**EXPLANATORY STATEMENT**

**Issued by the authority of the Assistant Minister for Social Services**

***Aged Care Act 1997***

***Residential Care Subsidy Amendment (Homeless 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. Section 44-27 of the Act provides for the payment of other supplements. Supplements are paid to approved providers in respect of a payment period as part of residential care subsidy. Section 44-27 (e) of the Act states that the Principles may provide for additional other supplements.

The purpose of the *Residential Care Subsidy Amendment (Homeless Supplement) Principle 2013* (the Amending Principle) is to create a new homeless supplement as an additional other supplement. Details are set out in the **Attachment**.

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

The Amending Principle introduces a new homeless supplement to replace the transitional homeless supplement. The homeless supplement, like the transitional homeless supplement, will provide additional funding for those approved providers that specialise in caring for people with a history of, or at risk of, homelessness. The homeless supplement has the same eligibility criteria as the transitional homeless supplement that it replaces, but the homeless supplement is an ‘other’ supplement as provided for by paragraph 44-27(e) of the Act, rather than an additional primary supplement as provided for by subsection 44-16(3) of the Act. As an ‘other’ supplement, the homeless supplement will not affect care recipients’ income tested fees.

The Amending Principle removes the provision specifying that care recipients of a residential aged care service receiving the transitional homeless supplement will not pay any income tested fees. This brings the impact of the homeless supplement on income tested fees in line with the impact of all ‘other’ supplements under section 44-27 of the Act.

**Regulation Impact Statement**

The Office of Best Practice Regulation has advised that no Regulation Impact Statement is required (OBPRI ID 15343).

**Commencement**

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

**ATTACHMENT**

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

**Section 1 – Name of Principle**

This sectionstates that the name of the Amending Principle is the *Residential Care Subsidy Amendment (Homeless Supplement) Principle 2013.*

**Section 2 – Commencement**

This section states that the Amending Principle commences on the day after it is registered.

**Section 3 – Authority**

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

**Section 4 – Schedule(s)**

This section 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**

***Residential Care Subsidy Principles 1997***

**Item 1 – Section 21.25 EA**

This item removes the transitional homeless supplement.

**Item 2 – Paragraph 21.30 (1) (h)**

Section 21.30 of the Principles describes classes of people who do not pay income tested fees in accordance with paragraph 44-22(1)(c) of the Act. This item removes subsection 21.30 (1) (h) to remove the provision that approved care recipients receiving residential care in a service that is receiving the transitional homeless supplement will not pay an income tested care fee.

**Item 3- After section 21.32 G**

This item inserts a new section in the Principles.

***Division 3 – Homeless Supplement***

This section describes the eligibility criteria for the homeless supplement.

An aged care services is eligible for the homeless supplement for each day in the payment period when more than 50% of care recipients of the service (other than care recipients receiving respite care) have been appraised using Appraisal Tool A in section 1.3 of Schedule 2 as demonstrating complex behavioural needs and social disadvantage associated with their background as a homeless person, and:

1. the places allocated in respect of the residential aged care service are subject to a condition of allocation under section 14-5 of the Act relating to the care of people with a background as homeless persons; or
2. the approved provider of the residential care service or its key personnel have experience in providing, or the capacity to provide, specialist services for such persons, including:
	* 1. programs and interventions to manage complex behavioural needs; or
		2. programs to promote social engagement and participation.

Subsection (2) provides that the Minister may determine, by legislative instrument, the amount of the homeless supplement, or the way in which the amount of the supplement is to be worked out.

**Statement of Compatibility with Human Rights**

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

***Residential Care Subsidy Amendment (Homeless Supplement) Principle 2013***

The 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**

The Principles set out the requirements for residential care subsidy. The subsidy is a payment by the Commonwealth to approved providers for providing residential care to care recipients. Section 44-27 of the Act provides for the payment of other supplements.

The purpose of the *Residential Care Subsidy Amendment (Homeless Supplement) Principles 2013* (Legislative Instrument) is to create a new other supplement – the homeless supplement. This homeless supplement replaces the existing transitional homeless supplement.

The Legislative Instrument also removes the provision that care recipients receiving residential care in a service that is receiving the transitional homeless supplement will not pay an income tested fee. This provision ensured that care recipients who were eligible to pay an income tested fee were not required to pay an increased fee if their residential care service became eligible to receive the transitional homeless supplement which, as a primary supplement, would normally have been taken into account in calculating the income tested fee. As an ‘other’ supplement, the homeless supplement does not contribute to the calculation of income tested fees. Therefore there is no need to continue to provide fee relief for care recipients who would otherwise be eligible to pay an income tested fee.

**Human Rights Implications**

The Legislative Instrument is compatible with the right 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.

The Legislative Instruments enables Government to give additional funding to providers specialising in giving care to people with special needs based on their history of, or risk of, homelessness.

**Conclusion**

This Legislative Instrument is compatible with human rights as it promotes the human right to health and the right to an adequate standard of living.

**Senator the Hon Mitch Fifield**

**Assistant Minister for Social Services**