

EXPLANATORY STATEMENT

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

Aged Care Legislation Amendment (December Additional Subsidy Increases) Determination 2023

Purpose and operation

The *Aged Care Legislation Amendment (December Additional Subsidy Increases) Determination 2023* (the Amending Determination) amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014* (the Subsidy, Fees and Payments Determination) and the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014* (the Transitional Provisions Determination).

The purpose of the Amending Determination is to increase from 1 December 2023 the dollar amount of the National Efficient Price (NEP) for residential care activity. The amount of residential care basic subsidy is based on the NEP using the National Weighted Activity Unit (NWAU). The NWAU is a measure of residential care activity, expressed as a common unit, against which the NEP is set. The Amending Determination also increases the dollar amount of the registered nurse supplement payable to approved providers of residential care services in respect of an eligible care recipient on a day on or after 1 December 2023.

These increases provide the aged care sector with sufficient funding to pay increased wages to residential aged care workers in line with the 2022-2023 Annual Wage Review Decision announced by the Fair Work Commission (FWC) on 2 June 2023, which increased aged care worker minimum award rates by 5.75%. The increased subsidy that is delivered by this Amending Determination is weighted so that the additional funding to be paid over the remaining seven months of the 2023-24 financial year (December 2023 to June 2024 inclusive) is equivalent to the increased amount that would have been paid if it had been spread evenly over the full financial year. The FWC decision of 2 June 2023 was in addition to the outcome of the FWC Aged Care Work Value Case Stages 1 and 2 decisions (made on 4 November 2022 and 21 February 2023 respectively), which was to provide a 15% interim increase to the minimum award wages for direct care aged care workers and for which additional aged care subsidy funding has already been provided.

Background

The Amending Determination is made under the *Aged Care Act 1997* (the Aged Care Act) and the *Aged Care (Transitional Provisions) Act 1997* (Transitional Provisions Act), which provide for the regulation and funding of aged care services. Persons or bodies 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.

Authority

The Aged Care Act and Transitional Provisions Act provide that for each type of aged care, the Minister may determine the amounts of particular components of the subsidy and the amounts 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 the Amending Determination are set out in the following table:

Type of care and type of payment	Section of the Aged Care Act
Residential care	
National Efficient Price	subsection 44-3(2)
Registered nurse supplement	subsection 44- 27(3)

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

Type of Care and type of payment	Section of the Transitional Provisions Act
Residential Care	
National Efficient Price	subsection 44-3(2)
Registered nurse supplement	subsection 44- 27(3)

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

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

Commencement

The Amending Determination commences on 1 December 2023.

Consultation

The increased subsidy provided by this Amending Determination is weighted so that the additional funding to be paid over the remaining seven months of the 2023-24 financial year (December 2023 to June 2024 inclusive) is equivalent to the increased amount that would have been paid if it had been spread evenly over the full financial year. No specific consultation was undertaken with respect to the amounts of the increases applied in this Amending Determination.

Information about the increase in rates of aged care subsidies and supplements that will apply from 1 December 2023 will be disseminated by the Department of Health and Aged Care via electronic media to approved providers.

General

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

2003.

Details of the Amending Determination are set out in **Attachment A**.

The Amending Determination is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment B**.

Details of the Aged Care Legislation Amendment (December Additional Subsidy Increases) Determination 2023

Section 1 – Name

Section 1 provides that the name of the instrument is the *Aged Care Legislation Amendment (December Additional Subsidy Increases) Determination 2023*.

Section 2 – Commencement

Section 2 provides that the instrument commences on 1 December 2023.

Section 3 – Authority

Section 3 provides that the instrument is made under subsections 44-3(2) and 44-27(3) of the *Aged Care Act 1997* and subsections 44-3(2) and 44-27(3) of the *Aged Care (Transitional Provisions) Act 1997*.

Section 4 – Schedules

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 – Section 64H (definition of *national efficient price*)

Item 1 provides for the increase in the dollar amount of the National Efficient Price (NEP). The amount of residential care basic subsidy is based on the NEP using the National Weighted Activity Unit (NWAU). The NWAU is a measure of residential care activity, expressed as a common unit, against which the NEP is set.

Item 2 – Subsection 64ZU(5) (table)

Item 2 provides for the increase in the dollar amount of the registered nurse supplement for qualifying facilities located in MM categories 1 to 4. The Modified Monash (MM) is a measure of whether a location is metropolitan, rural, remote, or very remote. MM1 locations are metropolitan areas. MM2 locations are regional centres. MM3 are large rural towns. MM4 are medium rural towns.

Item 3 – Subsection 64ZU(6) (table)

Item 3 provides for the increase in the dollar amount of the registered nurse supplement for qualifying facilities located in MM categories 5 to 7. The MM is a measure of whether a location is metropolitan, rural, remote, or very remote. MM5 locations are small rural towns. MM6 locations are remote communities. MM7 are very remote communities.

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

Item 4 – Section 81 (Definition of *national efficient price*)

Item 4 provides for the increase in the dollar amount of the National Efficient Price (NEP). The amount of residential care basic subsidy is based on the NEP using the NWAU.

Item 5 – Subsection 91S(5) (table)

Item 5 provides for the increase in the dollar amount of the registered nurse supplement for qualifying facilities located in MM categories 1 to 4.

Item 6 – Subsection 91S(6) (table)

Item 6 provides for the increase in the dollar amount of the registered nurse supplement for qualifying facilities located in MM categories 5 to 7.

Statement of Compatibility with Human Rights

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

Aged Care Legislation Amendment (December Additional Subsidy Increases) Determination 2023

This legislative instrument 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 (December Additional Subsidy Increases) Determination 2023* (Amending Determination) amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014* and the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014*. The Amending Determination increases the dollar amount of the national efficient price on which residential aged care subsidy is based and the dollar amount of the registered nurse supplement payable to approved providers of qualifying facilities in respect of a day on or after 1 December 2023.

Human Rights Implications

The Amending Determination engages the following human rights 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 the right 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)

Residential aged care subsidies and supplements are payable to approved providers for the provision of care and services to people living in aged care facilities who require assistance to achieve and maintain the highest standard of physical and mental health.

The increased amounts of residential care subsidy and registered nurse supplement provided by the Amending Determination will provide the aged care sector with sufficient funding to pay increased wages to residential aged care workers in line with the Annual Wage Review Decision announced by the Fair Work Commission (FWC) on 2 June 2023 which increased aged care worker minimum award rates by 5.75%. That FWC decision was in addition to the outcome of the FWC Aged Care Work Value Case Stages 1 and 2 decisions which was to provide a 15% interim increase to the minimum award wages aged care workers and for which additional aged care subsidy funding has already been provided.

These changes are designed to ensure that government funding keeps pace with increases in aged care worker minimum award rates and 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.

The Amending Determination 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 because it promotes the right to an adequate standard of living and the highest attainable standard of physical and mental health.

The Hon Anika Wells MP
Minister for Aged Care and Sport