

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Ageing

Aged Care Act 1997

User Rights Amendment Principles 2008 (No. 2)

The *Aged Care Act 1997* (the Act) provides for the funding of aged care services. Persons who are approved under the Act to provide residential aged care services (approved providers) can be eligible to receive residential care subsidy payments in respect of the care they provide to approved care recipients.

Subsection 96-1(1) of the Act allows the Minister to make Principles providing for various matters required or permitted by a Part or section of the Act. One of the sets of Principles made under the Act is the *User Rights Principles 1997* (the User Rights Principles).

Some care recipients can agree to pay an accommodation charge, which accrues daily and is paid or payable to an approved provider, for the care recipient's entry to a residential care service. Section 57A-6 of the Act allows for the maximum daily amount at which an accommodation charge may accrue to be an amount that is specified in, or worked out in accordance with, the User Rights Principles.

The *User Rights Amendment Principles 2008 (No.1)* gave effect to part of the package of changes which commenced on 20 March 2008. One of the changes made to the Act at that time was the creation of a new class of residents for which residential care subsidy is payable under Chapter 3 of the Act. The new class of 'supported residents' joins the existing classes of residents known as 'assisted residents' and 'concessional residents.' The User Rights Principles were amended to reflect this new class and make consequential changes to the maximum daily amount of accommodation charge payable by certain care recipients of residential aged care.

As allowed by section 57A-6 of the Act, section 23.81P of the User Rights Principles specifies a cap on the maximum daily accommodation charge payable by groups of residents based on the date they first entered care, whether they entered or re-entered care on a later date, whether they are in receipt of an income support payment, and whether the service through which they are receiving care meets the building requirements mentioned in section 21.11B of the *Residential Care Subsidy Principles 1997*.

Previous provisions

Subsection 23.81P (5) placed a cap on the maximum daily accommodation charge payable by residents who first entered care before 1 July 2004 and re-entered care during the period from 20 March 2008 to 19 September 2008.

Subsections 23.81P (6), (7) and (8) placed caps on the maximum daily accommodation charge payable by residents who first entered care after 30 June 2004 and entered care during the period from 20 March 2008 to 19 September 2008.

Subsection (6) provided the cap on the maximum daily accommodation charge if that person received an income support payment.

Subsections (7) and (8) provided caps on the maximum daily accommodation charge for people who did not receive an income support payment. The amount of the cap for a person who did not receive an income support payment depended on whether the service through which the person was receiving care met the building requirements mentioned in section 21.11B of the *Residential Care Subsidy Principles 1997*. If the service met those building requirements (which relate to fire, safety, privacy and space), the cap was specified under subsection (7). If the service did not meet those building requirements, the cap was specified under subsection (8), and was a lower amount than the cap specified under subsection (7).

Purpose of this Amendment

The *User Rights Amendment Principles 2008 (No.2)* amend section 23.81P of the User Rights Principles by replacing the previous subsections (5) to (8) with new subsections (5) to (8).

The new subsections (5) to (8) retain the caps on the maximum daily accommodation charge for care recipients who entered or re-entered care during the period from 20 March 2008 to 19 September 2008. In addition, the new subsections (5) to (8) specify the caps for care recipients who entered or re-entered care during the period from 20 September 2008 to 19 March 2009.

The new subsections (5) to (8) specify different amounts for the maximum daily accommodation charge payable by certain care recipients for entry on or after 20 September 2008, compared to entry before 20 September 2008. The difference in the amounts specified is in accordance with normal indexation procedures and the policy agreed for the package of changes that commenced on 20 March 2008.

The daily amounts listed in new subsections 23.81P (5) and (8) are indexed in the normal way for the next six months by using the 6-month CPI inflator to June 2008.

The daily amount listed in subsection 23.81P (6) for the post-2008 pensioner is increased by a greater amount set by Government policy so that it will eventually catch up to the amount set for non-pensioners in subsection 23.81P (7), which has also been set by Government policy.

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

Consultation

As the indexation of this supplement uses a well established formula for indexation, no specific consultation with industry was undertaken with respect to this instrument.