

## EXPLANATORY STATEMENT

### *Aged Care Act 1997*

### *Aged Care Legislation Amendment (Multi-Purpose Services Subsidy Increase No. 2) Determination 2024*

#### **Purpose and operation**

The *Aged Care Legislation Amendment (Multi-Purposes Services Subsidy Increase No. 2) Instrument 2024* (the Amending Determination) amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014* (the Subsidy Determination).

The purpose of the Amending Determination is to adjust the amount of flexible care subsidy payable in respect of flexible care that is provided through a multi-purpose service (MPS). It will facilitate increased subsidy payments being made to approved providers of MPS (MPS providers) from 1 July 2024.

These adjustments include:

- applying routine indexation to the amount of MPS subsidies and supplements payable from 1 July 2024
- further adjustments to spread additional funding, made available from 1 April 2024 to MPS providers to accommodate the 2022-23 Annual Wage Review decision of the Fair Work Commission, across payments for a full financial year, and
- a new direct care minutes supplement to support MPS providers in participating States or Territories trialling direct care target arrangements.

In addition, the Amending Determination makes technical amendments to the Subsidy Determination to clarify and simplify current MPS subsidy calculations. These changes have no practical effect, but will facilitate streamlined MPS subsidy provisions being transferred to the proposed new Aged Care Act and its Rules.

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

#### **Background**

The Amending Determination 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. This includes flexible care subsidy payments for flexible care that is provided through a MPS.

#### **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 Determination commences on 1 July 2024.

## **Consultation**

The proposed increase to MPS subsidy amounts and related technical amendments to the Subsidy Determination have 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 Determination. Information about the specific increases to MPS subsidy amounts and related technical amendments that will apply from 1 July 2024 will be communicated by the Department of Health and Aged Care to MPS providers, including via regularly MPS reform webinars that are now in place.

## **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 No. 2) Determination 2024**

**Section 1 – Name**

Section 1 provides that the name of the instrument is the *Aged Care Legislation Amendment (Multi-Purpose Services Subsidy Increase No. 2) Determination 2024*.

**Section 2 – Commencement**

Section 2 provides that the instrument commences on 1 July 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 87 (definition of *ARIA value additional amounts*)**

A technical amendment has been made to this definition to reflect the new definition of *effective place* (see Items 3 to 6 below).

**Items 2 – Section 87 (table to the definition of *ARIA value additional amounts*)**

This item provides for the indexation of amounts in relation to the amount of viability supplement for a home care place allocated in respect of a multi-purpose service by repealing the table to the definition of *ARIA value additional amount* in section 87 of the *Subsidy Determination* and substituting a new table with the indexed amounts.

**Items 3 to 6 – Section 87 and definitions related to places**

These items, together with Item 9 below, make amendments to the definitions and terms used to explain how MPS subsidies and supplements are calculated for clarity. These amendments have no practical impact. They are designed to simplify and clarify MPS subsidy provisions, and remove unnecessary terms that are no longer used in practice in the MPS program.

These amendments include:

- introducing a new definition of *effective place* to clarify the allocated places that are currently utilised for the purposes of calculating MPS subsidies and supplements (as opposed to places that are only provisionally allocated, or it has been agreed with a provider that they cannot be used to provide flexible care for a period)
- replacing references to high and low care places with a single term of *residential care places* to remove unnecessary complexity and duplication – noting these separate terms are no longer used in the MPS program, with subsidies and supplements for both types of places the same
- making minor consequential amendments to the definition of *home care place*, and
- introducing related definitions of *effective home care* and *effective residential care place*.

**Item 7 – Section 87 (definition of *MMM classification additional amount*)**

A technical amendment has been made to this definition to reflect the new definition of *effective place* (see Items 3 to 6 above).

**Item 8 – Section 87 (Table to the definition of *MMM classification additional amount*)**

This item provides for the indexation of amounts in relation to the amount of viability supplement for a home care place allocated in respect of a multi-purpose service by repealing the table to the definition of *MMM classification additional amount* in section 87 of the Subsidy Determination and substituting a new table with the indexed amounts.

**Item 9 – Section 87 (definition of *residential care place*)**

This item introduces a new definition of *residential care place* to replace current terms used in the Subsidy Determination of low care and high care places, as discussed above at Items 3 to 6.

**Item 10 – Sections 91, 91A and 91B**

This item repeals the existing formula that is used to calculate the amount of flexible care subsidy payable in respect of flexible care that is provided through a multi-purpose services. These amendments have no practical impact. They are designed to simplify MPS subsidy provisions and remove unnecessary formula components that have no practical effect.

Amendments made to the flexible care formula for MPS include:

- formula components have been alphabetised for ease of reading
- descriptions of components have been made consistent, and updated to reflect the new term of *effective place* discussed above at Items 3 to 6 above
- components that are no longer used removed (for example, the DEA supplement, which has been \$0 since 2014), and
- values for particular components have been included within the descriptions of the relevant component (for example, DVEA and OMSA supplements), and indexed where not fixed amounts.

In addition, sections 91A and 91B have been removed as they relate to historical payments only (that is, additional payments made during COVID-19 support periods).

