

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Aged Care

Aged Care Act 1997

Aged Care (Transitional Provisions) Act 1997

Aged Care Legislative Amendment (March Indexation) Instrument 2023

The *Aged Care Act 1997* (the Aged Care Act) and the *Aged Care (Transitional Provisions) Act 1997* (the Transitional Provisions Act) provide for the regulation and funding of aged care services. Persons who are approved under the *Aged Care Quality and Safety Commission Act 2018* 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 under the Aged Care Act and continuing care recipients under the Transitional Provisions Act.

Purpose

The *Aged Care Legislative Amendment (March Indexation) Instrument 2023* (the Amending Instrument) amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014* (the Subsidy, Fees and Payments Determination); the *Aged Care (Transitional Provisions) Principles 2014* (the Transitional Provisions Principles); and the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014* (the Transitional Provisions Determination).

The purpose of the Amending Instrument is to increase the dollar amount of certain accommodation related supplements payable to approved providers of aged care services in respect of a day from 20 March 2023 in line with the change to the Australian consumer price index (CPI) over 6 months to the December 2022 quarter, in addition to increasing the value of a number of caps and thresholds in line with the changes to the age pension rates.

The Amending Instrument will also update the specified amount of maximum accommodation charge for a post-2008 reform resident as a result of routine indexation. Section 44-5C of the Transitional Provisions Act provides that a person is a post-2008 reform resident if they are being provided with care through a residential care service and the person is not a pre-2008 reform resident (as defined in section 44-5D of the Transitional Provisions Act).

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

Authority

The Aged Care Act and Transitional Provisions Act provide that for each type of aged care, the Minister may determine the amount of particular components of subsidy and the amount of supplements payable to an approved provider for the provision of that type of aged care. Specifically, the authority provisions in the Aged Care Act for making specific determinations in the Amending Instrument are set out in the following table:

Type of care and type of payment	Section
Residential care	
Respite supplement	subsection 44-5(3)

Annual cap	subsection 44-21(7)
Lifetime cap	subsection 44-21(8)
First asset threshold	subsection 44-22(3)
Second asset threshold	subsection 44-22(3)
Maximum home value	subsection 44-26B(1)
Accommodation supplement	subsections 44-28(4) and 44-28(5)
Home care	
First cap	subsection 48-7(2) Step 4, paragraph (c)
Second cap	subsection 48-7(2) Step 5, paragraph (c)
Income threshold	subsection 48-7(6)
Annual cap	subsection 48-7(7)
Lifetime cap	subsection 48-7(8)
Basic daily care fee	paragraph 52D-3(a)

The authority provisions in the Transitional Provisions Act for making specific determinations in the Amending Instrument are set out in the following table:

Type of Care and type of payment	Section
Residential Care	
Accommodation supplement	subsections 44-5A(3) and 44-5A(4)
Concessional resident supplement	subsections 44-6(4) and 44-6(5)
Transitional accommodation supplement	subsection 44-16(3)
Pensioner supplement	subsection 44-28(7)

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

The Transitional Provisions Principles are made under section 96-1 of the Transitional Provisions Act. The specific provision that deals with the maximum daily accrual amount of accommodation charges is paragraph 57A-6(1)(c) of the Transitional Provisions Act.

Reliance on subsection 33(3) of the *Acts Interpretation Act 1901*

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Commencement

The Amending Instrument commences on 20 March 2023.

Consultation

Routine indexation of supplements, rates and thresholds in this instrument are calculated using a well-established formula based on the CPI as a measure of the movements in the non-labour costs of providers. Accordingly, no specific consultation was undertaken with respect to the amounts to which routine indexation has been applied in this Amending Instrument.

Information about the increase in rates and relevant thresholds from 20 March 2023 will be disseminated by the Department of Health and Aged Care via electronic media to approved

providers.

Regulatory Impact Statement (RIS)

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

Details of the Aged Care Legislative Amendment (March Indexation) Instrument 2023

Section 1 states that the name of the instrument is the *Aged Care Legislative Amendment (March Indexation) Instrument 2023*.

Section 2 states that the instrument commences on 20 March 2023.

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

Section 4 provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1 – Amendments

Aged Care (Subsidy, Fees and Payments) Determination 2014

Item 1 - Amendments of listed provisions – indexation of amounts

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

- Items 1-3: the ‘applicable amount’, which is used to calculate the residential care accommodation supplement and the residential care respite supplement;
- Items 4,5,9,10,14-17: the annual and lifetime caps which limit the amount of means tested and income tested care fees payable by recipients of residential care and home care;
- Items 6-7: the first and second asset thresholds that apply in the asset test component of the means assessment;
- Item 8: the cap on the maximum home value included in the asset test component of the means assessment;
- Items 11-13: the income thresholds at which the first and second annual caps on the income tested care fees in home care apply; and
- Items 18-21: the maximum rate of basic daily care fee for each home care package level.

