other changes to how respite care is funded, an approved provider will receive, in net, very similar amounts of subsidy for providing care to a respite care recipient and a non-respite care recipient with similar characteristics. This aligns the funding arrangements for care recipients receiving respite care through a residential care service and residential care in the form of non-respite care, with the aim of encouraging approved providers of residential care to offer both types of care.

The amount of the respite supplement for a day for a care recipient for the period before 1 October 2022 is set under Division 1 of Part 2 of Chapter 2 of the Subsidy, Fees and Payments Determination.

Division 3 - Oxygen Supplement

Section 64ZJ - Amount of oxygen supplement

Section 64ZJ specifies that the amount of the oxygen supplement for an eligible care recipient for a day is \$12.73.

The note explains that the oxygen supplement is set out in Subdivision B of Division 3 of Part 3 of Chapter 2 of the Subsidy Principles and that eligibility for the oxygen supplement is dealt with in that Subdivision.

The amount of the oxygen supplement for a care recipient for a day in the period before 1 October 2022 is set under Division 2 of Part 2 of Chapter 2 of the Subsidy, Fees and Payments Determination.

Division 4 – Enteral feeding supplement

Section 64ZK = Amount of enteral feeding supplement

Section 64ZK specifies the amounts of the oxygen supplement for an eligible care recipient for a day, which are \$20.17 for bolus feeding and \$22.65 for non-bolus feeding.

The note explains that the enteral feeding supplement set out in Subdivision C of Division 3 of Part 3 of Chapter 2 of the Subsidy Principles and the eligibility for the enteral feeding supplement is dealt with in that Subdivision.

The amount of the enteral feeding supplement for a care recipient for a day before 1 October 2022 is set under Division 3 of Part 2 of Chapter 2 of the Subsidy Fees and Payments Determination.

Part 6 – Reductions in subsidy

Part 6 in Chapter 2A deals with reductions in care subsidy, for days on and after 1 October 2022.

At the commencement of the Amending Instrument, the amounts of the reductions in care subsidy set out in Part 6 are the same as the care subsidy reduction amounts that applied in respect of a care recipient for a day before 1 October 2022. The effect of this is that there is no advantage or disadvantage to any care recipient or approved provider with the implementation of the new care subsidy reduction calculations, noting that care subsidy reduction amounts may change over time.

Section 64ZL - Care subsidy reduction – annual cap

Section 64ZL specifies that, for the purposes of subsection 44-21(7) of the Aged Care Act, the amount of the care subsidy reduction annual cap is \$30,574.33.

Section 64ZM - Care subsidy reduction – lifetime cap

Section 64ZM specifies that, for the purposes of subsection 44-21(8) of the Aged Care Act, the amount of the care subsidy reduction lifetime cap is \$73,378.49.

Section 64ZN - Care subsidy reduction – first asset threshold and second asset threshold

Section 64ZN specifies that, for the purposes of subsection 44-22(3) of the Aged Care Act, the amount of the care subsidy reduction first asset threshold is \$186,331.20 and the amount of the care subsidy reduction second asset threshold is \$448,993.60.

Section 64ZO Care subsidy reduction – maximum home value

Section 64ZO specifies that, for the purposes of subsection 44-26B(1) of the Aged Care Act, the amount of the care subsidy reduction maximum home value is \$186,331.20.

Part 7 – Amounts of other supplements

Part 7 deals with amounts of other supplements, for days on and after 1 October 2022.

Division 1 – Accommodation supplement

Section 64ZP - Amount of accommodation supplement

Section 64ZP sets out the method for calculating the amount of accommodation supplement for a care recipient provided with residential care as non-respite care for a day for the purposes of subsection 44-28(4) of the Aged Care Act.

The effect is to provide an amount of supplementary funding when a care recipient has limited means to contribute to the cost of their accommodation, and also to create an incentive for approved providers to provide care for a significant proportion of care recipients with limited income and/or means.

Subsection 64ZP(2) provides that, subject to subsections 64ZP(4)-(6) below, the amount of the accommodation supplement for an eligible care recipient is the applicable amount (as defined in section 64J above) for the day (where the *residential care percentage* (see subsection 64ZP(3) below) for the service in a payment period is 40% or more) or the applicable amount reduced by 25% as applicable.

The purpose of the accommodation supplement is to provide supplementary funding when a care recipient has limited means to contribute to the cost of their accommodation and aims to incentivise approved providers to provide care to a significant proportion of care recipients with limited income and/or means.

The note explains that Subdivision A of Division 5 of Part 3 of Chapter 2 of the Subsidy Principles also deals with the accommodation supplement.

Residential care percentage

Subsection 64ZP(3) sets out that the residential care percentage is calculated using the following formula:

$$\frac{\text{care for relevant residents}}{\text{care for all residents}} \times 100$$

care for all residents means the total number of days, in the payment period, on which the residential care service provided residential care as non-respite care to each care recipient:

- who is approved under Part 2.3 of the Aged Care Act as a recipient of that kind of care; and
- who is not an excluded resident (discussed below).

care for relevant residents means the total number of days, in the payment period, on which the residential care service provided residential care as non-respite care to each care recipient:

- who is approved under Part 2.3 of the Aged Care Act as a recipient of that kind of care; and
- who is a relevant resident (discussed below); and
- who is not an excluded resident (discussed below).

excluded resident means a care recipient to whom both of the following apply:

- the recipient is provided with residential care as non-respite care on an extra service basis within the meaning of subsection 36-1 of the Aged Care Act on a day; and
- a financial hardship determination is not in force under section 52K-1 of the Aged Care Act in relation to the recipient on the day.

relevant resident means each of the following:

- a care recipient who is eligible for a concessional resident supplement for a day under section 44-6 of the Transitional Provisions Act (see Subdivision B of Division 3 of Part 3 of Chapter 2 of the Transitional Provisions Principles); or
- a supported resident (see section 44-5B of the Transitional Provisions Act); or
- a low-means care recipient as defined in section 5 of the Subsidy Principles.

The effect of this is to limit the definition of “relevant resident” to only care recipients with limited income and/or means.

This calculation means that the provision of care in the residential care service for care recipients with limited means is taken into account over the whole of the relevant payment period rather than in respect of individual days during the payment period.

The intent of this provision is to prevent fluctuations in the accommodation supplement rate where the 25% reduction might otherwise apply for individual days in a payment period even though the 40% requirement was met by the service over the payment period as a whole.

Reduced amount—means tested amount for the care recipient

Subsection 64ZP(4) sets out circumstances where the accommodation supplement for a care recipient is taken to be nil. This occurs when the means tested amount for the care recipient on the day is equal to, or more than, the amount of the accommodation supplement that would, apart from this subsection, apply under subsection 64ZP(2) for the day for the recipient.

Subsection 64ZP(5) sets out the method for calculating a reduced rate of accommodation supplement where the means tested amount (**first amount**) for a care recipient on the day is greater than zero but less than the amount of the accommodation supplement (**second amount**). In this instance, the amount of the accommodation supplement for the day for the care recipient is the amount equal to the absolute difference between the first amount and the second amount.

Reduced amount—financial hardship

Subsection 64ZP(6) provides that if a financial hardship determination is in force under section 52K-1 of the Aged Care Act in relation to the care recipient on the day, then the amount of the accommodation supplement for the day for the care recipient is the amount equal to the difference between the amount of the accommodation supplement that would have otherwise applied but for this subsection and the amount specified in the financial hardship determination.

The effect of this provision is to ensure that for a care recipient with a financial hardship determination under section 52K-1 of the Aged Care Act that the approved provider receives an amount equal to the full amount of the accommodation supplement.

The accommodation supplement for days before 1 October 2022 is set under Division 1 of Part 4 of Chapter 2 of the Subsidy, Fees and Payments Determination.

Division 2 – Hardship supplement

Section 64ZQ - Amount of hardship supplement

Section 64ZQ sets out, for the purposes of subsection 44-30(5) of the Aged Care Act, the method for calculating the amount of hardship supplement for a care recipient in relation to whom a determination is in force under section 44-31 of the Aged Care Act, being the amount equal to the difference between:

- the maximum daily amount of resident fees (within the meaning of section 52C-3 of the Aged Care Act) payable by the recipient; and
- the amount specified in the determination.

The note explains that Subdivision B of Division 5 of Part 3 of Chapter 2 of the Subsidy Principles also deals with the hardship supplement.

The amount of the hardship supplement for days before 1 October 2022 is set under Division 2 of Part 4 of Chapter 2 of the Subsidy, Fees and Payments Determination.

Division 3 – Veterans’ supplement

Section 64ZR - Amount of veterans’ supplement

Section 64ZR specifies that, for the purposes of subsection 44-27(3) of the Aged Care Act, the amount of the veterans’ supplement for an eligible care recipient for a day is \$7.50.

The note explains that the veterans’ supplement is set out in Subdivision D of Division 5 of Part 3 of Chapter 2 of the Subsidy Principles and that eligibility for that supplement is also dealt with in that Subdivision.

The veterans’ supplement for days before 1 October 2022 is set under Division 4 of Part 4 of Chapter 2 of the Subsidy, Fees and Payments Determination.

Division 4 – Initial entry adjustment supplement

Section 64ZS - Amount of initial entry adjustment supplement

Section 64ZS specifies that, for the purposes of subsection 44-27(3) of the Aged Care Act, the amount of the initial entry adjustment supplement for an eligible care recipient in respect of a payment period is the amount worked out by multiplying the national efficient price by the NWAU attributable to the initial entry supplement of 5.28.

The note explains that initial entry adjustment supplement is set out in Subdivision I of Division 5 of Part 3 of Chapter 2 of the Subsidy Principles (see item 33 of Schedule 1 of the Amending Instrument). Eligibility for that supplement is also dealt with in that Subdivision.

The supplement is created in recognition of the temporary additional costs of settling a new care recipient into non-respite residential care at a residential care service, and provides for a one-off payment for the entry of a new resident into non-respite residential care calculated at 5.28 times the current national efficient price (\$216.80 at 1 October 2022, meaning a total of \$1,144.70).

Classification Principles 2014

Item 6 – Section 4

This item amends section 4 to insert two new definitions, *applicable day* for a classification, and *break period* for a care recipient.

Applicable day for a classification means:

- if the classification was made before 1 October 2022 — the day the classification was made; or
- if the classification is made on or after 1 October 2022 — the day the classification takes effect.

Break period for a care recipient has the meaning given by subsection 33C(3) of the Classification Principles (inserted by item 15 to Schedule 1 of the Amending Instrument). A ‘break period’ for a care recipient is the period which begins on the day the care recipient ceases to be provided with residential care and ends on the day which the care recipient re-enters a residential care service and is provided with residential care.

Item 7 – Chapter 2 (at the end of the heading), Item 8 – At the end of section 5, Item 9 – At the end of section 10, Item 10 – Paragraph 13(a), Item 11 – Section 18, Item 12 – At the end of section 24

Item 7 amends the heading of Chapter 2 to Classification of care recipients under Part 2.4 of the Aged Care Act before 1 October 2022.

Item 8 amends section 5 of the Classification Principles to specify that the purpose of Part 2 is to set out the process in determining the classification level for a care recipient being provided with residential care before 1 October 2022.

Item 9 amends section 10 of the Classification Principles to specify the purpose of Part 4 of is to set out the classification levels for care recipients being provided with residential care on a day before 1 October 2022.

Item 10 amends paragraph 13(a) of the Classification Principles to specify that one of the purposes of Part 5 is to set out the circumstances in which an appraisal does not apply in relation to the level of care needed by a care recipient being provided with residential care before 1 October 2022.

Item 11 amends section 18 of the Classification Principles to specify that the purpose of Part 7 is to set out when a respite care classification takes place for a care recipient who is provided care before 1 October 2022.

Item 12 amends section 24 of the Classification Principles to specify that the purpose of Part 9 is to set out the matters the Secretary must have regard to when reviewing the classifications for a care recipient who is provided with residential care before 1 October 2022.

These items are all consequential to amendments to the Aged Care Act through items 5 to 17 of Schedule 1 of the Royal Commission Response Act that limit classifications for care recipients being provided with residential care under Part 2.4 of the Aged Care Act to the period before 1 October 2022.

Item 13 – Chapter 3 (at the end of the heading)

This item amends the heading of Chapter 3 to Classification of care recipients under Part 2.4A of the Aged Care Act on or after 1 October 2022.

This item is consequential to amendments to the Aged Care Act through items 18 to 26 of Schedule 1 of the Royal Commission Response Act that effect classifications made under Part 2.4A of the Aged Care Act on and after 1 October 2022.

Item 14 – Section 30

This item repeals and substitutes section 30 to specify that, for the purposes of subsection 29C-2(3) of the Aged Care Act, Part 11 of the Classification Principles specifies the procedure the Secretary must follow in determining the appropriate classification level for a care recipient for respite care or non-respite care on or after 1 October 2022.

The effect is that Part 11 sets out the methods or procedures that the Secretary must follow in determining the appropriate classification level under Part 2.4A of the Aged Care Act for a care recipient on or after 1 October 2022.

Item 15 – Section 33

This item repeals section 33 and substitutes a new Part 11A which specifies when classifications under Part 2.4A of the Aged Care Act take effect.

Part 11A—When classifications take effect.

Section 33 provides, for the purposes of subsection 29C-2(6) of the Aged Care Act, that Part 11A specifies the day on which classifications of care recipients under Part 2.4A of the Aged Care Act take effect.

The note explains that classifications under Part 2.4A of the Aged Care Act affect an amount of subsidy payable, on or after 1 October 2022, under Chapter 3 of the Aged Care Act or of the Transitional Provisions Act.

Section 33A specifies a classification made under Part 2.4A of the Aged Care Act takes effect on 1 October 2022 if a classification of a care recipient for respite care or non-respite care under Part 2.4A of the Aged Care Act was made and in effect before 1 October 2022.

The effect is a classification for residential respite care or non-respite care under Part 2.4A of the Aged Care Act that was made and in effect before 1 October 2022 continues to have effect on and after 1 October 2022.

Section 33B specifies that a classification of care recipients under Part 2.4A of the Aged Care Act made on or after 1 October 2022 takes effect on 1 October 2022 if:

- a care recipient entered a residential care service to be provided with non-respite care before 1 October 2022; and
- the care recipient is classified for non-respite care under Part 2.4A of the Aged Care Act on or after 1 October 2022.

The effect for a non-respite care recipient who entered a residential care service before 1 October 2022, and their non-respite classification was made after 1 October 2022, is that the classification for the care recipient has effect on and after 1 October 2022. This ensures the rate of subsidy appropriate for the care recipient's classification is paid on and after 1 October 2022.

Section 33C specifies when classifications made on or after 1 October 2022 in respect of an entry for non-respite care on or after 1 October 2022 take effect.

