

EXPLANATORY STATEMENT

Aged Care Act 1997

Aged Care (Subsidy, Fees and Payments) Amendment (Maximum Accommodation Payment) Determination 2024

Purpose and operation

The *Aged Care (Subsidy, Fees and Payments) Amendment (Maximum Accommodation Payment) Determination 2024* (the Amending Instrument) amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014*.

The purpose of the Amending Instrument is to increase the maximum accommodation payment amount that an approved provider may charge a person who receives care through a residential care service or an eligible flexible care service from 1 January 2025.

Background

Care recipients with sufficient financial means can be asked to pay for, or contribute to, the cost of accommodation provided with residential care or eligible flexible care. This accommodation payment can be in the form of lump sums referred to as refundable accommodation deposits, or regular payments referred to as daily accommodation payments, or a combination of both.

The *Aged Care Act 1997* (the Act) allows the Minister to determine, by legislative instrument, a maximum amount of accommodation payment that providers may charge for accommodation. Providers may only charge above this maximum amount with the approval of the Independent Health and Aged Care Pricing Authority (Pricing Authority). The maximum accommodation payment amount (which is currently \$550,000) has not been changed since it was first introduced in 2014 and has decreased in relative value as accommodation costs in residential aged care (for example, covering the cost of the room and capital expenses) have increased over that time.

The Aged Care Taskforce (the Taskforce), which was established as a time-limited body in 2023 to provide expert advice to the Government, considered the maximum accommodation payment amount as part of its review of aged care funding arrangements. The Taskforce considered that there was a need for an immediate increase to the maximum accommodation payment amount and for this amount to be indexed over time to ensure it remains constant in real terms. This is in line with earlier recommendation 19 of the *Legislated Review of Aged Care 2017* (Tune Review) that the maximum accommodation price be increased to \$750,000 and indexed over time.

The Government has accepted the advice of the Taskforce. The Amending Instrument amends the maximum refundable accommodation deposit amount that an approved provider may charge a person for accommodation without approval from the Pricing Authority to \$750,000 (from its previous level of \$550,000). The Amending Instrument also amends the calculator used to work out the maximum daily accommodation payment amount a provider may charge a person, so that it is in line with the increased maximum refundable accommodation deposit amount. Indexation of the maximum accommodation payment amount will be managed through further amendments to the *Aged Care (Subsidy, Fees and Payments) Determination 2014*.

The Amending Instrument will reduce red tape for providers and give them greater confidence in developing or updating high quality accommodation. It will also make it easier for providers to plan new builds by giving confidence that they can be financially viable projects.

Authority

Subsection 52G-3(1) of the Act provides that the Minister may, by legislative instrument, determine the maximum amount of accommodation payment that an approved provider may charge a person.

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 January 2025.

Consultation

The increase to the maximum accommodation payment amount was recommended earlier by the Tune Review in its final report, following a range of consultations with consumers, carers, providers and peak bodies, in developing its recommendations. It was subsequently considered by the recent Taskforce, which also considered there was a need for an immediate increase, to implement the prior recommendation of the Tune Review.

In addition, the Taskforce consulted widely to develop the advice in its *Final Report*, including: 180 submissions, 11 roundtables, 12 in-person forums, an online survey, and targeted consultation. Approximately 180 written submissions and 1,944 survey responses were received.

The Taskforce's members consulted with a range of stakeholders including older people, carers and families, health professionals, providers, peak organisations, banks and superannuation funds. This provided members with an understanding of the key issues related to aged care funding arrangements.

More details on the Taskforce, including the Taskforce's *Final Report* and the extensive consultations undertaken in preparing the *Final Report* and feedback received from these consultations, are available at: <https://www.health.gov.au/committees-and-groups/aged-care-taskforce>.

Impact Analysis

Changes have been assessed as no more than minor. A detailed impact assessment is not required. (OIA Reference No.: OIA24-07603)

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**.

ATTACHMENT A

Details of the *Aged Care (Subsidy, Fees and Payments) Amendment (Maximum Accommodation Payment) Determination 2024*

Section 1 – Name

Section 1 provides that the name of the instrument is the *Aged Care (Subsidy, Fees and Payments) Amendment (Maximum Accommodation Payment) Determination 2024* (Amending Instrument).

Section 2 – Commencement

Section 2 provides that the Amending Instrument commences on 1 January 2025.

Section 3 – Authority

Section 3 provides that the authority for making the Amending Instrument is subsection 52G-3(1) of the *Aged Care Act 1997*.

Section 4 – Schedules

Section 4 has the effect that the *Aged Care (Subsidy, Fees and Payments) Determination 2014* is amended as per the terms of Schedule 1 of the Amending Instrument.

Schedule 1 – Amendments

Aged Care (Subsidy, Fees and Payments) Determination 2014

Item 1 – Section 110

This item amends section 110 to increase the maximum refundable accommodation deposit amount that an approved provider may charge a person from \$550,000 to \$750,000.

Item 2 – Subsection 111(1)

This item amends the calculator for working out the maximum daily accommodation payment amount that an approved provider may charge a person with the updated maximum refundable accommodation deposit amount (\$750,000) used in the formula.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Aged Care (Subsidy, Fees and Payments) Amendment (Maximum Accommodation Payment) Determination 2024

The *Aged Care (Subsidy, Fees and Payments) Amendment (Maximum Accommodation Payment) Determination 2024* (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 Disallowable Legislative Instrument

The Amending Instrument increases the maximum accommodation payment amount that an approved provider may charge a person who receives care through a residential care service or an eligible flexible care service from 1 January 2025.

The maximum accommodation payment amount (which is currently \$550,000) has not been changed since it was first introduced in 2014 and has decreased in relative value as accommodation costs in residential aged care (for example, covering the cost of the room and capital expenses) have increased over that time.

The Amending Instrument amends the maximum refundable accommodation deposit amount that an approved provider may charge a person for accommodation without approval from the Pricing Authority to \$750,000 (from its previous level of \$550,000). The Amending Instrument also amends the calculator used to work out the maximum daily accommodation payment amount a provider may charge a person, so that it is in line with the increased maximum refundable accommodation deposit amount.

Providers wishing to charge above the maximum amount can continue to obtain approval from the Pricing Authority.

The Amending Instrument will reduce red tape for providers and give them greater confidence in developing or updating high quality accommodation. It will also make it easier for providers to plan new builds by giving confidence that they can be financially viable projects.

This change will only impact some residents who enter care on or after 1 January 2025 and there will still be a range of accommodation options available below the maximum amount.

Human rights implications

This Amending Instrument does not engage any of the applicable rights or freedoms.

Conclusion

The Amending Instrument is compatible with human rights as it does not raise any human rights issues.

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