

# **EXPLANATORY STATEMENT**

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

### ***Aged Care Legislation Amendment (Adjusted Basic Subsidy Amount) Determination*** ***2024***

The *Aged Care Act 1997* (the Aged Care Act), the *Aged Care (Transitional Provisions) Act 1997* (the Transitional Provisions Act) and the *Aged Care Quality and Safety Commission Act 2018* (the ACQSC Act) provide for the funding and regulation of aged care services.

Providers who are approved under the ACQSC Act to provide aged care (approved providers) may be eligible to receive subsidy payments in respect of the care they provide to a person who has been approved under the Aged Care Act as recipients of aged care (approved care recipients). The Aged Care Act and the Transitional Provisions Act provide that, for each type of aged care, the Minister may determine the amount of subsidy payable to an approved provider for the provision of that type of aged care.

#### **Purpose and operation**

The *Aged Care Legislation Amendment (Adjusted Basic Subsidy Amount) Determination 2024* (Amending Instrument) makes consequential amendments to aged care subordinate legislation to correct incidental effects of amendments commencing through Schedule 3 of the *Aged Care Legislation Amendment (Subsidy and Other Measures) Instrument 2024* (Subsidy and Other Measures Instrument). This will preserve from 1 October 2024:

- existing arrangements to work out the adjusted basic subsidy amount, an amount used in working out daily amounts of residential care fees, and
- existing arrangements to work out the maximum daily amount of resident fees for reserving a place at a residential care service.

The changes are applicable in respect of residential care recipients (who are subject to the Aged Care Act and its legislative instruments) and continuing residential care recipients (who are subject to the Transitional Provisions Act and its legislative instruments).

The Amending Instrument amends the following subordinate legislation:

- *Aged Care (Subsidy, Fees and Payments) Determination 2014* (Subsidy Determination)
- *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014* (Transitional Provisions Determination).

#### **Background**

##### ***Adjusted basic subsidy amount and maximum daily fee to reserve a place in a residential care service***

The adjusted basic subsidy amount (subsection 44-21(6A) of the Aged Care Act and section 64ZG of the Subsidy Determination) is an amount used in working out residential care means-tested care fees (paragraph 52C-3(3)(a) of the Aged Care Act).

Since 2022, Australian Government policy has been that for all residential care recipients the adjusted basic subsidy amount is to be worked out, in part, by reference to the service amount of basic subsidy associated with receiving care through a non-specialised residential care service with a street address in a metropolitan area on the day. This is an equity measure that ensures means-tested care fees do not differ between care recipients only because of differences in where they receive their residential care.

Also since 2022, Australian Government policy has been to use the service amount of basic subsidy associated with receiving care through a non-specialised residential care service in a metropolitan area when working out the maximum daily fee to reserve a place in a residential care service (section 52C-5 of the Aged Care Act and section 106D of the Subsidy Determination). Again, this is an equity measure that ensures care recipient fees to reserve a place do not differ only because of where they wish to receive care.

The same policies also apply to continuing residential care recipients through the operation of subsection 44-21(5), section 58-2 and 58-6 of the Transitional Provisions Act and section 89 and section 95 of the Transitional Provisions Determination.

#### Scope and timing of amendments

To preserve existing arrangements, the Amending Instrument makes necessary amendments to the Subsidy Determination and the Transitional Provisions Determination from 1 October 2024, consequential to amendments in Schedule 3 of the Subsidy and Other Measures Instrument.

The extent of amendments is limited to changing references to column 1 of Item 7 of the table of service amounts in section 64M of the Subsidy Determination and section 84 of the Transitional Provisions Determination to become references to column 1 of Item 8 of that table as it will be amended from 1 October 2024 through the operation of items 4 and 7 of Schedule 3 of the Subsidy and Other Measures Instrument. This will preserve the intended link between the methods for working out the adjusted basic subsidy amount and the maximum daily amount of resident fees for reserving a place at a resident care service and the service amount of basic subsidy associated with receiving care through a non-specialised residential care service with a street address in a metropolitan area.

#### **Authority**

Section 44-21(6A) and 52C-5 of the Aged Care Act and section 44-21(5) and section 58-6 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 1 October 2024.

### **Consultation**

No consultation has been undertaken, as the amendments in the Amending Instrument are consequential to amendments in the Subsidy and Other Measures Instrument and have the sole effect of preserving existing arrangements that otherwise would be impacted by the amendments in the Subsidy and Other Measures Instrument.

