

EXPLANATORY STATEMENT

Aged Care Act 1997

Aged Care (Transitional Provisions) Act 1997

Aged Care Legislation Amendment (July Indexation) Instrument 2024

Purpose and operation

The *Aged Care Legislation Amendment (July Indexation) Instrument 2024* (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); the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014* (the Transitional Provisions Determination); and the *User Rights Principles 2014* (User Rights Principles).

The Amending Instrument applies routine indexation to certain supplements and other amounts used in the calculation of subsidies which are payable to approved providers of aged care services in respect of a day from 1 July 2024, and to increase the maximum daily prices for care management and package management which can be charged by approved providers of home care, in line with the home care subsidy increases.

Background

The Amending Instrument is made under the *Aged Care Act 1997* (the Aged Care Act) and the *Aged Care (Transitional Provisions) Act 1997* (the Transitional Provisions Act), which 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.

Authority

The Aged Care Act provides that for each type of aged care, the Minister may determine, by legislative instrument, the amount of subsidy and supplement 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	Aged Care Act section
Residential care	
Primary supplement amount	subsection 44-5(3)
Other supplement amount	subsection 44-27(3)
Home care	
Basic subsidy amount	subsection 48-2(2)
Primary supplement amount	subsection 48-3(3)
Care subsidy reduction income thresholds	subsection 48-7(6)
Other supplement amount	subsection 48-9(3)
Flexible care	
Flexible care subsidy	section 52-1

The Transitional Provisions Act provides that for residential care and flexible care, the Minister may determine, by legislative instrument, the amount of subsidy and supplement payable to an approved provider for the provision of that type of aged care. In relation to home care, the Transitional Provisions Act provides that the amount of home care subsidy payable to an approved provider in respect of a care recipient is the amount specified in the Transitional Provisions Principles. Specifically, 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	Transitional Provisions Act section
Residential care	
Oxygen supplement	subsection 44-13(6)
Enteral feeding supplement	subsection 44-14(6)
Additional primary supplements	subsection 44-16(3)
Other supplements	subsection 44-27(3)
Home care	
Home care subsidy amount	subsection 48-1(2)

Section 96-1 of the Aged Care Act provides that the Minister may, by legislative instrument, make Principles specified in the second column of the table in that section providing for matters required or permitted, or necessary or convenient, to give effect to the corresponding part or section of the Act specified in the third column of the table. This includes the User Rights Principles in relation to user rights matters (Part 4.2 of the 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 July 2024.

Consultation

The routine indexation of subsidies and supplements in this Amending Instrument is calculated through the use of a well-established formula based on the relevant wage and price indices. No specific consultation was undertaken with respect to the amount of the indexation to the aged care subsidies and supplements applied in this Amending Instrument.

Regulation 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**).

General

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

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

The Amending 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 (July Indexation) Instrument 2024

Section 1 – Name

Section 1 provides that the name of the instrument is the *Aged Care Legislation Amendment (July Indexation) Instrument 2024*.

Section 2 – Commencement

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

Section 3 – Authority

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

Section 4 – Schedules

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

Schedule 1 – Subsidy paid under the *Aged Care Act 1997*

Aged Care (Subsidy, Fees and Payments) Determination 2014

Item 1 – Amendments of listed provisions – increased amounts

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

- Items 1, 5 and 6; the amount of oxygen supplement
- Items 2, 3, 7, 8 and 9; the amount of enteral feeding supplement
- Item 4; the amount of veterans' supplement
- Items 10, 11 and 12; the amounts of income thresholds
- Items 13 and 14; the amount of flexible care subsidy for innovative care services
- Items 15 and 16; the amount of flexible care subsidy for transition care; and
- Items 17 and 18; the amount of flexible care subsidy for short-term restorative care.

Item 2 – Section 67 (table)

This item provides for the increase of amounts in relation to the basic subsidy amount for home care by repealing the table to section 67 and substituting a new table with the increased amounts.

Item 3 – Section 84A (table to definition of *ARIA value viability supplement amount*)

This item provides for the increase of amounts in relation to the amount of viability supplement for home care by repealing the table to the definition of *ARIA value viability supplement amount* in section 84A and substituting a new table with the increased amounts.

Item 4 – Section 84A (table to definition of *MMM classification viability supplement amount*)

This item provides for the increase of amounts in relation to the amount of viability supplement for home care by repealing the table to the definition of *MMM classification viability supplement amount* in section 84A and substituting a new table with the increased

amounts.

Item 5 – Subsection 104(1) (table)

This item provides for the increase of amounts in relation to the flexible care subsidy amounts for innovative care services by repealing the table to subsection 104(1) and substituting a new table with the increased amounts.

Item 6 – Subsection 104(2) (table)

This item provides for the increase of amounts in relation to the flexible care subsidy amount for care provided through an innovative care service by repealing the table to subsection 104(2) and substituting a new table with the increased amount.

Schedule 2 – Subsidy paid under the *Aged Care (Transitional Provisions) Act 1997*

Aged Care (Transitional Provisions) Principles 2014

Item 1 – Section 67E (table)

This item provides for the increase of amounts in relation to the basic subsidy amount for home care by repealing the table to section 67E and substituting a new table with the increased amounts.

Item 2 – Section 67N

This item provides for the increase of the home care top-up supplement amount.

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

Item 3 – Amendments of listed provisions – increased amounts

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

- Item 1; the amount of oxygen supplement
- Items 2 and 3; the amount of enteral feeding supplement
- Item 4; the amount of veterans' supplement

Schedule 3 – Other amendments

User Rights Principles 2014

Item 1 – Subsection 21KA(1) (table)

This item provides for the increase of maximum daily prices for care management and package management for home care services in line with the increases of home care basic subsidy by repealing the table to subsection 21KA(1) and substituting a new table with the increased maximum prices.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Aged Care Legislation Amendment (July Indexation) Instrument 2024

The *Aged Care Legislation Amendment (July Indexation) Instrument 2024* (the Amending 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 Amending Instrument amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014*, the *Aged Care (Transitional Provisions) Principles 2014*, the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014*, and the *User Rights Principles 2014*. The Amending Instrument increases the amount of particular subsidies and supplements payable to approved providers of aged care services and the maximum daily prices for care management and package management for home care from 1 July 2024.

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(1) 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(1) 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 Amending Instrument increases the amount of subsidies and supplements payable to approved providers for the provision of care and services to people living in aged care facilities or otherwise receiving care who require assistance to achieve and maintain the highest attainable standard of physical and mental health.

These increases help 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 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

The Amending Instrument is compatible with human rights as it promotes the human 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
Minister for Aged Care**