Subsection 33C(1) specifies that the classification of care recipients under Part 2.4A of the Aged Care Act made on and after 1 October 2022 takes effect on the day the recipient first enters a residential care service on or after 1 October 2022 if:

- the care recipient enters a residential care service on or after 1 October 2022; and
- the care recipient is classified for non-respite care on or after 1 October 2022.

Subsection 33C(2) specifies that if the care recipient has a ‘break period’ of more than 28 days before they are classified for non-respite care, the classification takes effect when the break period ends.

A ‘break period’ is defined under subsection 33C(3) as the period which starts when the care recipient ceases to receive residential care, and ends when the recipient next enters a residential care service and receives residential care. For example, if a care recipient enters one residential care service, then leaves the service for 5 days, and then enters another residential care service, the ‘break period’ would be 5 days, that is the period when the care recipient left the first service and entered the next service.

The effect of section 33C is that a classification made for a non-respite care recipient who enters a residential care service on or after 1 October 2022 usually has effect (including on payment of subsidy) on and from the day the recipient first enters a residential care service. The day the care recipient first enters a residential care service will usually be earlier than the day the classification is made. This ensures that the rate of subsidy appropriate for the care recipient’s classification is paid on and from the care recipient’s first day at the service, regardless of when the classification decision is made.

However, when a non-respite care recipient moves between two or more services before a classification is made, then the day of effect of their classification will be either:

- the day the care recipient entered the first service if they entered on or after 1 October 2022 and they have not taken a break in care of more than 28 days while moving between services before the classification is made; or
- if the care recipient has a break in care for more than 28 days, it is the day the care recipient re-enters a residential care service after their break.

This is appropriate as the classification made of a non-respite care recipient who has moved between services cannot be assumed to reflect their circumstances at earlier services when there has been a significant break between periods in care.

Section 33D specifies that classifications of care recipients under Part 2.4A of the Aged Care Act takes effect on the day the recipient first enters a residential care service to be provided with respite care on or after 1 October 2022 if:

- a care recipient is provided with residential respite care on or after 1 October 2022; and
- the care recipient is classified for respite care under Part 2.4A of the Aged Care Act on or after 1 October 2022.

The effect is a classification made for a respite care recipient who enters a residential care service on or after 1 October 2022 has effect (including on payment of subsidy) on and from the day the recipient first enters a residential care service, ensuring that the rate of subsidy

appropriate for the care recipient's classification is paid on and from the care recipient's first day at the service.

Section 33E specifies when a classification of a care recipient takes effect after a reclassification decision has been made in accordance with subsection 29D-1(1) of the Aged Care Act.

Subsection 33E(1) deals with reclassifications requested before 1 October 2022. If the Secretary decides to reclassify a care recipient under section 29D-1(1) of the Aged Care Act, and the care recipient is classified under Part 2.4A of the Aged Care Act on or after 1 October 2022, then the classification takes effect on 1 October 2022. This ensures that the rate of subsidy appropriate for the care recipient's classification is paid on and after 1 October 2022.

Subsection 33E(2) deals with reclassifications requested on or after 1 October 2022. If the Secretary decides to reclassify the recipient under section 29D-1(1) of the Aged Care Act, and as a result the care recipient is classified under Part 2.4A of the Aged Care Act, any subsequent new classification takes effect on the day the request for reclassification was made. This ensures that the rate of subsidy appropriate for the care recipient's classification is paid from the date the approved provider or care recipient requested a reclassification of the recipient's needs that led to the Secretary deciding to assign a new classification.

Item 16 – Paragraph 34(a) and Item 17 – After section 34

Section 34 of the Classification Principles deals with the purpose of Part 12 — Assessments of the level of care needed.

Item 16 repeals paragraph 34(a) and substitutes two new paragraphs so that section 34 specifies that for the purposes of section 29C- 3 of the Aged Care Act, Part 12 specifies:

- where the Secretary may assess the level of care needed by a care recipient; and
- procedures that the Secretary must follow in making such an assessment.

Item 17 inserts section 34A which specifies that, the Secretary may assess the level of care needed by a care recipient at a residential care service or any other place (as appropriate).

While assessments will ordinarily be carried out at the residential care service where a care recipient is receiving care, there may be exceptional circumstances in which it appropriate for the Secretary to carry out an assessment elsewhere. For example, due to the limited length of a respite care episode the Secretary may assess a respite care recipient at their home.

The procedures that the Secretary must follow in making an assessment are dealt with in sections 35 and 36 of the Classification Principles.

Item 18 – Subsections 35(1) and 36(1)

Section 35 deals with the assessment procedure for care recipients being provided with respite care while section 36 deals with the assessment procedure for care recipients being provided with non-respite residential care.

This item amends legislative references in subsection 35(1) and 36(1) respectively to clarify that each section is made for the purposes of paragraph 29C-3(2)(b) of the Aged Care Act. The effect is to clarify the legislative authority for each section and is a consequential

amendment to the amendments made to section 29C-3(2) of the Aged Care Act through item 24 of Schedule 1 to the Royal Commission Response Act.

Item 19 – Sections 42 and 43

In relation to reclassification of care recipients, section 42 of the Classification Principles deals with the circumstances in which care needs are taken to have changed significantly for respite care recipients. Section 43 of the Classification Principles deals with the circumstances in which care needs are taken to have changed significantly for non-respite care recipient

Item 19 amends sections 42 and 43 to specify that the circumstances in which care needs are taken to have changed significantly will be from the applicable day for the existing classification of the care recipient. ‘Applicable day’ is inserted into section 4 of the Classification Principles through item 6 to Schedule 1 to the Amending Instrument, and means:

- if the classification was made before 1 October 2022—the day the classification was made; or
- if the classification is made on or after 1 October 2022—the day the classification takes effect.

The effect is for the purposes of a reclassification of a care recipient whose classification was made before 1 October 2022, the day from which the care needs of the care recipient is taken to have changed significantly remains the day their classification was made. This ensures care recipients whose classification was made before 1 October 2022 are not disadvantaged by the amendments made by item 15 of Schedule 1 to the Amending Instrument (which inserts new sections 33 to 33E).

Item 20 – After Chapter 3

Chapter 4 deals with application, transitional and saving provisions. Chapter 4 consists of section 46, which sets how a classification for respite care made under Part 2.4 of the Aged Care Act before 1 October 2022, will be treated on and after 1 October 2022.

Subsection 46(1) specifies that section 46 applies if a classification (the original classification) of a care recipient for respite care has been made under Part 2.4 of the Aged Care Act before 1 October 2022 and, immediately before that day, both of the following apply:

- the original classification is in effect;
- the care recipient has not been classified for respite care under Part 2.4A of the Aged Care Act.

Subsection 46(2) specifies that the original classification of the care recipient is taken, on and after 1 October 2022, to be the new classification for respite care under Part 2.4A of the Aged Care Act.

Subsection 46(3) specifies that if the classification level for the care recipient for the original classification was low level residential respite care, the classification level for the recipient for the new classification is taken, on and after 1 October 2022, to be Respite Class 1.

Subsection 46(4) specifies that if the classification level for the care recipient for the original classification was high level residential respite care, the classification level for the recipient for the new classification is taken, on and after 1 October 2022, to be Respite Class 2.

Subsection 46(5) specifies, to avoid doubt, that the new classification of the care recipient may, on and after 1 October 2022, be dealt with under Part 2.4A of the Aged Care Act as a classification for respite care.

The effect of the section 46 is to set out for care recipients who, before 1 October 2022 have a respite classification under Part 2.4 of the Aged Care Act but not under Part 2.4A (the 'original classification'), how their classification will be treated on and after 1 October 2022. For these care recipients, on and after 1 October 2022:

- the original classification will be taken to be a new classification for respite under Part 2.4A of the Aged Care Act; and
- if the original classification was low level residential respite care, the new classification level will be taken to be Respite Class 1; or
- if the original classification was high level respite care, the new classification level will be taken to be Respite Class 2.

Subsidy Principles 2014

Item 21 – Section 4

This item repeals the definitions of *care day deficit* and *relevant resident*.

The repeal of the care day deficit is consequential to the repeal of Division 3 of Part 2 of Chapter 2 of the Subsidy Principles through item 21 of Schedule 1 to the Amending Instrument.

The definition of relevant resident is now dealt with through section 49 of the Aged Care (Subsidy, Fees and Payments) Determination as amended by item 4 of Schedule 1 to the Amending Instrument.

Item 22 – Paragraphs 13(a) and (b)

Section 13 specifies, for Division 43 of the Aged Care Act, the purpose of Part 2 of the Subsidy Principles specifies matters in relation to the payment of residential care subsidy by the Commonwealth to an approved provider for providing residential care to care recipients.

This item repeals and substitutes paragraphs 13(a) and (b), so that the matters are dealt with in Part 2 of the Subsidy Principles include:

- working out the proportion of the amounts equal to the capital payments that are to be deducted for the purposes of subsection 43-6(3) of the Aged Care Act; and
- the kinds of payments that are capital payments for the purposes of subsection 43-6(5) of the Aged Care Act.

These amendments are consequential to the repeal of the concept of non-compliance deductions from the Aged Care Act through items 27, 28 and 96 of Schedule 1 to the Royal Commission Response Act.

Item 23 – Division 3 of Part 2 of Chapter 2

This item repeals Division 3 of Part 2 of Chapter 2, which is made for the purposes of section 43-8 of the Aged Care Act and sets out the circumstances in which non-compliance deductions do not apply.

This is a consequential amendment as item 28 of the Schedule 1 of the Royal Commission Response Act repeals section 43-8 of the Aged Care Act.

Item 24 – At the end of paragraph 20(e)

Section 20 specifies that the purpose of Part 3 of Chapter 2 of the Subsidy Principles is to set out matters in relation to the amount of residential care subsidy payable to an approved provider of a residential care service in respect of a care recipient who is being provided with residential care through the service, including in paragraph 20(e) the “other supplements” that may apply to the care recipient.

This item inserts an additional subparagraph (vii) in paragraph 20(e) to list the initial entry adjustment supplement as another supplement that may apply to a care recipient. This is consequential to the creation of the initial entry adjustment supplement through item 33 to Schedule 1 to the Amending Instrument.

Item 25 – Section 21

This item repeals section 21 and substitutes a new section 21 that deals with matters on which a determination of the basic subsidy amount may be based on for the purposes of paragraph 44-3(3)(e) of the Aged Care Act.

Section 21 (as substituted) specifies that the Minister may determine a basic subsidy amount (including a nil amount) for a care recipient for a day based on whether:

- the care recipient has previously been provided with respite care on a number of days during the financial year in which the day occurs; and
- that number of days is equal to, or greater than, the number applicable under paragraph 23(1)(c) of the Subsidy Principles.

The effect is that the Minister may specify a basic subsidy amount (including a nil amount) when a care recipient receives in a financial year more than the maximum number of days of residential respite care for which a care recipient is eligible, as specified in paragraph 23(1)(c) of the Subsidy Principles.

Item 26 – Paragraphs 50(c) and (d), Item 27 – Section 50 (note 1), Item 28 – Section 50 (note 2)

Section 50 specifies that the Minister may determine the amount of accommodation supplement, or a method for working out the amount of accommodation supplement, payable for a day for a care recipient who is being provided with residential care (other than respite care) through a residential care service, based on a number of matters.

Item 26 repeals paragraphs 50(c) and (d) and substitutes a new paragraph 50(c) which specifies one of the matters which the amount of accommodation supplement may be based on is whether or not the residential care percentage (within the meaning of subsection 64ZP(3) of the *Aged Care (Subsidy, Fees and Payments) Determination 2014*) for the service for a payment period in which the day occurs is 40% or more. This item is consequential to item 5 of Schedule 1 of the Amending Instrument.

Item 27 repeals note 1 to section 50, which dealt with the definition of relevant resident in section 4. This is a consequential amendment, as item 21 of Schedule 1 to the Amending Instrument repeal the definition of ‘relevant resident’ in section 4 of the Subsidy Principles.

Item 28 renames the former “Note 2” to Section 50 to “Note”. This is a consequential amendment to item 27 of Schedule 1 to the Amending Instrument.

**Item 29 – Subdivision C of Division 5 of Part 3 of Chapter 2 (at the end of the heading),
Item 30 – Section 63**

Item 29 amends the heading of Subdivision C of Division of Part 3 of Chapter 2 to “Subdivision C—Viability supplement for payment periods beginning before 1 October 2022”.

Item 30 amends section 63 to set out the amount of the viability supplement for a recipient in respect of a payment period beginning before 1 October 2022.

This item limits the payment of the viability supplement (as it applies to residential care services) to payment periods beginning before 1 October 2022.

**Item 31 – Subdivision E of Division 5 of Part 3 of Chapter 2 (at the end of the heading),
Item 32 – Section 69**

Item 31 amends the heading of Subdivision E of Division of Part 3 of Chapter 2 to “Subdivision E—Homeless supplement for payment periods beginning before 1 October 2022”.

Item 32 amends section 69 to set out the amount of the homeless supplement for a care recipient in respect of a payment period that begins before 1 October 2022.

These items limit the homeless supplement (as it applies to residential care services) to payment periods beginning before 1 October 2022.

Item 33 – At the end of Division 5 of Part 3 of Chapter 2

This item inserts a new Subdivision into Division 5 of Part 3 of Chapter 2 of the Subsidy Principles that specifies an additional other supplement, the initial entry adjustment supplement.

Section 70AH specifies that, for the purposes of paragraph 44-27(1)(c) of the Aged Care Act, the initial entry adjustment supplement which applies to a care recipient in respect of a payment period if:

- the payment period begins on or after 1 October 2022; and
- the first day on which the care recipient entered the residential care service and was provided with residential care occurred during the payment period; and
- the care recipient was provided with that care on that day through that service.

Item 34 – Chapter 5

This item repeals Chapter 5, which dealt with miscellaneous matters which are no longer required.

SCHEDULE 2 – Residential care subsidy paid under the *Aged Care (Transitional Provisions) Act 1997*

Schedule 2 amends the following 4 legislative instruments:

- *Aged Care (Transitional Provisions) Principles 2014* (Transitional Principles)
- *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014* (Subsidy and Other Measures Determination)
- *Records Principles 2014* (Records Principles)
- *User Rights Principles 2014* (User Rights Principles).

Aged Care (Transitional Provisions) Principles 2014

Item 1 – Section 4 (definition of *ACFI classification*)

This item amends the definition of ACFI classification to restrict that definition to a classification under Part 2.4 of the Aged Care Act. Part 2.4 restricts the operation of those classifications to days before 1 October 2022.

Item 2 – Section 4 (definition of *care day deficit*)

This item repeals the definition of care day deficit, as references to this definition in sections 14, 15 and 16 (Division 3 of Part 2 of Chapter 2, which deals with non-compliance deductions) of the Transitional Provisions Principles are being repealed by item 21 of Schedule 1 to the Amending Instrument.

