

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

Aged Care Act 1997

Residential Care Subsidy Amendment (Workforce Supplement) Principle 2013

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

Section 96-1 of the Act allows the Minister to make Principles providing for various matters required or permitted by a Part or section of the Act. Among the Principles made under section 96-1 are the *Residential Care Subsidy Principles 1997* (the Principles).

Part 3.1 of the Act relates to residential care subsidy. Residential care subsidy is a payment by the Commonwealth to approved providers for providing residential care to care recipients. In addition to the basic subsidy amount, various supplements may be payable if eligibility requirements are met.

On 20 April 2012, the previous Government announced the *Living Longer Living Better* (LLLB) aged care reform package. As part of the reforms, the workforce supplement was introduced.

The Government has since announced that it will discontinue the workforce supplement and will return the funding allocated to the workforce supplement to the general pool of aged care funding.

Until such time as the Government has considered its options for allocating workforce supplement funding, the purpose of the *Residential Care Subsidy Amendment (Workforce Supplement) Principle 2013* (the Amending Principle) is to prevent applications for the workforce supplement from being made after 26 September 2013.

Approved providers that have been determined as eligible for the workforce supplement are not affected by this change and will continue to receive funding in accordance with the Principles. Additionally, applications that are received by the Secretary on or before 26 September 2013, but on which decisions have not yet been made, will continue to be considered.

The Amending Principle is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Consultation

The Government publicly released 'The Coalition's Policy for Healthy Life, Better Ageing' in September 2013. Within this document the Government outlined its intention to remove the workforce supplement and to work with providers on how funding is distributed.

Commencement

The Amending Principle commences on the day after it is registered.

Details of the Residential Care Subsidy Amendment (Workforce Supplement) Principle 2013

Clause 1 states that the name of the Amending Principle is the *Residential Care Subsidy Amendment (Workforce Supplement) Principle 2013*.

Clause 2 states that the Amending Principle commences on the day after it is registered.

Clause 3 provides that the authority for the making of the Amending Principle is the *Aged Care Act 1997* (the Act).

Clause 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 – Amendments

Item 1 - After subsection 21.26JB(1)

Item 1 amends the Principles to add a new subsection 21.26JB(1A) which prevents applications for the workforce supplement being made by residential care providers to the Secretary any time after 26 September 2013.

Item 2 - After subsection 21.26JC(1)

Item 2 amends the Principles to add a new subsection 21.26JC(1A) which prevents the Secretary from making a determination (that an approved provider is eligible for the workforce supplement) on any application that is received after 26 September 2013.

Statement of Compatibility with Human Rights

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

Residential Care Subsidy Amendment (Workforce Supplement) Principle 2013

The Legislative Instrument is not inconsistent with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

This instrument makes amendments to the *Residential Care Subsidy Principles 1997* (the Principles) to, from 26 September 2013, remove the Secretary's power to accept applications for the workforce supplement and to prevent the Secretary from making decisions on applications made for the workforce supplement where the application is received after 26 September 2013.

Human Rights Implications

This Legislative Instrument is neutral as to the impact on human rights.

The Australian Government will continue to provide additional funding to those approved providers of home and flexible care that were determined by the Secretary to be eligible for the workforce supplement. In addition, applications for the workforce supplement that are received before 26 September 2013 will continue to be considered in accordance with the Principles. This will enable higher wages and better conditions for aged care workers to continue in respect of already eligible providers and those providers who have already applied and may be eligible.

Approved providers who are not in receipt of the workforce supplement will continue to be paid residential care subsidy at a rate that is adequate to provide the appropriate level of care to care recipients. This supports the right of care recipients to an adequate standard of living and the right to the enjoyment of the highest attainable standard of physical and mental health as contained in article 11(1) and article 12(1) International Covenant on Economic, Social and Cultural Rights and article 25 and article 28 of the Convention on the Rights of Persons with Disabilities.

Conclusion

This Legislative Instrument is not inconsistent with human rights.

**The Hon Kevin Andrews MP
Minister for Social Services**