

## **EXPLANATORY STATEMENT**

**Issued by the authority of the Minister for Ageing**

***Aged Care Act 1997***

***Residential Care Subsidy Amendment Principles 2012 (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.

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 Residential Care Subsidy Principles).

The *Residential Care Subsidy Amendment Principles 2011 (No. 3)* (the previous Amending Principles) modified for the purposes of section 44-29 of the Act the method for assessing whether the viability supplement should be paid in respect of residents at a residential care service. These amendments allowed for additional financial support for residential care services which specialise in providing low care in rural and remote areas, or which care for aged care residents with complex behaviours who have a history of homelessness and/or are from Aboriginal and Torres Strait Islander communities.

The purpose of the *Residential Care Subsidy Amendment Principles 2012 (No.2)* (the Amending Principles) is to clarify the provisions relating to the timeframes for approved providers of eligible aged care services to notify the Secretary of appraisal outcomes, to extend the period for submission of notifications attracting back-dated payments and to allow for the late submission of notifications. The Amending Principles also correct some minor drafting errors.

The Amending Principles are taken to have commenced on 1 July 2011.

The retrospective commencement of the Amending Principles does not contravene subsection 12(2) of the *Legislative Instruments Act 2003* because it increases the opportunities for approved providers to notify the Secretary of the outcome of appraisals that could make them eligible to receive additional funding for existing residents. Retrospective application of these provisions does not impose any disadvantage on any person other than the Commonwealth.

### **Consultation**

As the amendments in the Amending Principles are minor changes, no specific consultation was undertaken in relation to this instrument.

### **Regulation impact statement**

The Office of Best Practice Regulation has advised that no Regulation Impact Statement is required (OBPR ID 12686).

**Further details**

Further details on the Amending Principles are attached.

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

**Details of the *Residential Care Subsidy Amendment Principles 2012 (No. 2)***

**Clause 1 – Name of Principles**

Clause 1 states that the name of the Amending Principles is the *Residential Care Subsidy Amendment Principles 2012 (No. 2)*.

**Clause 2 - Commencement**

Clause 2 states that the Principles are taken to have commenced on 1 July 2011.

**Clause 3 – Amendment of *Residential Care Subsidy Principles 1997***

Clause 3 states that Schedule 1 amends the Residential Care Subsidy Principles.

**Schedule 1 – Amendments**

**Item 1      Section 21.34**

Item 1 amends section 21.34 to correct cross-references.

**Item 2      After subsection 21.35B (3)**

Item 2 inserts the heading for section 21.35C which was removed by the *Residential Care Subsidy Amendment Principles 2011 (No. 3)* due to a drafting error.

**Item 3      Schedule 2**

Item 3 repeals Schedule 2 to the Residential Care Subsidy Principles and substitutes a new Schedule 2. The differences between the previous Schedule 2 and the new Schedule 2 are set out below.

Under the heading for Schedule 2, ‘Appraisal procedures for targeting care for homeless people or people from Aboriginal and Torres Strait Islander communities’, the reference to ‘paragraph 21.35C (4) has been changed to ‘subsection 21.35C (4)’ to correct a drafting error.

**1.1      Appraisal procedures**

Minor adjustments have been made to the wording of sub-item 1.1 (2) which are stylistic changes to improve clarity and do not change the intent of the original wording.

**1.2      Time for completion of appraisal procedures**

Sub-item 1.2 (1) sets out the general rule relating to the time for completion of appraisal procedures and notification of the outcome to the Secretary. Generally, an approved provider has 2 months after the day a resident enters the service to complete the appraisal procedures and notify the Secretary of the outcome of the appraisal, but should not submit the notification until at least 28 days has elapsed since the day the resident entered the service. This corresponds to the timeframe for completing and submitting an initial appraisal of the resident’s care needs using the Aged Care Funding Instrument (see paragraphs 25-3(2)(b) and 26-1(b) of the Act).

Sub-item 1.2 (2) allows an approved provider to submit the outcome of an appraisal earlier than would be the case under the general rule if a care recipient dies or leaves the service before the end of 28 days after the care recipient's entry day. An approved provider is not required, in the circumstances specified in this sub-item, to submit the outcome of the appraisal earlier than would be the case under the general rule, but has the option to do so.

Sub-item 1.2 (3) is a transitional provision extending the period for notifying the Secretary of the outcome of appraisals for existing care recipients to 1 September 2012. If a care recipient's entry day is less than 2 months prior to 1 July 2012, the general rule in sub-item 1.2 (1) applies, which ensures that the provider has a full 2 months to notify the Secretary of the outcome of the appraisal.

Sub-item 1.2 (4) specifies that, if an approved provider notifies the Secretary of the outcome of an appraisal before the end of the period specified in either the general rule set out in sub-item 1.2 (1) or the transitional rule set out in sub-item 1.2 (3), any additional points that may be added under subsection 21.35C (4) for the purposes of Step 3 of the viability supplement points calculator in subsection 21.35C (1) of the Principles as a result of the outcome of the appraisal take effect on either 1 July 2011 or the care recipient's entry day, whichever is the later day. The effect of this sub-item is that any additional amount of viability supplement that is payable as a result of the notification is payable from either 1 July 2011 or from the care recipient's entry day, whichever is the later day.

The retrospective operation of the amendments made by the Amending Principles allows for the back-dating of payments to 1 July 2011 in respect of eligible care recipients who were receiving care at that time, or to a resident's entry day if that day is later than 1 July 2011, if the approved provider notifies the Secretary of the outcome of the appraisal before 1 July 2012.

Sub-item 1.2 (5) allows for the late submission of notifications of the outcome of appraisals. If the notification of the outcome of an appraisal is received by the Secretary after the relevant notification period, any additional amount of viability supplement that is payable as a result of the notification is payable from the day the notification is received by the Secretary.

### **1.3 Appraisal Tools**

Minor amendments (the deletion of two extraneous words) have been made to the Appraisal Tools to improve clarity.

## **Statement of Compatibility with Human Rights**

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

### **Residential Care Subsidy Amendment Principles 2012 (No.2)**

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*.

#### **Overview of the Legislative Instrument**

These amendments clarify the timeframes for claiming additional financial support for residential care services which specialise in providing low care in rural and remote areas, or which care for aged care residents with complex behaviours who have a history of homelessness and/or or are from Aboriginal and Torres Strait Islander communities.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.