These amendments are consequential to the repeal of the concept of non-compliance deductions from the Aged Care Act through items 27, 28 and 96 of Schedule 1 to the Royal Commission Response Act.

Item 3 – Section 4 (note to definition of *enteral feeding supplement*)

This item repeals the note to the definition of enteral feeding supplement, which refers to Division 6 of Part 2 of Chapter 2 of the Subsidy and Other Measures Determination which also deals with the enteral feeding supplement. The note is not needed as the definition already provides reference to the relevant provision in section 44-14 of the Transitional Provisions Act, which sets out the enteral feeding supplement and how it is determined.

Item 4 – Section 4 (note to definition of *oxygen supplement*)

This item repeals the note to the definition of oxygen supplement, which refers to Division 5 of Part 2 of Chapter 2 of the Subsidy and Other Measures Determination which also deals with the oxygen supplement. The note is not needed as the definition already provides reference to the relevant provision in section 44-13 of the Transitional Provisions Act, which sets out the oxygen supplement and how it is determined.

Item 5 – Section 4 (definition of *relevant resident*)

This item repeals and substitutes the definition of **relevant resident**. The previous definition provided that the term had the same meaning as in the *Subsidy Principles 2014* (Subsidy Principles). Item 21 of Schedule 1 to the Amending Instrument repeals that definition from the Subsidy Principles. The substituted definition inserts that repealed definition from the Subsidy Principles in substantially the same form, with only minor clarifications.

Item 6 – Section 6

This item repeals section 6, which dealt with the meaning of **high level of residential care**, a term only used prior to 1 October 2022 for classifications made under ACFI. Other references

to that term have been removed from the Transitional Provisions Act through items 57, 82 and 87 of Schedule 1 to the Royal Commission Response Act.

Item 7 – Paragraphs 11(a) and (b)

Section 11 specifies, for Division 43 of the Transitional Provisions Act, that Part 2 of Chapter 2 of the Transitional Provisions Principles specifies matters in relation to the payment of residential care subsidy by the Commonwealth to an approved provider for providing residential care to continuing care recipients.

This item repeals and substitutes paragraphs 11(a) and 11(b), so that the matters in relation to the payment of residential care subsidy are limited to:

- working out the proportion of the amounts equal to the capital payments that are to be deducted for the purposes of subsection 43-6(3) of the Transitional Provisions Act;
- the kinds of payments that are capital payments for the purposes of subsection 43-6(5) of the Transitional Provisions Act.

The effect of this item is to retain previous references to capital payments as a matter relating to the payment of subsidy while removing previous references to non-compliance deductions, as this item is consequential to repeal of the concept of **non-compliance deductions** from the Transitional Provisions Act by items 58 and 96 of Schedule 1 to the Royal Commission Response Act.

Item 8 – Division 3 of Part 2 of Chapter 2

This item repeals Division 3 of Part 2 of Chapter 2, which dealt with non-compliance deductions in sections 14, 15 and 16 of the Transitional Provisions Principles. This item is consequential to repeal of the concept of **non-compliance deductions** from the Transitional Provisions Act through items 58 and 96 of Schedule 1 to the Royal Commission Response Act.

Item 9 – Subparagraphs 17(b)(iii) and (c)(ii)

Section 17, for the purposes of Division 44 of the Transitional Provisions Act, specifies that Part 3 of Chapter 2 of the Transitional Provisions Principles sets out matters in relation to the amount of residential care subsidy payable to an approved provider of a residential care service in respect of a continuing care recipient who is being provided with residential care through the service.

This item removes from the list of matters the charge exempt resident supplement in subparagraph 17(b)(iii) and the transitional supplement in subparagraph 17(c)(ii).

This item is consequential to repeal of the charge exempt resident supplement from the Transitional Provisions Act by items 64, 76 and 94 of Schedule 1 to the Royal Commission Response Act.

This item is also consequential to repeal of the transitional supplement through item 18 of Schedule 2 to the Amending Instrument.

Item 10 – Paragraph 17(g)

Section 17, for the purposes of Division 44 of the Transitional Provisions Act, specifies that Part 3 of Chapter 2 of the Transitional Provisions Principles sets out matters in relation to the amount of residential care subsidy payable to an approved provider of a residential care

service in respect of a continuing care recipient who is being provided with residential care through the service.

This item repeals and substitutes paragraph 17(g). The effect of the substituted wording is to remove consideration of the viability supplement from the list of matters in relation to residential care subsidy, as the viability supplement has been repealed (see item 20 of Schedule 2 to the Amending Instrument and items 76, 77 and 94 of Schedule 1 to the Royal Commission Response Act).

Paragraph 17(g) has been replaced by reference only to consideration of the hardship supplement, which continues to be in force, that may apply to the care recipient (see Division 8 of Part 2 of Chapter 2).

Item 11 – At the end of paragraph 17(h)

Section 17, for the purposes of Division 44 of the Transitional Provisions Act, specifies that Part 3 of Chapter 2 of the Transitional Provisions Principles sets out matters in relation to the amount of residential care subsidy payable to an approved provider of a residential care service in respect of a continuing care recipient who is being provided with residential care through the service.

This item adds to the list of matters for consideration in relation to residential care subsidy a new ‘other’ supplement, being the initial entry adjustment supplement as created by new section 64D (see item 23 of Schedule 2 to this Amending Instrument).

Item 12 – Section 18

This item repeals section 18, which dealt with how the **basic subsidy amount** under paragraph 44(3)(c) of the Transitional Provisions Act was determined for continuing respite care recipients.

There are no longer any continuing respite care recipients, and there cannot be any new continuing respite care recipients, meaning that there is no longer a requirement for section 18.

Item 13 – Subsection 19(1)

This item inserts additional wording into subsection 19(1) to clarify that the accommodation supplement for a care recipient is “payable for a day”.

Item 14 – Paragraphs 19(1)(c) and (d)

Section 19 deals with other matters on which the Minister may base a determination of different amounts (including nil amounts) of the accommodation supplement amount for a care recipient who is being provided with residential care (other than respite care or care provided on an extra service basis) through a residential care service. Section 19 is made for the purposes of paragraph 44-5A(4)(b) of the Transitional Provisions Act.

This item repeals two rules as set out in former paragraphs 19(1)(c) and (d) relating to whether certain proportions of care recipients in the resident population are provided with care and substitutes one rule relating to whether a certain proportion of persons in the resident population are provided with care.

The amended test under paragraph 19(1)(c) is whether the residential care percentage (within the meaning of subsection 91(3) of the (Subsidy and Other Measures Determination) for the service for the payment period in which the day occurs is 40% or more. See also item 38 of Schedule 2 to the Amending Instrument.

The effect of this item is to simplify an arrangement that encourages providers to provide care to residents with limited means.

Item 15 – Section 20

Section 20 deals with other matters on which the Minister may base a determination of different amounts (including nil amounts) of the concessional resident supplement for a care recipient who is being provided with residential care (other than respite care) through a residential care service. Section 20 is made for the purposes of paragraph 44-6(5)(d) of the Transitional Provisions Act.

This item amends the chapeau of section 20 to specify that the section deals with other matters for the amount of concessional resident supplement payable for a day for a care recipient who is being provided with residential care (other than respite care) through a residential care service and who meets conditions in following paragraphs.

The chapeau was previously limited to other matters for the concessional resident supplement for a concessional resident or an assisted resident (referred to as “the care recipient”) who is being provided with residential care (other than respite care) through a residential care service.

This item is consequential to items 66 to 69 of Schedule 1 to the Royal Commission Response Act, which repealed rules that previously required different rates of concessional resident supplement for concessional residents and assisted residents. This means that the amount of concessional resident supplement payable for a care recipient who is being provided with residential care through a residential care service will be the same regardless of whether the care recipient is a concessional resident or an assisted resident.

Item 16 – Paragraph 20(c)

Section 20 deals with other matters relating to determination of concessional resident supplement.

This item repeals a rule as set out in former paragraph 20(c) relating to whether certain proportions of care recipients in the resident population are provided with care and substitutes one rule relating to whether a certain proportion of persons in the resident population are provided with care.

The amended test under paragraph 20(c) is whether or not the residential care percentage (within the meaning of subsection 91(3) of the Subsidy and Other Measures Determination) for the service for the payment period in which the day occurs is 40% or more. See also item 38 of Schedule 2 to the Amending Instrument.

The effect of this item is to simplify an arrangement that encourages providers to provide care to residents with limited means.

Item 17 – Subdivision C Of Division 3 of Part 3 of Chapter 2

This item repeals Subdivision C of Division 3 of Part 3 of Chapter 2 (which contains sections 21 to 23), which dealt with the charge exempt resident supplement. This is a consequential amendment to the repeal of the supplement from the Transitional Provisions Act by items 64, 76 and 94 of Schedule 1 to the Royal Commission Response Act.

With the commencement of the new AN-ACC residential aged care funding model from 1 October 2022 through the amendments in the Royal Commission Response Act and this Amending Instrument, the charge exempt resident supplement is no longer required. No care recipients will be disadvantaged by the change, as those care recipients who were eligible for the charge exempt resident supplement become eligible for the concessional resident supplement instead.

Item 18 – Subdivision B of Division 4 of Part 3 of Chapter 2

This item repeals Subdivision B of Division 4 of Part 3 of Chapter 2 (which contains sections 32 and 33), which dealt with the transitional supplement, which was an additional primary supplement made under section 44-16 of the Transitional Provisions Act.

With the commencement of the new AN-ACC residential aged care funding model from 1 October 2022 through the amendments in the Royal Commission Response Act and this Amending Instrument, the transitional supplement is no longer required. No care recipients will be disadvantaged by the change, as those care recipients who were eligible for the transitional supplement become eligible for the concessional resident supplement instead.

Item 19 – Subsection 51(2) (note 3)

This item omits and substitutes note 3 to subsection 51(2) to provide that Clause 17A of Schedule 5 of the *Veterans' Entitlements Act 1986* (Veterans' Entitlements Act) describes how, for the purposes of that Act, income is defined in relation to a person who first became a charge exempt resident before the commencement of Schedules 1, 2 and 3 to the *Aged Care Amendment (Omnibus) Act 1999*.

The effect of this item is to update the note to exclude the reference to the Social Security Act and include the correct references to the Veterans' Entitlements Act as the former references had become outdated.

Item 20 – Subdivision A of Division 8 of Part 3 of Chapter 2

This item repeals Subdivision A of Division 8 of Part 3 of Chapter 2 (which contains section 55), which dealt with the viability supplement. This is a consequential amendment to the repeal of the viability supplement from the Transitional Provisions Act by items 76 and 77 of Schedule 1 to the Royal Commission Response Act.

Item 21 – Subdivision D of Division 8 of Part 3 of Chapter 2, Item 22 – section 62

Subdivision D of Division 8 of Part 3 of Chapter 2 (which contains sections 62 and 63) deals with the homeless supplement.

Item 21 amends the heading of the Subdivision to “Subdivision D—Homeless supplement for payment periods beginning before 1 October 2022”.

Item 22 amends the chapeau of section 62 to specify that the homeless supplement for a care recipient in respect of a payment period beginning before 1 October 2022 is the sum of all the

homeless supplements for the days during the period on which certain matters subsequently listed in paragraphs 62(a) and (b) occur.

With the commencement of a new residential aged care funding model from 1 October 2022 through the amendments in the Royal Commission Response Act and the Amending Instrument, funding previously provided through the homeless supplement will be covered by the new method of calculating the basic subsidy amount.

The homeless supplement is maintained in legislation for the period before 1 October 2022 for historical claims adjustment purposes only.

Item 23 – At the end of Division 8 of Part 3 of Chapter 2

This item inserts Subdivision H into Division 8 of Part 3 of Chapter 2, consisting of section 64D. The item creates a new “other supplement” for the purposes of paragraph 44-27(1)(e) of the Transitional Provisions Act, known as the initial entry adjustment supplement.

The new initial entry adjustment supplement applies to a care recipient in respect of a payment period if:

- the payment period begins on or after 1 October 2022; and
- the first day on which the care recipient entered the residential care service in question to be provided with residential care as non-respite care occurred during the payment period; and
- the care recipient was provided with that care on that day through that service.

The supplement is created in recognition of the temporary additional costs of settling a new care recipient into non-respite residential care at a residential care service.

For the value of the supplement, see section 91Q of the Subsidy and Other Measures Determination as inserted by item 38 of Schedule 2 to the Amending Instrument.

Item 24 – Paragraph 107(a)

Section 107 deals with accommodation charge agreement requirements when a financial hardship determination is sought in relation to a care recipient. This item repeals a reference to the repealed concept of a charge exempt resident from section 107(1)(a).

This item is consequential to item 70 of Schedule 1 to the Royal Commission Response Act, which repealed the concepts of a charge exempt resident and charge exempt resident supplement from the Transitional Provisions Act.

Item 25 – Chapter 5

This item repeals and substitutes Chapter 5. Former Chapter 5—Miscellaneous dealt with the historic expiry of certain provisions relating to the payroll tax supplement and the dementia and severe behaviours supplement, which are no longer required.

The substituted Chapter 5, which provides for application, transitional and saving provisions, contains new section 131 which specifies that the transitional supplement as in force immediately before 1 October 2022, continues to apply, on and after that day, in relation to a payment period that began before that day, despite repeal of the transitional supplement through item 18 of Schedule 2 to the Amending Instrument.

The effect of this item is that the transitional supplement continues to be in force for payment periods beginning before 1 October 2022 but will not apply to any payment periods beginning on or after 1 October 2022 given the supplement has been repealed.

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

Item 26 – Section 5

This item inserts into section 5 of the Subsidy and Other Measures Determination a definition that **certified**, in relation to a residential care service, has the same meaning as in the Transitional Provisions Principles.

The term **certified** was previously defined in section 20 of the Subsidy and Other Measures Determination. That definition is repealed from section 20 through item 31 of Schedule 2 to this Amending Instrument.

The definition in the Transitional Provisions Principles is identical to the definition that was previously in section 20 of the Subsidy and Other Measures Determination, and, as with that repealed definition, is defined by reference to the definition used in the Aged Care Act before 17 October 2014. At that time, through repealed Part 2.6, the Aged Care Act dealt with certification of residential care services. That version of the Aged Care Act can be viewed on the Federal Register of Legislation (see registered ID C2014C00687).

Item 27 – Section 5 (definition of *relevant resident*)

This item amends the definition of relevant resident by omitting the reference to the definition in the Subsidy Principles and instead references the definition in the Transitional Provisions Principles.

Item 21 of Schedule 1 to the Amending Instrument repealed the definition from the Subsidy Principles while item 5 of Schedule 2 to this Amending Instrument sets out the replacement definition of relevant resident in the Transitional Provisions Principles, which has substantially the same meaning as the previous definition.

