

# EXPLANATORY STATEMENT

## *Aged Care Act 1997*

### *Aged Care Legislation Amendment (Multi-Purpose Services Subsidy Increase) Instrument 2024*

#### **Purpose and operation**

The *Aged Care Legislation Amendment (Multi-Purposes Services Subsidy Increase) Instrument 2024* (the Amending Instrument) amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014* (the Subsidy, Fees and Payments Determination).

The purpose of the Amending Instrument is to increase the subsidy amount for Flexible Care in the form of multi-purpose services (MPS) in respect of high care and low care places and the viability supplement for Category A services.

This increase is to facilitate additional funding been paid to approved providers of MPS (MPS providers) to accommodate the 2022-23 Annual Wage Review decision of the Fair Work Commission (FWC) of 2 June 2023 to increase the minimum wage rate by 5.75%. It mirrors increases that were made to residential care subsidies on 1 December 2023 and will ensure MPS providers have sufficient funding available to pay these increased wages.

The increased subsidy that is delivered by this Amending Determination is weighted so that the additional funding to be paid over the remaining three months of the 2023-24 financial year (April – 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. This approach is designed to ensure an outcome consistent with the FWC decision which took effect from 1 July 2023, while also providing MPS subsidy payments in advance in accordance with the agreements currently in place with MPS providers.

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

#### **Background**

The Amending Instrument is made under the *Aged Care Act 1997* (the Aged Care Act), which relevantly provides for the 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 payments in respect of the care they provide to care recipients under the Aged Care Act.

Flexible care subsidies (including any applicable supplements) are paid on a per allocated place per day basis. The viability supplement for Category A in respect of the flexible care subsidy is paid in respect of a care recipient on a day to flexible care services in regional, rural and remote areas in recognition of the higher costs involved in providing care in those areas.

#### **Authority**

The Aged Care Act provides that for each type of aged care, the Minister for Aged Care 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, section 52-1 of the Aged Care Act provides that the amount of flexible care subsidy payable in respect of a day is the amount determined, or worked out in accordance with a method determined, by the Minister by legislative instrument.

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 Instrument commences on 1 April 2024.

### **Consultation**

The proposed increase to MPS subsidy amounts has been discussed with the MPS working group, which includes representatives of all State and Territory jurisdictions where MPS are located.

No specific consultation was undertaken with respect to the amounts of the increases applied in the Amending Instrument. Information about the specific increase in the subsidy amount and the viability supplement for Category A services that will apply from 1 April 2024 will be communicated by the Department of Health and Aged Care to approved providers.

### **General**

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of this instrument are set out in **Attachment A**.

This instrument 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 (*Multi-Purpose Services Subsidy Increase*) Instrument 2024**

**Section 1 – Name**

Section 1 provides that the name of the instrument is the *Aged Care Legislation Amendment (Multi-Purpose Services Subsidy Increase) Instrument 2024*.

**Section 2 – Commencement**

Section 2 provides that the instrument commences on 1 April 2024.

**Section 3 – Authority**

Section 3 provides that the instrument is made under the *Aged Care 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 92**

This item provides for the increase in the amount of flexible care subsidy for high care places in relation to Section 92 of the *Aged Care (Subsidies, Fees and Payments) Determination 2014* (SFP Determination). It amends the amount of B to increase the rate from \$140.53 to \$156.55. These increases correspond to the 5.75% increase to the minimum wage rate from 1 July 2023.

**Item 2 – Section 93**

This item provides for the increase in the amount of flexible care subsidy for low care places in relation to Section 93 of the SFP Determination. It amends the amount of B to increase the rate from \$140.53 to \$156.55. These increases correspond to the 5.75% increase to the minimum wage rate from 1 July 2023.

**Item 3 Section 97 (table)**

This item provides for the increase of amounts in relation to the viability supplement equivalent amount for Category A services by repealing the table to section 97 of the SFP Determination and substituting a new table that reflects the increased amounts. These increases correspond to the 5.75% increase to the minimum wage rate from 1 July 2023.

**Item 4 – Section 98 (table)**

This item provides for the increase of amounts in relation to the viability supplement equivalent amount for Category B services by repealing the table to section 98 of the SFP Determination and substituting a new table that reflects the increased amounts. These increases correspond to the 5.75% increase to the minimum wage rate from 1 July 2023.

**Item 5 – Section 99 (table)**

This item provides for the increase of amounts in relation to the viability supplement equivalent amount for Category C services by repealing the table to section 99 of the SFP Determination and substituting a new table that reflects the increased amounts. These increases correspond to the 5.75% increase to the minimum wage rate from 1 July 2023.

**Item 6 – Section 99A (table)**

This item provides for the increase of amounts in relation to the viability supplement equivalent amount for Category D services by repealing the table to section 99A of the SFP Determination and substituting a new table that reflects the increased amounts. These increases correspond to the 5.75% increase to the minimum wage rate from 1 July 2023.

## Statement of Compatibility with Human Rights

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

### *Aged Care Legislation Amendment (Multi-Purpose Services Subsidy Increase) Instrument 2024*

This Disallowable 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 Disallowable Legislative Instrument

The *Aged Care Legislation Amendment (Multi-Purpose Services Subsidy Increase) Determination 2024* (Amending Instrument) amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014* to increase the subsidy rates for Flexible Care in the form of multi-purpose services in respect of high care and low care places and the residential viability supplement. These increases are to accommodate increased wages to aged care workers in line with the 2022-23 Annual Wage Review decision announced by the Fair Work Commission (FWC) on 2 June 2023, which increased the minimum wage rate by 5.75% from 1 July 2023.

#### Human Rights Implications

The Amending Instrument 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)

The instrument increases the amount of subsidy payable to approved providers of flexible care in the form of multi-purpose services for the provision of flexible care services to people in a multi-purpose service (MPS) to achieve and maintain the highest standard of physical and mental health. These changes are designed to ensure that government funding keeps pace with increases in aged care worker minimum award rates. They will help ensure that approved providers of MPS continue to receive sufficient funds in order to provide care recipients with the highest attainable standard of health care and an adequate standard of living for those care recipients who are at an MPS receiving residential care (including accommodation).

The Amending 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 flexible care in the form of multi-purpose services.

**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**