### **Impact Analysis**

The amendments in in the Amending Instrument are consequential to amendments to the service amount of basic subsidy through Schedule 3 of the Subsidy and Other Measures Instrument. The Office of Impact Analysis advised that a detailed impact analysis was not required for the changes to basic subsidy arrangements and related matters (OIA24-07857).

### **General**

The Amending Principles are a legislative instrument for the purposes of the *Legislation Act 2003*.

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

The Amending Principles are 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 (Adjusted Basic Subsidy Amount) Determination 2024**

**Section 1** provides that the name of the instrument is the *Aged Care Legislation Amendment (Adjusted Basic Subsidy Amount) Determination 2024* (Amending Instrument).

**Section 2** states that the whole of the Amending Instrument commences on 1 October 2024.

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

**Section 4** provides that each instrument that is specified in a Schedule to the Amending Instrument is amended or repealed as set out in the applicable items in the relevant Schedule and other items in the Schedules have effect according to its terms.

**SCHEDULE 1—Amendments**

***Aged Care (Subsidy, Fees and Payments) Determination 2014***

**Item 1 – Section 64ZG**

This item amends section 64ZG to omit a reference to item 7 of column 1 of the table in subsection 64M(1) of the *Aged Care (Subsidy, Fees and Payments) Determination 2014* (Subsidy Determination) and substitute a reference to item 8.

When taken together with item 4 of Schedule 3 of the *Aged Care Legislation Amendment (Subsidy and Other Measures) Instrument 2024* (Subsidy and Other Measures Instrument), the effect is to preserve from 1 October 2024 the existing arrangement to work out the *adjusted basic subsidy amount* that applies to care recipients (subsection 44-21(6A) of the Aged Care Act) by, in part, referencing the service amount of basic subsidy associated with receiving care through a non-specialised residential care service with a street address in a metropolitan area (that is, in the MM 1 category of the Modified Monash Model of geographic remoteness).

'Modified Monash Model' and 'MM category' have the same meanings as in section 64H of the Subsidy Determination. Modified Monash Model means the 2019 model developed by the Department to categorise areas according to geographical remoteness and population size, as the model existed on 1 October 2022. MM category means a category for an area provided for by the Modified Monash Model and known as MM 1 (metropolitan areas), MM 2 (regional centres), MM 3 (large rural towns), MM 4 (medium rural towns), MM 5 (small rural towns), MM 6 (remote communities) or MM 7 (very remote communities).

### **Item 2 – Section 106D**

This item amends section 106D to omit a reference to item 7 of column 1 of the table in subsection 64M(1) of the *Aged Care (Subsidy, Fees and Payments) Determination 2014* (Subsidy Determination) and substitute a reference to item 8.

When taken together with item 4 of Schedule 3 of the Subsidy and Other Measures Instrument, the effect is to preserve from 1 October 2024 the existing arrangement to work out the *maximum daily fee to reserve a place in a residential care service* that applies to care recipients (section 52C-5 of the Aged Care Act) by, in part, referencing the service amount of basic subsidy associated with receiving care through a non-specialised residential care service with a street address in a metropolitan area (that is, in the MM 1 category of the Modified Monash Model).

'Modified Monash Model' and 'MM category' have the same meanings as in section 64H of the Subsidy Determination. Modified Monash Model means the 2019 model developed by the Department to categorise areas according to geographical remoteness and population size, as the model existed on 1 October 2022. MM category means a category for an area provided for by the Modified Monash Model and known as MM 1 (metropolitan areas), MM 2 (regional centres), MM 3 (large rural towns), MM 4 (medium rural towns), MM 5 (small rural towns), MM 6 (remote communities) or MM 7 (very remote communities).

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

### **Item 3 – Section 89**

This item amends section 89 to omit a reference to item 7 of column 1 of the table in subsection 84(1) of the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014* (Transitional Provisions Determination) and substitute a reference to item 8.

When taken together with item 7 of Schedule 3 of the Subsidy and Other Measures Instrument, the effect is to preserve from 1 October 2024 the existing arrangement to work out the *adjusted basic subsidy amount* that applies to continuing care recipients (subsection 44-21(5) of the Transitional Provisions Act) by, in part, referencing the service amount of basic subsidy associated with receiving care through a non-specialised residential care service with a street address in a metropolitan area (that is, in the MM 1 category of the Modified Monash Model of geographic remoteness).