Item 28 – Chapter 2 (at the end of the heading)

This item amends the heading of Chapter 2 (which contains sections 6 to 79F) to add ‘for payment periods beginning before 1 October 2022’. This change will mean that Chapter 2 will relate only to the subsidies under the current funding model that apply until the end of the September 2022 payment period. This is because Chapter 3 deals with the Australian National Aged Care Classification (AN-ACC) funding model, as introduced by Schedule 1 to the Royal Commission Response Act, which commences on 1 October 2022.

The new AN-ACC funding model established by Chapter 3 (which contains sections 80 to 91Q) applies to all payment periods commencing on or after 1 October 2022. See item 38 to Schedule 2 to the Amending Instrument.

Item 29 – Before Part 1 of Chapter 2

This item inserts Part 1A – Application of this Chapter. This includes section 5A which states that this Chapter applies in relation to a payment period that begins before 1 October 2022.

This is a consequential amendment to item 28 above and item 38 below.

Item 30 – Section 7 (definition of *ACFI classification*)

This item amends the definition of ACFI classification to limit this definition to classifications made under Part 2.4 of the Aged Care Act. Part 2.4 restricts the operation of those classifications to before 1 October 2022.

Item 31 – Section 7 (definition of *certified*)

This item repeals the definition of certified from section 20. Through item 26 of Schedule 2 to the Amending Instrument, substantively the same definition of certified is retained in the Subsidy and Other Measures Determination by inserting the definition into section 5 instead.

Item 32 – Section 24 (note)

Section 24 provides that Division 3 of Part 2 of Chapter 2 sets out the amount of the charge exempt resident supplement for a day for an eligible charge exempt resident. As the application of Chapter 2 is amended through the Amending Instrument, under this section the charge exempt resident supplement is payable for payment periods beginning before 1 October 2022.

This item repeals and substitutes the note to section 24 which is a consequential amendment to the repeal of the charge exempt resident supplement through repeal of section 44-8A of the Transitional Provisions Act by item 70 of Schedule 1 to the Royal Commission Response Act and item 17 of Schedule 2 to the Amending Instrument.

This note now explains that the charge exempt resident supplement, as set out in the now-repealed sections 44-8A and 44-8B of the Transitional Provisions Act as in force immediately before 1 October 2022, continues to apply in relation to a payment period that starts before that day.

This item is also consequential to item 98 of Schedule 1 to the Royal Commission Response Act, a saving provision for the otherwise repealed concept of the charge exempt resident supplement.

Item 33 – Section 25 (at the end of the definition of *eligible charge exempt resident*)

Section 25 provides for the definition of eligible charge exempt resident for the purposes of Division 3 of Part 2 of Chapter 2 of the Subsidy and Other Measures Determination (that is, the charge exempt resident supplement).

This item inserts a note at the end of the definition of eligible charge exempt resident that explains that the term charge exempt resident has the meaning given by now-repealed section 44-8B of the Transitional Provisions Act, as it was in force immediately before 1 October 2022.

This item is consequential to item 98 of Schedule 1 to the Royal Commission Response Act, a saving provision for the otherwise repealed concept of charge exempt resident.

Item 34 – Subsection 52(2)

Section 52 provides that Division 8 of Part 2 of Chapter 2 sets out the amount of the transitional supplement for a day for a care recipient. As the application of Chapter 2 is amended through the Amending Instrument, under this section the transitional supplement is payable for payment periods beginning before 1 October 2022.

This item amends subsection 52(2) to provide that, for Division 8 of Part 2 of Chapter 2, the transitional supplement is the transitional supplement set out in repealed Subdivision B of Division 4 of Part 3 of Chapter 2 of the Transitional Provisions Principles. The provision as amended is retained for use with respect to days in a payment period prior to 1 October 2022.

This item is consequential to repeal of Subdivision B of Division 4 of Part 3 of Chapter 2 of the Transitional Provisions Principles (that is, the transitional supplement) through item 18 of Schedule 2 to the Amending Instrument.

Item 35 – At the end of section 64

Section 64 provides that Part 3 of Chapter 2 sets out the amount of the adjusted subsidy reduction for a day for a care recipient. As the application of Chapter 2 is amended through the Amending Instrument, under this section adjusted subsidy reduction applies to payment periods before 1 October 2022.

This item inserts a note at the end of the section that explains that the adjusted subsidy reduction, as it was established by the now-repealed section 44-19 of the Transitional Provisions Act as in force immediately before 1 October 2022, continues to apply in relation to a payment period that starts before that day.

This item is consequential to item 100 of Schedule 1 to the Royal Commission Response Act, a saving provision for the otherwise repealed concept of the adjusted subsidy reduction.

Item 36 (repeal and substitute the note at the end of section 68 - viability supplement)

Section 68 provides that Division 2 of Part 3 of Chapter 2 sets out the amount of the viability supplement for a day for a care recipient. As the application of Chapter 2 is amended by the Amending Instrument the viability supplement is payable for payment periods before 1 October 2022.

This item inserts a note at the end of the section that explains that the viability supplement, as it was established by the now-repealed section 44-29 of the Transitional Provisions Act as in force immediately before 1 October 2022, continues to apply in relation to a payment period that starts before that day.

This item is consequential to item 98 of Schedule 1 to the Royal Commission Response Act, a saving provision for the otherwise repealed concept of the viability supplement.

Item 37 Subsection 72(2) (note 1)

Section 72 deals with the amount of hardship supplement for certain charge exempt residents (that is, a care recipient who is a member of the class specified in paragraph 56(1)(b) of the Transitional Provisions Principles). As the application of Chapter 2 is amended by the Amending Instrument, under this section the hardship supplement is payable for payment periods before 1 October 2022.

This item amends note 1 to subsection 72(2) to explain that charge exempt resident has the meaning given by repealed section 44- 8B of the Transitional Provisions Act.

This item is a consequential amendment consequential to item 70 of Schedule 1 of the Royal Commission Response Act, which repealed section 44-8B of the Transitional Provisions Act,

and item 98 of Schedule 1 to the Royal Commission Response Act, a saving provision for the otherwise repealed concept of charge exempt resident.

Item 38 – After Chapter 2

This item creates Chapter 3 dealing with residential care subsidy for payment periods beginning on or after 1 October 2022. Arrangements under Chapter 2 continue to apply historically to days before 1 October 2022, for example for subsidy claims adjustments.

Chapter 3 establishes the detailed legislative framework for the new AN-ACC funding model in relation to continuing care recipients (that is, care recipients who are subject to the Transitional Provisions Act). Chapter 3 substantially mirrors the scheme set out in the Aged Care Act and the Subsidy, Fees and Payments (through the amendments in Schedule 1 to the Amending Instrument) in relation to non-continuing care recipients.

Chapter 3—Residential care subsidy for payment periods beginning on or after 1 October 2022

This item inserts Chapter 3 – Residential care subsidy for payment periods beginning on or after 1 October 2022. Along with Schedule 1 to the Royal Commission Response Act, the effect of this amendment is to introduce the new AN-ACC funding model.

Part 1—Preliminary

This item inserts a Part 1 into Chapter 3 that deals with preliminary matters for residential care subsidy for payment periods beginning on and after 1 October 2022.

Section 80 Application of this Chapter

Section 80 that provides that Chapter 3 applies to payment periods beginning on or after 1 October 2022.

As a payment period is a calendar month (see section 43-2 of the Transitional Provisions Act), the first applicable payment period for the provisions in Chapter 3 will be the month of October 2022.

Section 81 Definitions

Section 81 sets out the following definitions:

applicable amount for a day for a care recipient is set out in section 82 of the Subsidy and Other Measures Determination.

classification means a classification made under Part 2.4A of the Aged Care Act.

has specialised ATSI status on a day has the same meaning as in Chapter 2A of the Subsidy, Fees and Payments Determination. See item 5 of Schedule 1 to the Amending Instrument.

has specialised homeless status on a day has the same meaning as in Chapter 2A of the Subsidy, Fees and Payments Determination. See item 5 of Schedule 1 to the Amending Instrument.

minimum permissible asset value has the same meaning as in subsection 57-12(3) of the Transitional Provisions Act.

MM category means a category for an area provided for by the Modified Monash Model and known as MM 1, MM 2, MM 3, MM 4, MM 5, MM 6 or MM 7.

Modified Monash Model means the model known as the Modified Monash Model (MMM) 2019 developed by the Health Department to categorise areas according to geographical remoteness and population size, as the model exists on 1 October 2022.

At the making of this instrument, the Modified Monash Model could be freely accessed by members of the public on the Department of Health and Aged Care's website (<https://www.health.gov.au/health-topics/rural-health-workforce/classifications/mmm>).

national efficient price for residential care activity is \$216.80. This is the amount at 1 October 2022, and may change through future determinations.

non-respite care has the same meaning as in the Transitional Provisions Act.

non-respite classification amount – this amount for a care recipient for a day is set out in section 83 of the Subsidy and Other Measures Determination.

NWAW (short for **National Weighted Activity Unit**) means a measure of residential care activity, expressed as a common unit, against which the national efficient price is set.

An effect of the definition is that the national efficient price is also the “value” of 1 NWAW.

operational places are defined in subsection 84(2) of the Subsidy and Other Measures Determination.

reduced applicable amount for a day for a care recipient is determined using the formula set out in subsection 91(4) of the Subsidy and Other Measures Determination.

residential care percentage for a residential care service is determined using the formula set out in subsection 91(3) of the Subsidy and Other Measures Determination.

service amount for a care recipient for a day is set out in section 84 of the Subsidy and Other Measures Determination.

Section 82 Meaning of applicable amount for a day for a care recipient

Section 82 defines the meaning of the **applicable amount** for a day for a care recipient being provided with residential care through a residential care service. Different applicable amounts will apply depending on the age of the residential care service in which the care recipient is receiving care and whether the residential care service meets the privacy and space requirements set out in Schedule 1 to the Transitional Provisions Principles.

As at 1 October 2022 the amounts are:

- \$63.14 for residential care provided in a residential care service that meets the building requirements and is a newly built or significantly refurbished residential care service.
- \$41.17 for residential care provided in a residential care service that meets the building requirements but is not newly built or significantly refurbished residential care service.
- \$34.58 for residential care provided in a residential care service that does not meet the building requirements.

The building requirements are specified in Schedule 1 to the Transitional Provisions Principles.

Section 83 Meaning of *non-respite classification amount* for a care recipient for a day

Section 83 defines the **non-respite classification amount** for each class as the amount worked out by multiplying the national efficient price (\$216.80 at 1 October 2022) by the specified NWAU attributable to each classification as set out in the following table:

AN-ACC class	NWAU
Class 1	1.00
Class 2	0.19
Class 3	0.31
Class 4	0.21
Class 5	0.37
Class 6	0.35
Class 7	0.49
Class 8	0.54
Class 9	0.54
Class 10	0.87
Class 11	0.83
Class 12	0.81
Class 13	1.00

The note explains that the classification levels for classifications for non-respite care are those provided for by section 40 of the Classification Principles.

The non-respite classification amount reflects a core feature of the new funding arrangements introduced by the Amending Instrument being that subsidy varies with the specific characteristics of both care recipients and residential care services. These varying amounts are consistent with research that has found there is a need for different amounts of subsidy in different circumstances to meet the care needs of care recipients. The different non-respite classification amounts for different classes of care recipients are based on the actual cost of providing care to care recipients in the different non-respite classes.

For subsidy linked to residential care service characteristics, see section 84.

Section 84 Meaning of *service amount* for a care recipient for a day

Section 84 defines the meaning of **service amount** for a care recipient for a day. The service amount is an amount of subsidy that is determined by the specific characteristics of the residential care service where the care recipient receives residential care.

The service amount is another core feature of the new funding arrangements introduced by the Amending Instrument. Similar to the non-respite classification amount, the service amount varies depending on the specific characteristics of residential care services that research has found indicates a need for different amounts of subsidy to meet the costs of delivering care that meets the care needs of care recipients.

Characteristics of residential care services that result in different subsidy rates include geographic location, number of operational places (see subsection 84(2)), whether a service has specialised homeless status and whether a service has specialised ATSI status.

For subsidy linked to non-respite care recipient characteristics, see section 83.

Subsection 84(1) specifies that the service amount for a care recipient for a day is the amount worked out in accordance with what is specified in column 2 of the relevant item in a table, provided that:

- the care recipient is provided with residential care as non-respite care on a day through a residential care service; and
- on the day, the service also meets the requirements set out in column 1 of an item of the table.

For those residential care services that meet the requirements of items 5 to 7 of the table in subsection 84(1) the service amount per care recipient per day is the amount worked out by multiplying the national efficient price by the relevant NWAU.

Subsection 84(2) specifies that for those residential care services with a MM6 (remote) or MM7 (very remote) street address (that is, that meet the requirements in items 1 to 4 of the table in subsection 84(1)), the service amount is calculated through the following formula:

$$\text{National efficient price} \times \text{NWAU} \times \frac{\text{Operational places}}{\text{Occupied places}}$$

The effect is that these residential care services effectively receive subsidy that varies with the national efficient price, NWAU and the number of “operational places” – whether or not those “operational places” are occupied by a care recipient (subject, however, to otherwise meeting the general requirements to be eligible for subsidy in Part 3.1 of the Aged Care Act and Part 3.1 of the Transitional Provisions Act).

For each day, this funding is then split out across the care recipients in such a residential care service who are eligible to attract subsidy by dividing the amount by the number of “occupied places” to create a per-care recipient subsidy amount.

For the purpose of the formula in subsection 84(2):

Occupied places is defined to mean the total number of places allocated under Part 2.2 of the Aged Care Act to a person (that is, an approved provider) in respect of the relevant residential care service to which all of the following apply:

- the places are not provisionally allocated on the relevant day;
- the places are places in respect of which:
 - residential care is provided through the service to a care recipient on the relevant day; and
 - subsidy is payable for the provision of that care under Part 3.1 of the Aged Care Act or Part 3.1 of the Transitional Provisions Act.

The note to this definition explains that a care recipient who is on leave from the service is taken to be provided with residential care by the approved provider operating the service (see section 42-2 of the Aged Care Act and section 42-2 of the Transitional Provisions Act).

This clarifies that care recipients on leave from the residential care service are still to be counted in the number of places in respect of which residential care is provided through the service to a care recipient (see subparagraph 84(2)(b)(i)).

Operational places is defined to mean the total number of places allocated under Part 2.2 of the Aged Care Act to a person (that is, an approved provider) in respect of the relevant residential care service to which all of the following apply:

- the places are not provisionally allocated on the relevant day;
- if a notice relating to the service has been given under subsection 27B(2) of the Accountability Principles—the places are not places specified in the notice as offline places (within the meaning of paragraph 27B(3)(b) of those principles) for a period in which the relevant day occurs;
- the places are places in respect of which subsidy would be payable under Part 3.1 of the Aged Care Act, or Part 3.1 of the Transitional Provisions Act, if a care recipient were provided with residential care through the service on the relevant day.