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

Item 2 - Amendment of listed provisions – indexation of amounts

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

- Items 1-3: the ‘applicable amount’, which is used to calculate the accommodation supplement and the concessional resident supplement;
- Items 4-6: the transitional accommodation supplement; and
- Item 7: the pensioner supplement.

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

Item 3 – Subsection 118(1) (after table item 30)

This item inserts a new item (item 31) to the table in subsection 118(1) of the Transitional Provisions Principles to specify the amount of maximum daily accommodation charge for a post-2008 reform resident who first entered residential care before 1 July 2004 and re-enters care on or after 20 March 2023 and before 20 September 2023.

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

The new amount is \$23.20

Item 4 – Subsection 118(2) (after table item 30)

This item inserts a new item (item 31) to the table in subsection 118(2) of the Transitional Provisions Principles to specify the amount of maximum daily accommodation charge for a post-2008 reform resident who first entered residential care on or after 1 July 2004, receives an income support payment and enters care on or after 20 March 2023 and before 20 September 2023.

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

The new amount is \$42.70

Item 5 – Subsection 118(3) (after table item 26)

This item inserts a new item (item 27) to the table in subsection 118(3) of the Transitional Provisions Principles to specify the amount of maximum daily accommodation charge for a post-2008 reform resident who first entered residential care on or after 1 July 2004, does not receive an income support payment and is receiving care through a service that meets the building requirements referred to in Schedule 1 to the Transitional Provisions Principles, and enters a residential care service on or after 20 March 2023 and before 20 September 2023.

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

The new amount is \$42.70

Item 6 – Subsection 118(4) (after table item 30)

This item inserts a new item (item 31) to the table to subsection 118(4) of the Transitional Provisions Principles to specify the amount of maximum daily accommodation charge for a post-2008 reform resident who first entered residential care on or after 1 July 2004, does not receive an income support payment and is receiving care through a service that does not meet the building requirements referred to in Schedule 1 to the Transitional Provisions Principles, and enters a residential care service, on or after 20 March 2023 and before 20 September 2023.

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

The new amount is \$35.87

Statement of Compatibility with Human Rights

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

Aged Care Legislative Amendment (March Indexation) Instrument 2023

The *Aged Care Legislative Amendment (March Indexation) Instrument 2023* 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 Legislative Instrument

This legislative instrument amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014* and the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014*, to increase the dollar amount of particular supplements payable to approved providers of aged care services in line with the changes to the Australian consumer price index over 6 months to the December 2022 quarter, in addition to increasing the value of certain caps and thresholds in line with the changes to the age pension rates.

This legislative instrument also amends the *Aged Care (Transitional Provisions) Principles 2014* to update the specified amount of maximum accommodation charge for a post-2008 reform resident as a result of routine indexation. Section 44-5C of the *Aged Care (Transitional Provisions) Act 1997* provides that a person is a post-2008 reform resident if they are being provided with care through a residential care service and the person is not a pre-2008 reform resident (as defined in section 44-5D of the *Aged Care (Transitional Provisions) Act 1997*).

Human Rights Implications

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

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

Indexation of aged care subsidies and payments increase the amount of subsidy payable to approved providers for the provision of care and services to people with a condition of frailty or disability who require assistance to achieve and maintain the highest standard of physical and mental health. It also increases the dollar amount of additional payments in the form of supplements that are payable to approved providers to assist with the costs of caring for people who are financially disadvantaged. Indexation of aged care fees increases the thresholds and caps that are considered in determining how much people who can afford to contribute to the cost of their care can be asked to pay.

These changes are designed to ensure the payments and contributions keep pace with increases in the consumer price index. This helps ensure that aged care providers continue to receive sufficient funds in order to provide care recipients with a high standard of living and care.

In doing the above, this legislative instrument positively engages the rights set out in Articles 11(1) and 12(1) of the ICESCR and Articles 25 and 28 of the CRPD by promoting the right to an adequate standard of living and the right to the enjoyment of the highest attainable

standard of physical and mental health for persons receiving aged care.

Conclusion

This legislative instrument is compatible with human rights as it promotes the right to an adequate standard of living and the highest attainable standard of physical and mental health by maintaining the value of these payments and contributions.

The Hon Anika Wells MP
Minister for Aged Care