

## EXPLANATORY STATEMENT

Issued by the authority of the Minister for Aged Care

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

*Aged Care Legislation Amendment (Outbreak Management Support Supplement) (No. 2)*  
*Instrument 2024*

### **Purpose and operation**

The *Aged Care Legislation Amendment (Outbreak Management Support Supplement) (No. 2) Instrument 2024* (Amending Instrument) amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014* and the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014*.

The Amending Instrument broadly makes three changes. Firstly, the Amending Instrument continues the existing Outbreak Management Support Supplement (OMS Supplement) payable for a day for a care recipient with an adjustment to the amount payable (\$1.65) from 1 January 2025. The extension of the OMS Supplement ensures continued support, to assist approved providers of residential care, with outbreak management support for care recipients. The adjusted OMS Supplement amount will also apply in respect of continuing residential care recipients (a pre-1997 cohort of care recipients who are subject to the *Aged Care (Transitional Provisions) Act 1997* (the Transitional Provisions Act) and its subordinate legislation) from 1 January 2025

Secondly, the Amending Instrument will continue the OMS Supplement amount included in the calculation of the flexible care subsidy payable for a day for a care recipient in respect of flexible care provided through a multi-purpose service with an adjustment to the amount payable (\$1.65) from 1 January 2025.

Thirdly, the Amending Instrument introduces the OMS Supplement amount into the calculation of the flexible care subsidy for a day for a care recipient who is being provided with transition care through a flexible care service.

These changes will continue to provide time limited assistance to providers in their provision of outbreak management support for care recipients.

### **Background**

The *Aged Care Act 1997* (the Aged Care Act) and the Transitional Provisions Act provide for the regulation and funding of aged care services.

Providers who are approved under the *Aged Care Quality and Safety Commission Act 2018* to provide aged care (approved providers) may be eligible to receive subsidy and supplement payments in respect of the care they provide to care recipients who have been approved under the Aged Care Act as recipients of aged care (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 and supplements payable to an approved provider for the provision of that type of aged care.

The OMS Supplement was introduced as part of the 2023-24 Mid-Year Economic and Fiscal Outlook and has provided support for residential care and multi-purpose services to assist approved providers to manage outbreaks of COVID-19 and other infectious disease in 2024. The extension of the OMS Supplement in 2025 continues support for providers of residential care, multi-purpose services and now includes the transitional care program. The extension of the OMS Supplement provides support for providers to embed best-practice infection prevention and control, and outbreak management into core business.

The continuation of the OMS Supplement recognises the Government's ongoing commitment and investment in supporting approved providers in meeting outbreak management costs and safeguarding the health and wellbeing of care recipients.

## **Authority**

### *OMS Supplement*

Subsection 44-27(3) of the Aged Care Act provides that the Minister may determine by legislative instrument, in respect of each supplement, the amount of the supplement, or the way in which the amount of the supplement is to be worked out. Section 64ZV of the *Aged Care (Subsidy, Fees and Payments) Determination 2014* currently sets the amount of the OMS supplement (as defined by section 70AN of the *Subsidy Principles 2014*) for a day for a care recipient.

Subsection 44-27(3) of the Transitional Provisions Act provides that the Minister may determine by legislative instrument, in respect of each supplement, the amount of the supplement, or the way in which the amount of the supplement is to be worked out. The Transitional Provisions Act only applies to continuing care recipients. Section 91T of the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014* currently sets the amount of the OMS supplement (as defined by section 64H of the *Aged Care (Transitional Provisions) Principles 2014*) for a day for a care recipient.

### *Flexible Care subsidy*

Subsection 52-1(1) of the Aged Care Act provides that the amount of flexible care subsidy that is payable in respect of a day is the amount either determined by the Minister by legislative instrument or worked out in accordance with a method determined by the Minister by legislative instrument.

Section 91 of the *Aged Care (Subsidy, Fees and Payments) Determination 2014* currently sets the amount of flexible care subsidy payable for a day in respect of flexible care that is provided through a multi-purpose service (as defined by section 104 of the *Subsidy Principles 2014*).

Section 106 of the *Aged Care (Subsidy, Fees and Payments) Determination 2014* also sets the amount of flexible care subsidy for a day for a care recipient who is being provided with transition care (as defined by section 106 of the *Subsidy Principles 2014*) through a flexible

care service.

### **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 Department had discussed the current capability and ongoing outbreak management supports needs for the aged care sector beyond 2024 with representations at a meeting of the Australian Health Protection Principal Committee, Aged Care Advisory Group on 2 August 2023, and are supportive of the continuation of the OMS Supplement.

The extension of the OMS Supplement has considered the current COVID-19 epidemiological environment, recommendations from the Independent Health and Aged Care Pricing Authority and Government priorities, as the aged care sector transitions to self-management of outbreaks and delivery of safe and quality aged care services for older Australians.

