EXPLANATORY STATEMENT

Issued by the authority of the Minister for Mental Health and Ageing

Aged Care Act 1997

User Rights Amendment Principles 2012 (No. 1)

The *Aged Care Act 1997* (the Act) provides for the regulation and 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. Among the Principles made under subsection 96-1(1) are the *User Rights Principles 1997* (the User Rights Principles).

The purpose of the *User Rights Amendment Principles 2012 (No. 1)* 'the Amending Principles' is to specify for the purposes of paragraph 57A-6 (1) (c) of the Act the maximum daily accrual amount of accommodation charge for specified types of post-2008 reform residents. The accommodation charge has been increased in accordance with previously announced Australian Government policy.

The maximum amount of accommodation charge is capped based on when a care recipient enters residential aged care. Until 2010, the maximum accommodation charge was different for residents receiving an income support payment and self-funded retirees. The maximum amount of accommodation charge for pensioners and self-funded retirees entering care from 20 March 2010 onwards, became the same in most cases.

The exceptions to this general rule are people who first entered care before 1 July 2004 (whose maximum accommodation charge is lower) and people who are receiving care through a service that does not meets certain building requirements (whose maximum accommodation charge is also lower). While the maximum amount of accommodation charge payable by existing residents remains the same while they are in care, the maximum accommodation charge for new residents is adjusted twice per year (on 20 March and 20 September) in accordance with Australian Government policy.

The purpose of the amendments to subsections 23.81P(5) – (8) is to increase the maximum amount of accommodation charge for residents entering care on or after 20 March 2012, in accordance with previously announced Australian Government policy.

Statement of Compatibility with Human Rights

This 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 2011* and does not engage any of the applicable rights or freedoms.

Further details of the Amending Principles are attached.

Consultation

The Department of Health and Ageing undertook extensive consultation on the policy, which included policy on the amounts of accommodation charge, that was implemented through the *Aged Care Amendment (2008 Measures No. 1) Act 2008* and related instruments. As the amounts of accommodation charge are in line with previously announced Government policy, no further consultation has been undertaken with respect to this instrument.

Information about the increase in the amounts of accommodation charge will be disseminated via electronic media to approved providers.

The Amending Principles commence on 20 March 2012.

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

ATTACHMENT

Details of the *User Rights Amendment Principles 2012 (No. 1)*

1 Name of Principles

Section 1 states that the name of the Amending Principles is the *User Rights Amendment Principles 2012 (No. 1)*.

2 Commencement

Section 2 states that the Principles commence on 20 March 2012.

3 Amendment of User Rights Principles

Section 3 states that Schedule 1 amends the *User Rights Principles 1997*.

Schedule 1 – Amendments

Items 1, 2, 3 and 4 – Sections 28.81P(5) to (8)
These items replace existing subsections 23.81P(5), (6), (7) and (8) to include both existing provisions and add new clauses to specify for paragraph 57A-6(1) (c) of the Act the maximum daily accrual amount of accommodation charge for certain types of post-2008 reform residents entering care on or after 20 March 2012 and before 20 September 2012. The amounts included are in accordance with previously announced Australian Government policy.