**Item 11 – Subparagraph 91C(1)(b)(ii)**

This item amends this paragraph to use the new term of *effective residential care places* discussed above at Items 3 to 6 (that is, it removes references to the terms high care and low care places which will no longer be used).

**Item 12 – Sections 92 and 93**

This item collapses the current Sections 92 and 93 into one section (that is, new Section 92) and provides for the applicable amount for a *residential care place* that should be utilised when calculating an MPS subsidy in line with the flexible care subsidy formula at Section 91. As discussed above at Items 3 to 6, this is because separate arrangements for high and low care places are no longer required.

Adjustments to the amount that is “B” have also been made to apply indexation, and cater for additional funding made available from 1 April 2023 to correspond to new minimum wage rates being increases from 1 July 2023, being paid across the full financial year.

New section 93 introduces a new Direct care minutes supplement amount. Consistent with previous Government decisions via Budget processes and funding allocations for the MPS program, this will facilitate additional funding being paid to MPS providers in jurisdictions which have agreed to participate in a trial of direct care targets for MPS.

The additional funding is designed to support participation in the trial and related co-design activities, as well as the ongoing provision of sufficient and quality direct care to MPS residents. The size of the supplement provided will depend on the Modified Monash Classification of the location of the MPS.

Participating States or Territories will be outlined on the website of the Department of Health and Aged Care.

### **Item 13 – Sections 94**

This item amends this paragraph to use the new term of *effective residential care places* discussed above at Items 3 to 6 (that is, it removes references to the terms high care and low care places which will no longer be used).

### **Item 14 – Sections 94 (table)**

This item provides for the indexation of amounts in relation to the respite supplement equivalent amount for a multi-purpose service by repealing the table to section 94 of the Subsidy Determination and substituting a new table with the indexed amounts.

Adjustments have also been made to cater for additional funding made available from 1 April 2023 to correspond to new minimum wage rates being increases from 1 July 2023, being paid across the full financial year.

### **Item 15 – Sections 95**

This item removes section 95 with information about relevant supplement amounts now included in Section 91, where still required, as discussed above at Item 10.

### **Item 16 – Section 96**

A technical amendment has been made to this definition to reflect the new definition of *effective place* (see Items 3 to 6 above).

### **Item 17 – Section 96A (table)**

This item provides for the indexation of amounts in relation to the viability supplement equivalent amount for Category A services by repealing the table to section 96A of the Subsidy Determination and substituting a new table with the indexed amounts.

### **Item 18 – Section 96B**

This item removes section 96B with information about the *Outbreak management support supplement* amount now included in Section 91, as discussed above at Item 10.

### **Item 19 – Section 97 (table)**

This item provides for the indexation of amounts in relation to the viability supplement equivalent amount for Category A services by repealing the table to section 97 of the Subsidy Determination and substituting a new table with the indexed amounts.

Adjustments have also been made to cater for additional funding made available from 1 April 2023 to correspond to new minimum wage rates being increases from 1 July 2023, being paid across the full financial year.

### **Item 20 – Section 98 (table)**

This item provides for the indexation of amounts in relation to the viability supplement equivalent amount for Category B services by repealing the table to section 98 of the Subsidy Determination and substituting a new table with the indexed amounts.

Adjustments have also been made to cater for additional funding made available from 1 April 2023 to correspond to new minimum wage rates being increases from 1 July 2023, being paid across the full financial year.

### **Item 21 – Section 99 (table)**

This item provides for the indexation of amounts in relation to the viability supplement equivalent amount for Category C services by repealing the table to section 99 of the Subsidy Determination and substituting a new table with the indexed amounts.

Adjustments have also been made to cater for additional funding made available from 1 April 2023 to correspond to new minimum wage rates being increases from 1 July 2023, being paid across the full financial year.

**Item 22 – Section 99A (table)**

This item provides for the indexation of amounts in relation to the viability supplement equivalent amount for Category D services by repealing the table to section 99A of the Subsidy Determination and substituting a new table with the indexed amounts.

Adjustments have also been made to cater for additional funding made available from 1 April 2023 to correspond to new minimum wage rates being increases from 1 July 2023, being paid across the full financial year.

**Item 23 – Section 101 (table)**

This item provides for the indexation of amounts in relation to the concessional resident equivalent amounts for multi-purpose services by repealing the table to section 101 of the Subsidy Determination and substituting a new table with the indexed amounts.

Adjustments have also been made to cater for additional funding made available from 1 April 2023 to correspond to new minimum wage rates being increases from 1 July 2023, being paid across the full financial year.

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Humans Rights (Parliamentary Scrutiny) Act 2011*  
***Aged Care Legislation Amendment (Multi-Purpose Services Subsidy Increase No. 2)***  
***Determination 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 No. 2) Determination 2024* (Amending Determination) amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014* (the Subsidy Determination). The purpose of the Amending Determination is to adjust the amount of flexible care subsidy payable in respect of flexible care that is provided through a multi-purpose service (MPS). It will facilitate increased subsidy payments being made to approved providers of MPS (MPS providers) from 1 July 2024.

### 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)

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 an MPS to achieve and maintain the highest standard of physical and mental health. These changes 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**