

## **EXPLANATORY STATEMENT**

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

***Aged Care Act 1997***

***User Rights Amendment Principles 2013 (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.

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 *User Rights Principles 1997* (the User Rights Principles).

The purpose of the *User Rights Amendment Principles 2013 (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 meet 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 2013, using a well-established formula based on the Consumer Price Index as a measure of the movements in the non-labour costs of providers.

### **Consultation**

Indexation of the accommodation charge is in accordance with previously announced Australian Government policy upon which extensive consultation was undertaken. No specific consultation was undertaken with respect to the Amending Principles.

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 2013.

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

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

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

### **User Rights Amendment Principles 2013 (No. 1)**

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 Legislative Instrument**

The purpose of the *User Rights Amendment Principles 2013 (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.

#### **Human Rights Implications**

This Legislative Instrument engages the right to equality and non-discrimination contained in Article 2(2) of the International Covenant on Economic, Social and Cultural Rights and the right to health contained in Article 12 of that covenant.

The Legislative Instrument limits the right to equality and non-discrimination by increasing the maximum amount of accommodation charge payable by eligible residents who enter a residential aged care service on or after 20 March 2013. This means that residents who are eligible to pay an accommodation charge who enter care on or after 20 March 2013 may be asked to pay a higher amount than eligible residents who have entered care before that date.

This limitation on the right to equality and non-discrimination is designed to achieve the legitimate objective of ensuring that providers of residential aged care receive an increase in their income from accommodation charges in line with the increase in their non-labour costs.

This limitation of the right to equality has a positive impact on another human right, the right to health, by ensuring that the income of approved providers keeps pace with increases in their costs. This enables approved providers to maintain the standard of care and services they provide to recipients of residential aged care services.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as, to the extent that it limits the right to equality and non-discrimination, the limitation is reasonable, necessary and proportionate and is balanced by the promotion of the human right to health.

**The Hon Mark Butler MP, Minister for Mental Health and Ageing**