The effect of this definition is to exclude from the count of operational places those allocated places through which an approved provider cannot offer subsidised care to care recipients. This ensures that the service amount is only paid in respect of the places for which they have the actual potential to provide care.

For provisionally allocated places, see also subsection 15-1(2) of the Aged Care Act.

For offline places, see also item 6 of Schedule 3 to the Amending Instrument.

Part 2 – Basic subsidy amount

Part 2 deals with the amount of basic subsidy, with effect on and after 1 October 2022.

For the amount of basic subsidy for a day before 1 October 2022, see Part 1 of Chapter 2 of the Subsidy and Other Measures Determination.

Division 1 Purpose of this Part

Section 85 Purpose of this Part

Section 85 specifies that Part 2 is made for the purposes of subsection 44-3(2) of the Transitional Provisions Act.

Section 44-3 of the Transitional Provisions Act has been amended by items 60 to 63 of Schedule 1 to the Royal Commission Response Act. As amended by item 60, subsection 44-3(2) provides that the basic subsidy amount for a care recipient for a day is the amount either determined by the Minister or worked out in accordance with a method determined by the Minister by legislative instrument.

Division 2 of Part 2 of this Subsidy and Other Measures Determination (that is, sections 86 and 87 – see below) sets out the calculation method for determining the basic subsidy amount.

Division 2 Basic Subsidy amount for care recipient provided with residential care as non-respite care

Division 2 of Part 2 deals with the basic subsidy amount for a care recipient provided with residential care as non-respite care.

Section 86 Basic subsidy amount – classification of care recipients is in effect

Section 86 specifies the basic subsidy amount when a classification of a care recipient for non-respite care is in effect.

Subsection 86(1) specifies that if a classification of a care recipient for non-respite care is in effect on a day then the basic subsidy amount for the recipient for that day is the amount equal to the sum of:

- the non-respite classification amount for the recipient for that day (see section 83); and
- the service amount for the recipient for that day (see section 84).

The note to the subsection explains that when a classification of a care recipient is in effect is dealt with in Part 11A of Chapter 3 of the Classification Principles.

The effect of subsection 86(1) is that subsidy varies with the specific characteristics of both care recipients and residential care services. This is a key feature of the new AN-ACC funding model that applies on and after 1 October 2022, which is designed to align funding with the cost of care provision.

Subsection 86(2) specifies that if the care recipient is on extended hospital leave and the classification which is in effect on a day is on or after the 29th day of the recipient's leave then the basic subsidy amount for the recipient for that day is the service amount for the recipient for that day. Extended hospital leave is defined in Schedule 1 to the Aged Care Act.

The effect of subsection 86(2) is that during an extended period in which a care recipient is on leave in the care of a hospital the amount of basic subsidy is reduced to the service amount.

Section 87 Basic Subsidy amount – care recipient not classified

Section 87 specifies the amount of basic subsidy when a care recipient has not yet been classified.

Subsection 87(1) specifies that if, on a day (the **relevant day**) a care recipient has not yet been classified for non-respite care under Part 2.4A of the Aged Care Act, then, subject to this section, the basic subsidy amount for the recipient for that is the amount equal to the sum of:

- the amount equal to the non-respite classification amount that would be worked out for the recipient for that day if it were assumed that a classification for non-respite care were in effect on that day and the classification level for the classification of the recipient were Class 8 (see section 83); and
- the service amount for the recipient for that day (see section 84).

The note explains that section 40 of the Classification Principles deals with the classification levels for classifications for non-respite care.

The effect of subsection 87(1) is that for a care recipient who has not yet been classified the rate of subsidy paid is equivalent to the amount if the care recipient had a Class 8 classification (except as other provisions in this section apply instead).

The note explains that section 40 of the Classification Principles provides for the classification levels for classifications for non-respite care.

The effect of subsection 87(1) is that for a care recipient who has not yet been classified the rate of subsidy paid is equivalent to the amount if the care recipient had a Class 8 classification (except as other provisions in this section apply instead). This will ensure all care recipients receive an amount of basic subsidy under the new funding arrangements on and from 1 October 2022.

Entry for palliative care

Subsection 87(2) specifies that if:

- if on a day (the **relevant day**) the care recipient is provided with residential care as non-respite care in the form of palliative care through the residential care service in question; and
- the approved provider of the service notified, in accordance with section 63-1B of the Aged Care Act, the Secretary of the recipient's entry into that service for the provision of such care; and
- the recipient is not on extended hospital leave on the relevant day;

then the basic subsidy amount for the recipient for the relevant day is the amount equal to the sum of:

- the amount equal to the non-respite classification amount that would be worked out for the recipient for that day if it were assumed that:
 - a classification of the recipient for non-respite care were in effect on that day; and
 - the classification level for the classification of the recipient were Class 1; and
- the service amount for the recipient for that day.

The note explains that section 40 of the Classification Principles provides for the classification levels for classifications for non-respite care.

The effect of subsection 87(2) is that if a care recipient has been admitted for palliative care but has not yet been classified the rate of subsidy which is paid is equivalent to the subsidy amount as if the care recipient had a Class 1 classification (see section 64K) (except as other provisions in this section apply instead).

Extended hospital leave

Subsection 87(3) specifies that if the care recipient is on extended hospital leave on a day when they have not yet been classified (the **relevant day**) and the relevant day is on or after the 29th day of the recipient's leave, then the basic subsidy amount for the recipient for that day is only the service amount for the recipient for that day.

The effect of subsection 87(3) is that during an extended period in which a care recipient is on leave in the care of a hospital the amount of basic subsidy is reduced to the service amount for that day, in line with the payment for care recipients that have a classification (see subsection 86(2)).

Care recipient classified after the relevant day

Subsection 87(4) specifies that if the care recipient is classified for non-respite care under Part 2.4A of the Aged Care Act after the day the classification comes into effect, and the classification has effect on a day on which the care recipient was yet to be classified then section 87 is to be taken not to have applied in relation to the recipient in respect of that day.

The note explains that a classification may take effect on a day that is before the day a care recipient is classified (see Part 11A of Chapter 3 of the Classification Principles).

The effect of subsection 87(4) is that once a care recipient becomes classified their classification replaces the basic subsidy amount under section 87(1) that has been paid up to the date the classification is made. This is realised through a payment adjustment process.

Part 3—Adjusted basic subsidy amount

Part 3 inserts the adjusted basic subsidy amount into the Subsidy and Other Measures Determination.

Part 3 is consequential to the amendment of section 44-21 of the Transitional Provisions Act through item 74 of Schedule 1 to the Royal Commission Response Act.

Section 44-21(5) of the Transitional Provisions Act, as amended, specifies that an adjusted basic subsidy amount is an amount to be determined by the Minister or worked out in accordance with a method determined by the Minister. The adjusted basic subsidy amount is used in relation to the amount of the income tested reduction (see subsections 44-21(2) and (3) of the Transitional Provisions Act as amended by the Royal Commission Response Act).

Section 88 Purpose of this Part

Section 88 specifies that Part 3 is made for the purposes of subsection 44-21(5) of the Transitional Provisions Act.

Section 89 Adjusted basic subsidy amount – care recipient provided with residential care as non-respite care.

Section 89 specifies that the adjusted basic subsidy amount for a care recipient who is provided with residential care as non-respite care is calculated by adding the care recipient's classification subsidy amount (see section 83) and the service amount for a residential care service that meets the requirements of column 1 of item 7 of the table in subsection 84(1), and not the service amount that would otherwise apply based on the location and specialised status of the residential care service. The service amount associated with that type of residential care service attracts the lowest service amount among all service amounts.

The effect is that care recipients' income tested reduction and any related fees—being amounts provided for by section 44-21 of the Aged Care Act—will not differ because of the characteristics of the residential care service in which they receive care. Defining the adjusted basic subsidy amount in this way is equitable for care recipients, particularly regional, rural and remote care recipients, as it ensures that care recipients with similar means will pay similar income tested fees regardless of the location of the residential care service in which they receive care.

Part 4 – Amounts of primary supplements

Part 4 deals with the amounts of primary supplement.

Primary supplements are provided for by Subdivision 44-C of Part 3.1 of Chapter 3 of the Transitional Provisions Act.

Division 1 – Accommodation supplement

Division 1 deals with the amount of the accommodation supplement, with effect on and after 1 October 2022.

The accommodation supplement for days before 1 October 2022 is set out in Division 1 of Part 2 of Chapter 2 (containing sections 13 to 17) of the Subsidy and Other Measures Determination.

Section 90 Purpose of this Division

Section 90 specifies that the Division 1 of Part 4 of Chapter 3 is made for the purposes of subsection 44-5A(3) of the Transitional Provisions Act, which provides that the accommodation supplement for a particular day is the amount determined by the Minister by legislative instrument or worked out in accordance with a method determined by the Minister by legislative instrument.

The note to section 90 explains that Subdivision A of Division 3 of Part 3 of Chapter 2 (containing section 19) of the Transitional Provisions Principles also deals with the accommodation supplement.

Section 91 Amount of accommodation supplement – general rule

Section 91 deals with the general rule for the amount of accommodation supplement or a care recipient provided with residential care as non-respite care for a day as an amount that depends on a care recipient's means and the proportion of care recipients at the residential care service with limited income and/or means.

Subsection 91(1) specifies that section 91 applies to a care recipient if the recipient is provided with residential care as non-respite care through a residential care service on a day and, on that day, section 91A does not apply in relation to the recipient.

Subsection 91(2) provides that, subject to subsections 91(1) above and 91(4)-(6) below, the amount of the accommodation supplement for an eligible care recipient is the applicable amount (as defined in section 82 above) for the day (where the **residential care percentage** (see subsection 91(3) below) for the service in a payment period is 40% or more) or the applicable amount reduced by 25% as applicable.

The purpose of the accommodation supplement is to provide supplementary funding when a care recipient has limited means to contribute to the cost of their accommodation and aims to incentivise approved providers to provide care to care recipients with limited income and/or means.

Residential care percentage

Subsection 91(3) sets out that the residential care percentage is calculated using the following formula:

$$\frac{\text{care for relevant residents}}{\text{care for all residents}} \times 100$$

care for all residents means the total number of days, in the payment period, on which the residential care service provided residential care as non-respite care to each care recipient:

- who is approved under Part 2.3 of the Aged Care Act as a recipient of that kind of care; and

- who is not an excluded resident (see further below in this section for who is an excluded resident).

care for relevant residents means the total number of days, in the payment period, on which the residential care service provided residential care as non-respite care to each care recipient:

- who is approved under Part 2.3 of the Aged Care Act as a recipient of that kind of care; and
- who is a relevant resident; and
- who is not an excluded resident (discussed below).

excluded resident means a care recipient to whom both of the following apply: the recipient is provided with residential care as non-respite care on an extra service basis within the meaning of subsection 36-1 of the Aged Care Act on a day;

- a determination is not in force under section 52K-1 of the Aged Care Act in relation to the recipient on the day.

relevant resident means each of the following:

- a care recipient who is eligible for a concessional resident supplement for a day under section 44-6 of the Transitional Provisions Act (see Subdivision B of Division 3 of Part 3 of Chapter 2 of the Transitional Provisions Principles);
- a supported resident (see section 44-5B of the Transitional Provisions Act);
- a low-means care recipient (see section 7 of the Transitional Provisions Principles).

The effect of this is to limit the definition of “relevant resident” to only care recipients with limited income and/or means.

This calculation means that the provision of care in the residential care service for care recipients with limited means is taken into account over the whole of the relevant payment period rather than in respect of individual days during the payment period.

The intent of this provision is to prevent fluctuations in the accommodation supplement rate where the 25% reduction might otherwise apply for individual days in a payment period even though the 40% requirement was met by the service over the payment period as a whole.

Reduced applicable amount

Subsection 91(4) defines the reduced applicable amount used in subsection 91(2) for a day for a care recipient as the amount calculated using the following formula:

$$\text{applicable amount} = \frac{\text{assets-related amount} - \text{minimum permissible asset value}}{2080}$$

applicable amount means the applicable amount for the day for the care recipient (see sections 81 and 82 of the Subsidy and Other Measures Determination).

assets-related amount means as applicable one of the following three amounts:

- The amount equal to the sum of the maximum amount specified in the determination, and the minimum permissible asset value for the recipient, if in relation to the care recipient a determination is in force under paragraph 57-14(1)(b) of the Transitional Provisions Act (where a determination under paragraph 57-14(b) of the Transitional Provisions Act is in force).

Provisions Act relates to the accommodation bond payable in cases of financial hardship).

- The amount equal to the sum of the maximum daily amount specified in the determination multiplied by 2080 and the minimum permissible asset value for the recipient, if in relation to the care recipient a determination is in force under paragraph 57A-9(1)(b) of the Transitional Provisions Act (where a determination under paragraph 57A-9(1)(b) of the Transitional Provisions Act relates to the accommodation charge payable in cases of financial hardship).
- the value of the care recipient's assets at the time that applies under section 43 of the Transitional Provisions Principles in relation to the recipient.

Minimum permissible asset value means the minimum permissible asset value for the care recipient (see section 81).

The effect of the definition of reduced applicable amount is that the amount of the accommodation supplement for a care recipient for a day is reduced for having assets above a certain threshold. This is consistent with the intention of the accommodation supplement being to create an incentive for approved providers to provide care to a significant proportion of care recipients with limited income and/or means.

Section 91A Amount of accommodation supplement – accommodation bond not charged etc.

Section 91A deals with an alternative amount of accommodation supplement to that specified in section 91 in certain circumstances, including when an accommodation bond was not charged.

Subsection 91A(1) specifies that the section applies to a care recipient if the care recipient is provided with residential care as non-respite care through a residential care service on a day and on that day:

- a financial hardship determination is in force under paragraph 57-14(1)(a) or 57A-9(1)(a) of the Transitional Provisions Act in relation to the recipient; or
- the value of the recipient's assets is less than the minimum permissible asset value for the recipient.

For minimum permissible asset value, see section 81.

Subsection 91A(2) specifies that if the section applies to a care recipient the amount of the accommodation supplement for the day for the care recipient is the applicable amount for the day for the recipient if the residential care percentage for the service for the payment period in which the day occurs is 40% or more, or otherwise the amount worked out by reducing the applicable amount for the day for the recipient by 25%.

For the applicable amount, see section 82.

The effect is to create an incentive for approved providers to provide care to a significant proportion of care recipients with limited income and/or means.

Division 2 – Concessional resident supplement

Division 2 of Part 4 of Chapter 3 deals with the amount of the concessional resident supplement, with effect on and after 1 October 2022.

The concessional resident supplement for days before 1 October 2022 is set out in Division 2 of Part 2 of Chapter 2 (containing sections 19 to 23A) of the Subsidy and Other Measures Determination.