### **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**.

This 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 (Outbreak Management Support Supplement) (No. 2) Instrument 2024**

**Section 1 – Name**

Section 1 provides that the name of the Amending Instrument is the *Aged Care Legislation Amendment (Outbreak Management Support Supplement) (No. 2) Instrument 2024*.

**Section 2 – Commencement**

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

**Section 3 – Authority**

Section 3 provides the authority for making the Amending Instrument is sections 44-27 and 52-1 of the *Aged Care Act 1997* and section 44-27 of the *Aged Care (Transitional Provisions) Act 1997*.

**Section 4 – Schedule**

Section 4 has the effect that the Amending Instrument is amended by the terms specified in Schedule 1 to the Amending Instrument.

**Schedule 1— Amendments**

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

**Item 1 – Section 64ZV**

This item amends section 64ZV of the *Aged Care (Subsidy, Fees and Payments) Determination 2014* to revise the amount of the OMS Supplement payable for a day for a care recipient to \$1.65.

The revised amount of the outbreak management support supplement is calculated on the basis that the amount is the same for each day of residential care a care recipient receives at a residential care service during a particular payment period. The amount has been calculated as a contribution towards outbreak management, taking into account the financial costs associated with maintaining increased infection prevention control practices, including the cost of rapid antigen tests, personal protective equipment and the backfill of shifts for staff. This reasoning applies in relation to items, 2, 3, 4 and 5.

**Item 2 - Paragraph 91(a) (the amount worked out for OMSA)**

This item amends paragraph 91(a) of the *Aged Care (Subsidy, Fees and Payments) Determination 2014* to revise the amount of the outbreak management support supplement included for a day for a care recipient included in the calculation of the flexible care subsidy payable for a day for a care recipient in respect of flexible care provided through a multi-purpose service to \$1.65.

### **Item 3 – After paragraph 106(1)(b)**

This item amends section 106 of the *Aged Care (Subsidy, Fees and Payment) Determination 2014*, which deals with the amount of flexible care subsidy for care provided as transition care, to include an equivalent outbreak management support supplement amount for a care recipient in respect of a payment period commencing on 1 January 2025, via a new paragraph (c).

### **Item 4 – After subsection 106(3)**

This item inserts a new subsection (4) to section 106, to provide for an equivalent amount of OMS Supplement for the purposes of the new paragraph (c) (inserted by item 3) in the amount of \$1.65 to be used in the calculation of flexible care subsidy for a day for a care recipient who is being provided with transition care through a flexible care service.

This item also includes a note that the OMSA is short for outbreak management support supplement amount.

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

### **Item 5 – Section 91T**

This item amends section 91T of the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014* to revise the amount of the outbreak management support supplement for a day for a continuing care recipient to \$1.65.

## Statement of Compatibility with Human Rights

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

### ***Aged Care Legislation Amendment (Outbreak Management Support Supplement) (No. 2) Instrument 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 (Outbreak Management Support Supplement) (No. 2) Instrument 2024* (Amending Instrument) amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014* and the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014*.

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The adjusted OMS Supplement amount will also apply in respect of continuing residential care recipients (a pre-1997 cohort of care recipients who are subject to the Transitional Provisions Act and its subordinate legislation) from 1 January 2025.

Secondly, the Amending Instrument will continue the OMS Supplement amount included in the calculation of the flexible care subsidy payable for a day for a care recipient in respect of flexible care provided through a multi-purpose service with an adjustment to the amount payable (\$1.65) from 1 January 2025.

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#### **Human rights implications**

The Amending Instrument engages the right to the enjoyment of the highest attainable standard of physical and mental health as contained in article 12(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and article 25 of the *Convention on the Rights of Persons with Disabilities* (CRPD).

##### *Right to health*

The right to health under article 12 of the ICESCR, includes the prevention, treatment and control of epidemic, endemic, occupational, and other diseases. Through the continuation of the OMS Supplement, the Amending Instrument supports the prevention, treatment and control of epidemic, endemic, occupational and other diseases by providing a contribution to managing outbreaks of COVID-19 and other infectious disease. This supports the aged care

sector as it embeds environmental and industrial hygiene best practice into core business.

The Amending Instrument also promotes Article 25 of the CRPD by promoting the health of care recipients with a disability by contributing towards the costs associated with outbreak management, (e.g. personal protective equipment and supporting the backfill of shifts for isolating staff).

The Amending Instrument gives effect to measures approved on 25 November 2024 by the Minister for Aged Care regarding funding increases in aged care. The additional funding will support approved providers to maintain high infection, prevention, and control standards to prevent and respond to outbreaks of COVID-19 as and when they occur.

The Government recognises aged care is a critical sector and people living in residential care services are amongst the most vulnerable in the community. The Amending Instrument continues the OMS Supplement at a revised amount as one of the subsidies and supplements payable to approved providers for the provision of care and services to people with a condition of frailty or disability who require assistance to achieve and maintain the highest attainable standard of physical and mental health.

### **Conclusion**

The Amending Instrument is compatible with human rights as it promotes the human rights of care recipients to the highest attainable standard of physical and mental health.

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