

EXPLANATORY STATEMENT

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

Aged Care Legislation Amendment (January Subsidy Increase) Instrument 2025

Purpose and operation

The *Aged Care Legislation Amendment (January Subsidy Increase) Instrument 2025* (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); and the *User Rights Principles 2014* (User Rights Principles).

The Amending Instrument applies increases of 0.93 per cent to the daily rates of home care subsidy and supplements, short term restorative care subsidy and supplements, and transition care subsidy and supplements which are payable to approved providers of aged care services in respect of a day from 1 January 2025.

The increased amounts of subsidies and supplements for home care, short term restorative care, and transition care in this Amending Instrument will help support approved providers to pay increased award wages for aged care workers following the Fair Work Commission's Aged Care Work Value Case (ACWVC) Stage 3 decision.

The Amending Instrument also increases the amount of the flexible care aged care wage supplement amount that is paid to eligible Multi-Purpose Services (MPS) providers.

On 27 June 2024, the Fair Work Commission (FWC) handed down its decision in relation to the implementation and phasing of the wage increases for the aged care workers included in its 15 March 2024 decision. Direct care workers' award wage increases will generally be split over two tranches, with a 3.28 per cent increase on 1 January 2025 and a 5.68 per cent increase 1 October 2025.

The vast majority of MPS providers pay their employees under respective State and Territory Health employment awards. Only three non-State and Territory government MPS providers who employ their staff under the national Aged Care Award are eligible to receive the aged care wage supplement and the additional funding provided by the increase will help these MPS providers to have sufficient funding available to pay the increased wages resulting from the FWC stage 3 decision.

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 1997* (the Act). Flexible care subsidies (including any applicable supplements) that are paid to eligible MPS providers are paid on a per allocated place per day basis. The Amending Instrument also increases 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.

From 1 January 2025, award wages will increase for many aged care workers, as a result of the Fair Work Commission's ACWVC Stage 3 decision. This proposal gives effect to the Government's commitment to fund the impact of the Commission's ACWVC Stage 3 decision by increasing funding in recognition of ongoing increased wage costs.

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 to that subsidy 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
Home care	
Basic subsidy amount	subsection 48-2(2)
Primary supplement amount	subsection 48-3(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
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 an 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

From 1 January 2025, award wages will increase for many aged care workers, as a result of the Fair Work Commission's ACWVC Stage 3 decision. This proposal gives effect to Government's commitment to fund the impact of the Commission's ACWVC Stage 3 decision. No specific consultation was undertaken with respect to the amount of the increases to the aged care subsidies and supplements applied in this Amending Instrument. Information about the specific increases in the subsidies and supplements in this Amending Instrument that will apply from 1 January 2025 will be communicated by the Department of Health and Aged Care to approved providers.

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 Legislation Amendment (January Subsidy Increase) Instrument 2025

Section 1 – Name

Section 1 provides that the name of the instrument is the *Aged Care Legislation Amendment (January Subsidy Increase) Instrument 2025*.

Section 2 – Commencement

Section 2 provides that the instrument commences on 1 January 2025.

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 and 2; the amount of home care oxygen supplement
- Items 3, 4 and 5; the amount of home care enteral feeding supplement
- Items 6 and 7; the amount of flexible care subsidy for transition care; and
- Items 8 and 9; 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 – Section 96A (table)

Item 5 repeals the table at section 96A and substitutes it with a table that provides for the increase in the amount of flexible care subsidy for the aged care wage supplement amount. It amends the amount of the specific subsidies identified under the column titled ‘Amount (\$)’.

These increases correspond to the 3.28 per cent increase to amount of funding provided to these organisations to pay the salaries and on-costs paid for staff employed to provide aged care services. The calculation of the 3.28 per cent increase is based on the proportion of expenditure on the salaries and wages for aged care workers in the eligible MPS sites operated by non-state government MPS Providers. This is converted into the increase of the subsidy per day and per operational residential place at the MPS site.

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.

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 (January Subsidy Increase) Instrument 2025

The *Aged Care Legislation Amendment (January Subsidy Increase) Instrument 2025* (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*, 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 January 2025.

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 of home care, short term restorative care, and transition care, and multi-purpose services for the provision of care and services to people 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**