Section 91B Amount of concessional resident supplement

Section 91B sets out the amount of concessional resident supplement as a calculated amount that depends on the proportion of care recipients at the residential care service with limited income and/or means.

The effect is to create an incentive for approved providers to provide care to a significant proportion of care recipients with limited income and/or means.

Subsection 91B(1) sets out that the section is made for the purposes of subsection 44-6(4) of the Transitional Provisions Act.

The note explains that Subdivision B of Division 3 of Part 3 of Chapter 2 (containing section 20) of the Transitional Provisions Principles also deals with the concessional resident supplement.

Subsection 91B(2) specifies that the amount of the concessional resident supplement for a day for a care recipient provided with residential care as non-respite care through a residential care service is the applicable amount for the day for the recipient if the residential care percentage for the service for the payment period in which the day occurs is 40% or more, or otherwise the amount worked out by reducing the applicable amount for the day for the recipient by 25%.

For the applicable amount, see section 82.

For the residential care percentage, see subsection 91(3).

Subsection 91B(3) specifies that, despite subsection 91(2), the amount of the concessional resident supplement for the day for the care recipient is nil if:

- the recipient is a concessional resident or an assisted resident; and
- the recipient entered the service before 17 October 2014; and
- on the day of entry, the service was not certified.

The effect is to carry forward for the period on and after 1 October 2022 a historical measure that encouraged approved providers to certify residential care services. For the definition of certified see item 26 of Schedule 2 to this Amending Instrument.

Division 3 - Oxygen Supplement

Division 3 of Part 4 of Chapter 3 deals with the amount of the oxygen supplement, with effect on and after 1 October 2022.

The oxygen supplement for days before 1 October 2022 is set under Division 5 of Part 2 of Chapter 2 (containing sections 35 and 36) of the Subsidy and Other Measures Determination.

Section 91C Amount of oxygen supplement

Section 91C specifies that, for the purposes of subsection 44-13(6) of the Transitional Provisions Act, the amount of the oxygen supplement for an eligible care recipient for a day at 1 October 2022 is \$12.73.

The note explains that Subdivision E of Division 3 of Part 3 of Chapter 2 of the Transitional Provisions Principles also deals with the oxygen supplement.

Division 4 – Enteral feeding supplement

Division 4 of Part 4 of Chapter 3 deals with the amount of the enteral feeding supplement, with effect on and after 1 October 2022.

The enteral feeding supplement for days before 1 October 2022 is set under Division 6 of Part 2 of Chapter 2 (containing sections 37 and 38) of the Subsidy and Other Measures Determination.

Section 91D Amount of enteral feeding supplement

Section 91D specifies that, for the purposes of section 44-14(6) of the Transitional Provisions Act, the amount of the enteral feeding supplement for an eligible care recipient for a day at 1 October 2022 is \$20.17 for bolus feeding and \$22.65 for non-bolus feeding.

The note explains that Subdivision F of Division 3 of Part 3 of Chapter 2 of the Transitional Provisions Principles also deals with the enteral feeding supplement.

Division 5 – Accommodation charge top-up supplement

Division 5 of Part 4 of Chapter 3 deals with the amount of accommodation charge top-up supplement, with effect on and after 1 October 2022.

The accommodation charge top-up supplement for days before 1 October 2022 is set under Division 9 of Part 2 of Chapter 2 (containing sections 54 and 55) of the Subsidy and Other Measures Determination.

Section 91E Amount of accommodation charge top-up supplement

Section 91E deals with the amount of the accommodation charge top-up supplement.

Subsection 91E(1) specifies that section 91E is made for the purposes of subsection 44-16(3) of the Transitional Provisions Act.

The note explains that the accommodation charge top up supplement is set out in Subdivision C of Division 4 of Part 3 of Chapter 2 (containing sections 34 and 35) of the Transitional Provisions Principles, and that eligibility for the supplement is dealt with in that Subdivision.

Subsection 91E(2) specifies that the amount of the accommodation charge top up supplement for a day for a care recipient is the a calculated amount, being the difference between:

- the maximum daily amount at which an accommodation charge would accrue for the entry of the care recipient if the care recipient were not receiving an income support payment on the care recipient's date of entry, as calculated under section 57-6 of the Transitional Provisions Act; and

- the maximum daily amount at which an accommodation charge would accrue for the entry of the care recipient to the service if the recipient were a post-reform 2008 resident who was receiving an income support payment on the care recipient’s date of entry, as specified under subsection 118(2) of the Transitional Provisions Principles.

Subsection 91E(3) specifies that the amount of accommodation charge top up supplement for a day for the care recipient is nil if the amount worked out under subsection (2) is a negative amount.

The effect of this section is to provide for an amount of accommodation charge top-up supplement in circumstances where a pensioner care recipient who entered care for high level care from 20 March 2008 to 19 March 2019 was liable to pay a reduced accommodation charge on entry to the residential care service because the care recipient was receiving an income support payment at the time.

Division 6 – Transitional accommodation supplement

Division 6 of Part 4 of Chapter 3 deals with the amount of the transitional accommodation supplement, with effect on and after 1 October 2022.

The transitional accommodation supplement for days before 1 October 2022 is set under Division 10 of Part 2 of Chapter 2 (containing sections 56 and 57) of the Subsidy and Other Measures Determination.

Section 91F Amount of transitional accommodation supplement

Section 91F deals with the amount of transitional accommodation supplement.

Subsection 91F(1) specifies that the new section is made for the purposes of subsection 44-16(3) of the Transitional Provisions Act.

The note explains that the transitional accommodation supplement is set out in Subdivision D of Division 4 of Part 3 of Chapter 2 (containing sections 36 and 37) of the Transitional Provisions Principles, and that eligibility for the supplement is dealt with in that Subdivision.

Subsection 91F(2) specifies the amount of the transitional accommodation supplement for a day for a care recipient who entered care between 20 March 2008 and 19 September 2011 is a calculated amount, being the difference between:

- the amount of accommodation supplement payable for the day for the care recipient under Division 1 of this Part, and
- the amount specified in the table with reference to the day on which the care recipient entered residential care:

Entry day and amount		
Item	Entry day	Amount
1	After 19 March 2008 and before 20 September 2010	\$9.41
2	After 19 September 2010 and before 20 March 2011	\$6.27
3	After 19 March 2011 and before 20 September 2011	\$3.14

The rates in the table provided in subsection 91F(2) decrease as date of entry becomes later (from equivalent to 1% of the single rate aged pension to 2/3rds of 1% of the single rate aged

pension to 1/3rd of the single rate aged pension, with amounts in the table at 1 October 2022) as the supplement was established as a transitional measure applying to a time-limited cohort of entrants to residential care.

Subsection 91F(3) specifies that the amount of transitional accommodation supplement for a day for the care recipient is nil if the amount worked out under subsection (2) is a negative amount.

Division 7 – 2012 basic daily fee supplement

Division 7 of Part 4 of Chapter 3 deals with the amount of the 2012 basic daily fee supplement, with effect on and after 1 October 2022.

The 2012 basic daily fee supplement for days before 1 October 2022 is set under Division 11 of Part 2 of Chapter 2 (containing sections 58 to 60) of the Subsidy and Other Measures Determination.

Section 91G Amount of 2012 basic daily fee supplement

Section 91G specifies for the purposes of subsection 44-16(3) of the Transitional Provisions Act, the amount of the 2012 basic daily fee supplement for a day for a care recipient is the amount worked out by rounding down to the nearest cent the amount equal to 1% of the basic age pension amount (worked out on a per day basis).

The note explains that the 2012 basic daily fee supplement is set out in Subdivision E of Division 4 of Part 3 of Chapter 2 (containing sections 38 and 39) of the Transitional Provisions Principles, and that eligibility for the supplement is dealt with in that Subdivision.

The effect is to provide for a supplement specifically and only for non-respite care recipients who meet the criteria set out in section 39 of the Transitional Provisions Principles. This provides the care recipient with a supplement of 1% of the single rate aged pension amount calculated per day, if the approved provider discounts their maximum basic daily fee by an amount equal to 1% of the basic aged pension amount (worked out on a daily basis).

Part 5 – Amounts of other supplements

Part 5 of Chapter 3 deals with the amounts of other supplements. Other supplements are provided for by Subdivision 44-F of Part 3.1 of Chapter 3 (containing sections 44-27 to 44-31) of the Transitional Provisions Act.

Division 1 – Pensioner Supplement

Division 1 of Part 5 of Chapter 3 deals with the amount of the pensioner supplement, with effect on and after 1 October 2022.

The pensioner supplement for days before 1 October 2022 is set under Division 1 of Part 4 of Chapter 2 (containing sections 66 and 67) of the Subsidy and Other Measures Determination.

Section 91H Amount of Pensioner supplement

Section 91H specifies that, for the purposes of subsection 44-28(7) of the Transitional Provisions Act, the amount of the pensioner supplement for an eligible care recipient for a day at 1 October 2022 is \$9.41.

Division 2 - Hardship Supplement

Division 2 of Part 5 of Chapter 3 deals with the amount of the hardship supplement, with effect on and after 1 October 2022.

The hardship supplement for days before 1 October 2022 is set under Division 3 of Part 4 of Chapter 2 (containing sections 70 to 74) of the Subsidy and Other Measures Determination.

The hardship supplement is provided for under section 44-30 of the Transitional Provisions Act. The amount or method is determined by the Minister by legislative instrument under subsection 44-30(5) of that Act. The Minister may under subsection 44-30(6) of that Act determine different amounts (including nil amounts) based on matters determined by the Minister by legislative instrument.

Under sections 44-30 and 44-31 of the Transitional Provisions Act, matters relating to eligibility for financial hardship supplement can be determined in the Transitional Provisions Principles. Subdivision B of Division 8 of Part 3 of Chapter 2 (that is, sections 56, 57 and 58) of the Transitional Provisions Principles provide for matters relating to eligibility to receive a hardship supplement. Where paying the maximum daily amount of resident fees would cause financial hardship, classes of such persons are detailed in section 56 and the matters which the Secretary must consider in deciding whether to make a financial hardship determination are detailed in section 57. Section 58 provides for the circumstances in which the Secretary may revoke a financial hardship determination.

Section 91J Purpose of this Division

Section 91J specifies that Division 2 of Part 5 of Chapter 3 is made for the purposes of subsection 44-30(5) of the Transitional Provisions Act.

The note explains that Subdivision B of Division 8 of Part 3 of Chapter 2 (containing sections 56 to 58) of the Transitional Provisions Principles also deals with the hardship supplement.

Section 91K Amount of hardship supplement – certain pre-2008 reform residents

Section 91K specifies the amount of hardship supplement for certain pre-2008 reform residents who entered an aged care service after 30 September 1997 (that is, care recipients who are a member of the class specified in paragraph 56(1)(a) of the Transitional Provisions Principles).

Subsection 91K(1) specifies that the amount of the hardship supplement for a day for a care recipient who is a member of the class specified in paragraph 56(1)(a) of the Transitional Provisions Principles is the amount equal to the sum of:

- the amount of basic income support compensation for the recipient worked out under subsection 91K(2); and
- \$0.40, being the amount of pharmaceutical allowance compensation; and
- \$1.40, being the amount of pharmaceutical concessions compensation.

Subsection 91K(2) specifies that the amount of basic income support compensation for a care recipient (for subsection 91K(1)) is the amount worked out using the following formula, rounded to the nearest 5 cents and rounding up in the case of exactly halfway between two multiples of 5 cents:

Fortnightly assessable income amount means the amount that is the care recipient’s total assessable income (within the meaning of section 44-24 of the Transitional Provisions Act) worked out on a per fortnight basis.

The effect of section 91K is to continue a historic amount of pharmaceutical allowance compensation and pharmaceutical concessions compensation for eligible persons. Those sums do not change over time and are added to an indexed amount of basic income support compensation to calculate this supplement.

The equivalent amount for days before 1 October 2022 is set under section 71 in Division 3 of Part 4 of Chapter 2 to the Subsidy and Other Measures Determination.

Section 91L Amount of Hardship supplement – certain care recipients who occupied an approved place in an aged care service on 30 September 1997

Section 91L deals with the amount of hardship supplement for certain care recipients who occupied an approved place in an aged care service on 30 September 1997.

Subsection 91L(1) specifies that the amount of the hardship supplement for a day for a care recipient who is a member of the class specified in paragraph 56(1)(b) of the Transitional Provisions Principles is the amount equal to the sum of:

- the amount of basic income support compensation for the recipient worked out under subsection 91L(2); and
- \$0.40, being the amount of pharmaceutical allowance compensation; and
- \$1.40, being the amount of pharmaceutical concessions compensation.

Subsection 91L(2) specifies that the basic income support compensation for a care recipient (for subsection 91L(1)) is the amount of residential care allowance the recipient was receiving on the day before 1 October 1997, adjusted in line with adjustments made to the amount of the pensioner supplement.

A note to subsection 91L(2) explains that the pensioner supplement means the supplement referred to in section 44-28 of the Transitional Provisions Act.

The effect of section 91L is to continue a historic amount of pharmaceutical allowance compensation and pharmaceutical concessions compensation for certain persons who occupied an approved place in a residential care service on 30 September 1997. Those sums do not change over time and are added to an indexed amount of basic income support compensation to calculate this supplement.

The equivalent amount for days before 1 October 2022 is set under section 72 in Division 3 of Part 4 of Chapter 2 to the Subsidy and Other Measures Determination.

Section 91M Amount of hardship supplement – certain care recipients who occupied an approved place in a hostel on 30 September 1997

Section 91M deals with the amount of hardship supplement for certain care recipients who occupied an approved place in a hostel on 30 September 1997 (and so are not captured by sections 91K and 91L).

Section 91M specifies that the amount of the amount of the hardship supplement for a day for a care recipient who is a member of the class specified in paragraph 56(1)(c) of the Transitional Provisions Principles is \$0.80.

The equivalent amount for days before 1 October 2022 is set under section 73 in Division 3 of Part 4 of Chapter 2 to the Subsidy and Other Measures Determination.

Section 91N Amount of hardship supplement – care recipients in relation to whom a financial hardship determination is in force

Section 91N specifies that the amount of the hardship supplement for a day for a care recipient in relation to whom a financial hardship determination is in force under section 44-31 of the Transitional Provisions Act is the amount equal to the difference between:

- the maximum daily amount of resident fees (within the meaning of section 58-2 of that Act) payable by the recipient; and
- the amount specified in the determination.

The effect of this section is to continue for the period on and after 1 October 2022 the hardship supplement arrangements that are triggered by the care recipient receiving a determination that reduces the maximum daily amount of resident fees payable by the care recipient to their approved provider. This section ensures that a supplement equal to the reduction is paid to the approved provider to ensure that the approved provider ultimately receives an amount equivalent to the maximum daily amount of resident fees.