'Modified Monash Model' and 'MM category' have the same meanings as in section 81 of the Subsidy Determination. Modified Monash Model means the 2019 model developed by the Department to categorise areas according to geographical remoteness and population size, as the model existed on 1 October 2022. MM category means a category for an area provided for by the Modified Monash Model and known as MM 1 (metropolitan areas), MM 2 (regional centres), MM 3 (large rural towns), MM 4 (medium rural towns), MM 5 (small rural towns), MM 6 (remote communities) or MM 7 (very remote communities).

Continuing residential care recipient means a person who:

- entered a residential care service before 1 July 2014, and
- has not:
  - ceased to be provided with residential care by a residential care service for a continuous period of more than 28 days (other than because the person is on leave), or
  - before moving to another residential care service, made a written choice, in accordance with the *Fees and Payments Principles 2014*, covered by Chapters 3 and 3A of the Aged Care Act in relation to the other service (Schedule 1 of the Aged Care Act).

#### **Item 4 – Section 95**

This item amends section 95 to omit a reference to item 7 of column 1 of the table in subsection 84(1) of the Transitional Provisions Determination and substitute a reference to item 8.

When taken together with item 4 of Schedule 7 of the Subsidy and Other Measures Instrument, the effect is to preserve from 1 October 2024 the existing arrangement to work out the *maximum daily fee to reserve a place in a residential care service* that applies to continuing care recipients (section 58-6 of the Transitional Provisions Act) by, in part, referencing the service amount of basic subsidy associated with receiving care through a non-specialised residential care service with a street address in a metropolitan area (that is, in the MM 1 category of the Modified Monash Model).

'Modified Monash Model' and 'MM category' have the same meanings as in section 81 of the Transitional Provisions Determination. Modified Monash Model means the 2019 model developed by the Department to categorise areas according to geographical remoteness and population size, as the model existed on 1 October 2022. MM category means a category for an area provided for by the Modified Monash Model and known as MM 1 (metropolitan areas), MM 2 (regional centres), MM 3 (large rural towns), MM 4 (medium rural towns), MM 5 (small rural towns), MM 6 (remote communities) or MM 7 (very remote communities).

Continuing residential care recipient means a person who:

- entered a residential care service before 1 July 2014, and
- has not:
  - ceased to be provided with residential care by a residential care service for a continuous period of more than 28 days (other than because the person is on leave), or
  - before moving to another residential care service, made a written choice, in accordance with the *Fees and Payments Principles 2014*, covered by Chapters 3 and 3A of the Aged Care Act in relation to the other service (Schedule 1 of the Aged Care Act).

## Statement of Compatibility with Human Rights

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

*Aged Care Legislation Amendment (Adjusted Basic Subsidy Amount) Determination 2024*

This 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 instrument

The *Aged Care Legislation Amendment (Adjusted Basic Subsidy Amount) Determination 2024* (Amending Instrument) makes consequential amendments to aged care subordinate legislation to correct incidental effects of certain amendments commencing through Schedule 3 of the *Aged Care Legislation Amendment (Subsidy and Other Measures) Instrument 2024*. This will preserve from 1 October 2024:

- existing arrangements to work out the adjusted basic subsidy amount, an amount used in working out daily amounts of residential care fees, and
- existing arrangements to work out the maximum daily amount of resident fees for reserving a place at a residential care service.

The changes are applicable in respect of residential care recipients (who are subject to the *Aged Care Act 1997* and its legislative instruments) and continuing residential care recipients (who are subject to the *Aged Care (Transitional Provisions) Act 1997* and its legislative instruments).

The Amending Instrument amends the following subordinate legislation:

- *Aged Care (Subsidy, Fees and Payments) Determination 2014*
- *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014*.

### Human rights implications

#### Right to social security and social protection

The right to social security including social insurance is contained in article 9 of the ICESCR. Article 28 of the CRPD also recognises the right of persons with disabilities to social protection, including measures to ensure access to appropriate and affordable services and public housing programs.

The Amending Instrument engages the right to social security by preserving existing equity measures that ensure residential care recipients in regional, rural and remote areas and/or who need specialised services do not face undue cost barriers to access residential care services.

Without the amendments in the Amending Instrument, barriers to access may arise from having to pay higher fees to receive the same care and services than care recipients in non-specialised residential care services in metropolitan services, or from having to pay higher fees to reserve a place at a residential care service offering specialised services or that is in a non-metropolitan area.

**Conclusion**

The Amending Instrument is compatible with human rights as it promotes the right to social security and social protection.

**The Hon Anika Wells MP  
Minister for Aged Care**