The equivalent amount for days before 1 October 2022 is set under section 74 in Division 3 of Part 4 of Chapter 2 to the Subsidy and Other Measures Determination.

Division 3 – Veterans’ supplement

Division 3 of Part 5 of Chapter 3 deals with the amount of veterans’ supplement, with effect on and after 1 October 2022.

The veteran’s supplement for days before 1 October 2022 is set under Division 4 of Part 4 of Chapter 2 (containing sections 76 and 77) of the Subsidy and Other Measures Determination.

Section 91P Amount of veterans’ supplement

Section 91P specifies, for the purposes of subsection 44-27(3) of the Transitional Provisions Act, that the amount of the veterans’ supplement for a care recipient for a day at 1 October 2022 is \$7.50.

Section 91P explains that the veterans’ supplement is set out in Subdivision C of Division 8 of Part 3 of Chapter 2 (containing sections 59 and 60) of the Transitional Provisions Principles. Eligibility for the veterans’ supplement is dealt with in that Subdivision.

Division 4 – Initial entry adjustment supplement

Division 4 of Part 5 of Chapter 3 deals with the amount of the initial entry adjustment supplement.

Section 91Q Amount of initial entry adjustment supplement

Section 91Q specifies that, for the purposes of subsection 44-27(3) of the Transitional Provisions Act, the amount of the initial entry adjustment supplement for a care recipient in respect of a payment period is the amount worked out by multiplying the national efficient price by the NWAU attributable to the initial entry adjustment supplement of 5.28.

The note explains that the initial entry adjustment supplement is set out in Subdivision H of Division 8 of Part 3 of Chapter 2 (containing new section 64D) of the Transitional Provisions Principles (as inserted by item 23 of Schedule 2 to the Amending Instrument). Eligibility for the supplement is dealt with in that Subdivision.

The supplement is created in recognition of the temporary additional costs of settling a new care recipient into non-respite residential care at a residential care service and provides for a one-off payment for the entry of a new resident into non-respite residential care calculated at 5.28 times the current national efficient price (\$216.80 at 1 October 2022, meaning a total of \$1,144.70).

Records Principles 2014

Item 39– Section 4 (definition of *charge exempt resident*)

This item amends the existing definition of **charge exempt resident** in section 4 of the Records Principles to have the meaning given by repealed section 44-8B of the Transitional Provisions Act.

The effect of this item is to repeal from the definition of charge exempt resident the reference to a summary definition of charge exempt resident that was in a now repealed entry in the dictionary in clause 1 of Schedule 1 to the Transitional Provisions Act (see item 87 of Schedule 1 to the Royal Commission Response Act), and to substitute a reference to a more comprehensive definition of charge exempt resident that was in a now repealed section 44-8B of the Transitional Provisions Act (see item 70 of Schedule 1 to the Royal Commission Response Act). For the purpose of the Records Principles, the repealed definition in section 44-8B is preserved by the amended reference.

User Rights Principles 2014

Item 40 – Subsection 13(2)

Section 13 of the User Rights Principles provides for matters relating to the movement of a continuing residential care recipient (that is, a care recipient who is subject to the Transitional Provisions Act) to another residential care service.

This item amends subsection 13(2) to specify that the approved provider of the service that the care recipient is entering must give the care recipient a copy of the document titled New Arrangements for Aged Care—from 1 July 2014, as it exists on 1 October 2022. The document is available at <https://www.health.gov.au/resources/publications/new-arrangements-for-aged-care-from-1-july-2014-residential-care>. The document deals with

choices that certain residential care and home care recipients who entered a service before 1 July 2014 must make when moving service after that date.

This item is necessary to reflect that the document in question has been updated so that references to residential care subsidy arrangements and other relevant matters reflect the changes from 1 October 2022.

Item 41 – Subsection 21(2)

Section 21 of the User Rights Principles provides for matters relating to the movement of a continuing home care recipient (that is, one who is subject to the Transitional Provisions Act) to another home care service.

This amends subsection 21(2) to specify that the approved provider of the service the care recipient is entering must give the care recipient a copy of the document titled New Arrangements for Aged Care—from 1 July 2014, as it exists on 1 October 2022. The document is available at <https://www.health.gov.au/resources/publications/new-arrangements-for-aged-care-from-1-july-2014-residential-care>. The document deals with choices that certain residential care and home care recipients who entered a service before 1 July 2014 must make when moving services after that date.

This item is necessary to reflect that the document has been updated so that references to residential care subsidy arrangements and other relevant matters reflect the changes from 1 October 2022.

SCHEDULE 3 – Other amendments

Schedule 3 amends the following 6 legislative instruments:

- *Accountability Principles 2014* (Accountability Principles)
- *Aged Care (Subsidy, Fees and Payments) Determination 2014* (Subsidy, Fees and Payments Determination)
- *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014* (Transitional Subsidy and Other Measures Determination)
- *Allocation Principles 2014* (Allocation Principles)
- *Approval of Care Recipients Principles 2014* (Approval Principles)
- *Quality of Care Principles 2014* (Quality of Care Principles).

Accountability Principles 2014

Item 1 – Section 4 (definition of *charge exempt resident*)

This item amends the definition of **charge exempt resident** in section 4 of the Accountability Principles to have the meaning given by repealed section 44-8B of the Transitional Provisions Act.

The effect of this item is to repeal from the definition of charge exempt resident the reference to a summary definition that was in a now repealed entry in the dictionary (Clause 1 of Schedule 1) in the Transitional Provisions Act, and to substitute a reference to a more comprehensive definition of charge exempt resident that was in a now repealed section 44-8B of the Transitional Provisions Act. For the purposes of the Accountability Principles, the repealed definition in section 44-8B is preserved by the amended reference.

Item 2 - Section 4

This item amends section 4 of the Accountability Principles to insert a new definition, **MM category**, that has the meaning given by section 64H of the Subsidy, Fees and Payments Determination as inserted by item 5 of Schedule 1 to the Amending Instrument.

Under this definition, MM category means a category for an area provided for by the Modified Monash Model and known as MM 1, MM 2, MM 3, MM 4, MM 5, MM 6 or MM 7. The Modified Monash Model, also defined by section 64H, means the model known as the Modified Monash Model (MMM) 2019 developed by the Department of Health and Aged Care to categorise areas according to geographical remoteness and population size, as the model exists on 1 October 2022.

At the making of this instrument, the Modified Monash Model can be freely accessed by members of the public at the Department of Health and Aged Care's website (<https://www.health.gov.au/health-topics/rural-health-workforce/classifications/mmm>).

Item 3 - Section 4A

Section 4A of the Accountability Principles deals with the responsibility under paragraph 63-1(1)(ha) of the Aged Care Act for an approved provider to allow certain delegates of the Secretary access to a residential care service for the purpose of conducting assessments under section 29C-3 of the Aged Care Act.

This item amends section 4A to clarify that the power of the delegate of the Secretary to access an aged care service for the purpose of conducting an assessment of care needs is through a delegation made under subsection 96-2(15) of the Aged Care Act.

Item 4 - Paragraph 4B(1)(a)

Section 4B deals with, for the purposes of paragraph 63- 1(1)(ha) of the Aged Care Act, a requirement of an approved provider to allow certain delegates of the Secretary access to a residential care service.

This item amends paragraph 4B(1)(a) to specify that the power of the delegate of the Secretary is through a delegation made under subsection 96-2(15) of the Aged Care Act. The effect is to clarify the source of that power.

Item 5 - Paragraph 24(b)

This item repeals and substitutes paragraph 24(b) and provides that Division 1 of Part 3 of the Accountability Principles specifies the period within which an approved provider of a residential care service must notify the Secretary of certain matters, as provided for in sections 63-1B and 63-1BA of the Aged Care Act.

Section 63-1B of the Aged Care Act deals with an approved provider's responsibility to record and notify the Secretary of the entry of new residents into a residential care service.

Section 63-1BA of the Aged Care Act deals with an approved provider's responsibility to notify the Secretary of the cessation of the provision of certain residential care to a care recipient through a particular residential care service. See also item 7 of Schedule 3 to the Amending Instrument.

Item 6 – After section 27A

Section 27B deals with information an approved provider must give to the Secretary about allocated places in respect of which the provider is, or will be, unable to provide residential care.

This item sets out a new responsibility for the purposes of paragraph 63(1)(m) of the Aged Care Act for an approved provider operating a residential care service in a remote or very remote region (that is, with a street address in the MM 6 or MM 7 categories – see item 2 to Schedule 3 for the definition of MM categories).

The responsibility is for the approved provider to inform the Secretary in writing as soon as the provider becomes aware that they are unable or will be unable to provide residential care through all of the allocated places (that is, places allocated under Part 2.2 of the Aged Care Act Act) at the residential care service. These places are to be known as **offline places** (see paragraph 27B(3)(b)).

The approved provider must specify in the notice to the Secretary the following matters:

- the residential care service and the service's street address to which the notice relates;
- the number of allocated places which the approved provider is or will be unable to provide residential care through the service; and
- the period which the approved provider is or will be unable to provide residential care in respect of those offline places.

Through the effect of this item, item 5 of Schedule 1 to the Amending Instrument and item 38 of Schedule 2 to the Amending Instrument, offline places are to be excluded from certain subsidy calculations that rely on a count of places at a residential care service.

Item 7 – At the end of Division 1 of Part 3

Section 28A that, for the purposes of section 63-1BA of the Aged Care Act, sets out the period for notifying Secretary of the cessation of the provision of certain types of residential care

Section 28A provides that an approved provider must notify the Secretary of the cessation of the provision of residential care (other than respite care) to a care recipient through a service within 28 days after the day the care ceased to be provided.

This item is intended to protect the integrity of residential care subsidy payments, by requiring timely notice of when the provision of residential care to a person has ceased. A similar requirement already exists in relation to the cessation of the provision of home care (see section 30A of the Accountability Principles).

Aged Care (Subsidy, Fees and Payments) Determination 2014

Item 8 – Before Part 1 of Chapter 5

Part 1A—Resident fees into the Subsidy, Fees and Payments Determination consists of sections 106C and 106D.

Section 106C provides that the Part 1A is made for the purposes of section 52C-5 of the Aged Care Act. That section provides for a maximum fee in respect of a day that can be charged for a care recipient to reserve a place at a residential care service.

A care recipient can, with agreement of the approved provider, reserve a place at a residential care service when they have exhausted leave. Care recipient leave is dealt with in sections 42-2, 42-2A and 42-3 of the Aged Care Act.

Section 106D provides that the maximum fee for the day that a care recipient can be charged to reserve a place is the amount equal to the sum of the following amounts:

- the maximum daily amount of resident fees (within the meaning of section 52C-3 of the Aged Care Act) that would have been payable by the care recipient if the care recipient had been provided with residential care through the residential care service on the day; and
- the amount of residential care subsidy that would have been payable to the approved provider operating the residential care service through which the care recipient would have received care on the day if it were assumed that the **service amount** were the amount that would be worked out under subsection 64M(1) of the Subsidy, Fees and Payments Determination in respect of a residential care service that meets the requirements set out in column 1 of item 7 of the table in that subsection.

Section 52C-3 of the Aged Care Act deals with the maximum daily amount of resident fees payable by a care recipient while they are receiving care through a residential care service.

Residential care subsidy includes an amount known as the service amount that links to the characteristics of the residential care service through which residential care is provided to a

care recipient. The service amount is set out in section 64M of the Subsidy, Fees and Payments Determination, as inserted by item 5 of Schedule 1 to the Amending Instrument. The effect is that the maximum fee to reserve a place will not differ because of the characteristics of the residential care service in which they receive care. Defining the maximum fee to reserve a place in this way is equitable for care recipients, particularly regional, rural and remote care recipients, as it ensures that care recipients with the same classification levels and similar means will have the same maximum fee regardless of the location of the residential care service in which they receive care.

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

Item 9 – At the end of the determination

Chapter 5—Resident fees into the Transitional Subsidy, and Other Measures Determination consists of sections 94 and 95.

Section 94 provides that Chapter 5 is made for the purposes of section 58-6 of the Transitional Provisions Act, which provides for a maximum fee in respect of a day that can be charged for a continuing care recipient to reserve a place at a residential care service.

The Transitional Provisions Act applies only to continuing care recipients. A continuing care recipient can, with agreement of the approved provider, reserve a place at a residential care service when they have exhausted leave. Continuing care recipient leave is dealt with in sections 42-2, 42-2A and 42-3 of the Transitional Provisions Act.

Section 95 provides that the maximum fee for the day that a care recipient can be charged is the amount equal to the sum of the following amounts:

- the maximum daily amount of resident fees (within the meaning of section 58-2 of the Transitional Provisions Act) that would have been payable by the continuing care recipient if the continuing care recipient had been provided with residential care through the residential care service on the day; and
- the amount of residential care subsidy that would have been payable to the approved provider operating the residential care service through which the continuing care recipient would have received care if it were assumed that the **service amount** were the amount that would be worked out under subsection 84(1) of the Transitional Subsidy, and Other Measures Determination in respect of a residential care service that meets the requirements set out in column 1 of item 7 of the table in that subsection.

Section 58-2 of the Transitional Act deals with the maximum daily amount of resident fees payable by a continuing care recipient while receiving care through a residential care service.

Residential care subsidy includes an amount known as the service amount that links to the characteristics of the residential care service through which residential care is provided to a continuing care recipient. The service amount is set out in section 84 of the Transitional Subsidy, and Other Measures Determination, as inserted by item 38 of Schedule 2 to the Amending Instrument.

The effect is that the maximum fee to reserve a place will not differ because of the characteristics of the residential care service in which they receive care. Defining the maximum fee to reserve a place in this way is equitable for care recipients, particularly regional, rural and remote care recipients, as it ensures that care recipients with the same

classification levels and similar means will have the same maximum fee regardless of the location of the residential care service in which they receive care.

Allocation Principles 2014

Item 10 - Paragraphs 10(d) and 26(d)

Section 10 of the Allocation Principles deals with the kinds of people in respect of whom the Secretary may determine, under subsection 12- 5(1) of the Aged Care Act, a proportion of care that must be provided to certain groups of people through allocated places.

Section 26 of the Allocation Principles deals with the kinds of people in respect of whom the Secretary may determine, under paragraph 13-2(3)(e) of the Aged Care Act, a proportion of care for specified kinds of people that may be specified in an invitation to apply for an allocation of places.

This item repeals:

- paragraph 10(d), which specified that ‘recipients of respite care’ were kinds of people in respect of whom Secretary may determine a proportion of care for the purposes of subsection 12-5(1) of the Aged Care Act; and
- paragraph 26(d), which specified that ‘recipients of respite care’ were kinds of people for whom a proportion of care may be specified in an invitation to apply for an allocation of places for the purpose of paragraph 13-2(3)(e) of the Aged Care Act.

Changes to the way in which subsidy is calculated through the amendments in the (Royal Commission Response Act and the Amending Instrument make funding for non-respite residential care and respite residential care closely equivalent.

Accordingly, there is no need to retain a power to compel approved providers of residential care and certain types of flexible care to provide a particular proportion of care to recipients of respite care through allocated places, or to specify a proportion of recipients of respite care in invitations for allocation of places.

Item 11 – Section 32

This item repeals section 32, which specified the purpose of Division 3 of Part 4 of the Allocation Principles

Section 32 stated that Division 3 was empowered by section 14-6 of the Aged Care Act as a whole. However, Division 3 deals only with specifying, under subsection 14-6(2) of the Aged Care Act, matters to which the Secretary must have regard in determining conditions of allocation of places. The effect of the amendment is to clarify the interpretation of the Division.

Item 12 – After subparagraph 33(1)(a)(ii)

Section 33 deals with conditions of allocation generally for the purposes of subsection 14- 6(2) of the Aged Care Act, by requiring that the Secretary must determine certain conditions for the allocation of places.

This item adds to the conditions listed under paragraph 33(1)(a) a new condition that a care recipient cannot be discharged and readmitted from a residential care service to attract the initial entry adjustment supplement (see section 64ZS of the Subsidy, Fees and Payments

Determination as inserted by item 5 of Schedule 1 and section 91Q inserted by item 38 of Schedule 2 to the Amending Instrument).

The effect of this item, with respect to a care recipient in a place subject to the new conditions of allocation, is to prevent an approved provider from being able to repeatedly trigger payment of the initial entry adjustment supplement for a care recipient (under the Aged Care Act) or a continuing care recipient (under the Transitional Provisions Act).

Item 13 – Section 34

This item repeals section 34, which specified that the Secretary must have regard to the need for respite care when allocating places and may include conditions on the allocation that related to the proportion of care to be provided to recipients of respite care.

The Allocation Principles may, under section 14-6 of the Aged Care Act, allow the Secretary to determine ‘places of a specified kind’ having regard to matters specified in the Allocation Principles as conditions on allocations of places.

This requirement to have regard to the need for respite care is no longer necessary, as changes to the way in which subsidy is calculated through the amendments in the Royal Commission Response Act and the Amending Instrument make funding for non-respite residential care and respite residential care closely equivalent. Accordingly, there is no need to require the Secretary to have regard to the proportion of respite care when determining conditions of allocation.

Item 14 – Subsection 48(2) (paragraph (a) of the example for paragraphs (2)(a) and (b))

Section 48 deals with matters relating to the approval by the Secretary of a transfer of allocated places between approved providers and the consideration of the benefits or adverse effects that approval of the transfer would have on current and future care recipients.

This item repeals paragraph (a) of the example for paragraphs 48(2)(a) and (b), which notes that the Secretary may consider whether the transfer would affect the provision of aged care services that meet particular needs, including the provision of respite care.

This item is no longer required as changes to the way in which subsidy is calculated through the amendments in the Royal Commission Response Act and the Amending Instrument make funding for non-respite residential care and respite residential care closely equivalent. There is no longer a need to consider whether a transfer of allocated places would materially affect provision of respite care.

Item 15 – Paragraphs 51(1)(c) and 62(1)(a) (repeal paragraphs - respite care)

Section 51 deals with information that the Secretary may give to a transferee when allocated places are transferred and the timeframe for giving information when allocated places are transferred. Section 62 deals with information that the Secretary may give to a transferee when provisionally allocated places are transferred and the timeframe for giving that information.

This item repeals paragraphs 51(1)(c) and 62(1)(a), both of which referred to details about the amount of respite care (if any) to be provided by the transferor’s aged care service.

This item is consequential amendment to the section 17A-1 of the Aged Care Act as inserted by clause 4 of Schedule 1 to the Royal Commission Response Act. That new section revoked on and from 1 October 2022 all conditions for allocations of places (including provisionally allocated places) which required that respite care must be provided in respect of certain places.

Item 16 – Paragraph 64(1)(d)

Section 64 of the Allocation Principles deals with information that must be included in an application for variation of conditions of allocation for places. Subsection 64(1) lists the information that must be included in an application.

This item repeals and substitutes paragraph 64(1)(d) so that an application requires inclusion of information about whether any of the places is a place included in a residential care service, or a distinct part of a residential care service, that has extra service status.

The effect is to retain the previous reference to extra service places while removing a reference to adjusted subsidy places. This is a consequential amendment to the repeal of the concept of adjusted subsidy places from the Aged Care Act on 1 October 2022 through item 36 of Schedule 1 to the Royal Commission Response Act.

Item 17 – Paragraph 66(2)(a), Item 18 – Subsection 66(2) (Example for paragraphs 2(a) and (b)), Item 19 – Subsection 66(2) (paragraph (a) of the Example for paragraphs 2(a) and (b))

Section 66 of the Allocation Principles deals with other matters to be consider when the Secretary is considering an application for variation of conditions of allocation of places. Subsection 66(2) lists particular matters that the Secretary must take into account in considering the effect of a proposed variation.

Item 17 repeals paragraph 66(2)(a), with the effect of removing a reference to the extent to which, after the variation, current and future care recipients in the region in which the service operates will have access to respite care.

Consequential to item 17, item 18 repeals and substitutes the chapeau to the first example in subsection 66(2) so that it no longer references the repealed paragraph 66(2)(a)

Also consequential to item 17, item 19 repeals from the first example to subsection 66(2) the previous paragraph (a), which referred to respite care services as a matter for which the Secretary may consider whether a variation would affect the provision of aged care services that meet particular needs.

Changes to the way in which subsidy is calculated made by the amendments in the Royal Commission Response Act and this Amending Instrument make funding for non-respite residential care and respite residential care closely equivalent. Accordingly, there is no longer a need to consider whether a variation of allocated places would materially affect provision of respite care.

Item 20 – At the end of Part 10

This item inserts a new application provision (section 76) which provides that the amendments to:

- section 10;

- section 26;
- section 48;
- sections 51 and section 62; and
- sections 64 and 66,

as made through Schedule 3 to the Amending Instrument, apply on or after 1 October 2022 in relation to (as the case may be) determinations made, invitations published, transfer notices received, and information given.

Approval of Care Recipients Principles 2014

Item 21 – Subsection 10(1) and Item 22 – Subsections 10(2) and (3)

Section 10 of the Approval of Care Recipient Principles deals with the limitations of the approval of a person for residential care provided as respite care. See also item 24 of Schedule 3 to the Amending Instrument for related transitional provisions.

Item 21 renumbers what was subsection 10(1) and item 22 repeals subsections 10(2) and (3), which dealt with limiting an approval for residential respite care to approval for a low level or a high level of residential respite care.

The effect of these items is that, by former subsection 10(1) being replaced by amended section 10, approval of a person as a recipient of residential care may be limited to respite care if respite care is appropriate to the needs of the person, the person’s carer, or both.

These items are consequential to the effect of the new subsidy arrangements introduced through the Royal Commission Response Act and the Amending Instrument to cease paying different rates of subsidy in respect of the provision of low level and high level residential respite care. The concepts of low level and high level care are not included in the new AN-ACC funding model.

Item 23 – Section 17

This item repeals former section 17, which provided a transitional provision for amendments to the Aged Care Act and the various aged care principles made in 2014. Repeal of this section is appropriate as the effect of the transitional provision is entirely spent.

Item 24 – At the end of Part 6

This item inserts, at the end of Part 6, new section 19 outlining transitional provisions relating to the amendments made by the Amending Instrument.

Subsection 19(1) provides that section 10 as amended (see item 21 and item 22 of Schedule 3 to the Amending Instrument) deals with limitations of approval of a person for residential care provided as respite care, applies only in relation to an approval given on or after 1 October 2022.

Subsection 19(2) provides that any limitation on an approval that was given before 1 October 2022 that limited the approval to a low level or high level of residential care no longer applies for a day that is on and after 1 October 2022.

This item is appropriate as an effect of the new subsidy arrangements introduced through the Royal Commission Response Act and the Amending Instrument is to remove different rates of subsidy in respect of the provision of low level and high level residential respite care.

Quality of Care Principles 2014

Item 25 – Subsections 7(4) to 7(6)

This item repeals subsections 7(4) to 7(6) of the Quality of Care Principles, which dealt with the maximum amount that an approved provider may charge a care recipient for the provision of the care and services listed in Schedule 1 to the Quality of Care Principles. These subsections provided that in certain circumstances additional fees may have been payable by a care recipient to their approved provider for the provision of the care and services listed in Part 3 of Schedule 1 to the Quality of Care Principles.

This item commences implementation of one of the objectives of the new AN-ACC funding model established by the amendments in the Royal Commission Response Act and the Amending Instrument, that no additional fees are payable by any care recipient for the provision of any of the care and services in any Part of Schedule 1 to the Quality of Care Principles.

Item 26 – Part 3 of Schedule 1 (heading), Item 27 – Clause 3 of Schedule 1 (heading), Item 28 – Clause 3 of Schedule 1, Item 29 – Clause 3 of Schedule 1 (note), Item 30 – Clause 3 of Schedule 1 (table heading)

These items:

- amend the heading of Part 3 of Schedule 1 to “Part 3—Other care and services—to be provided for all care recipients who need them”;
- the heading of clause 3 of Schedule 1 to “3 Other care and services—for all care recipients who need them”;
- amend the body of clause 3 of Schedule 1 to “The following table specifies the other care and services that must be provided for all care recipients who need them”;
- delete the note to clause 3 of Schedule 1; and
- amend the table heading of clause 3 to “Other care and services—to be provided for all care recipients who need them”.

These items change several references to care and services to references to other care and services, to better distinguish the care and services in Part 3 of Schedule 1 from those in Part 2 of Schedule 1, and also repeal references to the repealed subsections 7(5) and 7(6) of the Quality of Care Principles (see item 25 of Schedule 3 to the Amending Instrument).

Statement of Compatibility with Human Rights

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

Aged Care Legislation Amendment (Residential Aged Care Funding) Instrument 2022

The *Aged Care Legislation Amendment (Residential Aged Care Funding) Instrument 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) Act 2011*.

Overview of the legislative instrument

The *Aged Care Legislation Amendment (Residential Aged Care Funding) Instrument 2022* (the Amending Instrument) amends the:

Accountability Principles 2014

Aged Care (Subsidy, Fees and Payments) Determination 2014

Aged Care (Transitional Provisions) Principles 2014

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

Allocation Principles 2014

Approval of Care Recipients Principles 2014

Classification Principles 2014

Quality of Care Principles 2014

Records Principles 2014

Subsidy Principles 2014

User Rights Principles 2014.

The Amending Instrument relies in several instances on amendments to the *Aged Care Act 1997* and the *Aged Care (Transitional Provisions) Act 1997* made through the *Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022* that have effect on and from 1 October 2022.

The amendments in the Amending Instrument have the effect of replacing the Aged Care Funding Instrument with the Australian National Aged Care Classification (AN-ACC) as the residential aged care subsidy calculation model from 1 October 2022. Introducing the AN-ACC funding model responds to Recommendation 120 of the Final Report of the Royal Commission into Aged Care Quality and Safety.

The new AN-ACC funding model will link calculation of a variable amount of residential aged care subsidy to each care recipient's AN-ACC classification level. It will also link calculation of a fixed amount of subsidy to the characteristics of residential aged care services. This fixed component will be the same for all residents at a residential care service and will be higher for services in remote locations and certain specialist services, in recognition of higher fixed operating costs.

Human rights implications

The Amending Instrument is consistent with human rights as it promotes the rights of older Australians to the right to social security and an adequate standard of living and health.

The Amending Instrument engages the following human rights:

- the right to an adequate standard of living in article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and articles 25 and 28 of the Convention on the Rights of Persons with Disabilities (CRPD);
- the right to health in article 12(1) of the ICESCR and articles 23(1)(c) and 25 of the CRPD; and
- the right to social security in article 9 of the ICESCR and article 28 of CRPD.

Right to an adequate standard of living

The right to an adequate standard of living, including adequate food, water and housing, and to the continuous improvement of living conditions is contained in article 11(1) of ICESCR.

Articles 25 and 28 of the CRPD also require countries to take appropriate measures to ensure clean water services and public housing programs for people with disability. The Amending Instrument promotes the right of those receiving care to an adequate standard of living by providing for the subsidised provision of aged care accommodation and services on the basis of need. This includes ensuring higher subsidies are paid in respect of the costs of aged care accommodation for those with less assets and or lower incomes.

The new arrangements for calculating residential aged care basic subsidy will better match the amount of basic subsidy paid for provision of residential aged care to the real costs of meeting the care recipient's needs in their residential aged care setting. This is because the calculation method will reflect both the individual characteristics of the care recipient and the characteristics of the service where the care is delivered. As such, the new arrangements for calculation of residential aged care basic subsidy promotes the rights of those care recipients to an adequate standard of living.

Right to health

The right to health is contained under article 12 of the ICESCR and article 25 of the CRPD.

These articles refer to the right of individuals, including persons with disability, to the highest attainable standard of physical and mental health. The Amending Instrument promotes the right to health by providing for the subsidised provision of aged care accommodation and services on the basis of need. The subsidisation of aged care services will ensure consumers are able to access health facilities and goods, including essential medications and services and other health services.

The new arrangements for calculating residential aged care basic subsidy will better match the amount of basic subsidy paid for provision of residential aged care to the real costs of meeting the care recipient's needs in their residential aged care setting. This is because the calculation method will reflect both the individual characteristics of the care recipient and the characteristics of the service where the care is delivered.

As such, the new arrangements for calculation of residential aged care basic subsidy will better facilitate access to health services to promote the enjoyment of the highest attainable standard of physical and mental health by care recipients.

Right to social security

The right to social security including social insurance is contained in article 9 of the ICESCR.

The Amending Instrument promotes the right of those receiving care to social security, by providing for the subsidised provision of aged care accommodation and services on the basis of need. This includes ensuring higher subsidies are paid in respect of the costs of aged care accommodation for those with fewer assets and or lower incomes.

The new arrangements for calculation of residential aged care basic subsidy will better match the amount of basic subsidy paid for provision of residential aged care to the real costs of meeting the care recipient's needs in their residential aged care setting. This is because the calculation method will reflect both the individual characteristics of the care recipient and the characteristics of the service where the care is delivered. As such, the new arrangements for calculation of residential aged care basic subsidy aim to maintain the right to social security by providing a minimum essential level of benefits to all older persons, so as to enable them to acquire at least essential health care, basic shelter and housing, water and sanitation and foodstuffs.

Conclusion

The Amending Instrument is compatible with human rights as it positively promotes the human right to an adequate standard of living, and to attain the highest standard of physical and mental health, and the right to social security.

Circulated by the authority of the Minister for Aged Care, the Hon Anika Wells MP