

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

Aged Care Act 1997

Residential Care Subsidy Amendment (Transitional Workforce Supplement) Principle 2014

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 *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 44-5 of the Act provides for the payment of primary supplements. Supplements are paid to approved providers in respect of a payment period as part of residential care subsidy.

Section 44-16 of the Act states that the Principles may provide for additional primary supplements. Prior to 12 December 2013, the Principles provided for an additional primary supplement called the workforce supplement, along with the eligibility criteria for this supplement.

The purpose of the *Residential Care Subsidy Amendment (Transitional Workforce Supplement) Principle 2014* (the Amending Principle) is to provide for payment of a transitional workforce supplement on and after 12 December 2013 and before 1 July 2014 to approved providers that were eligible to receive the workforce supplement on 11 December 2013.

Subsection 44-16(3) of the Act provides that the Minister may determine, by legislative instrument, in respect of each supplement the amount of the supplement or the way in which the amount of the supplement is to be worked out. The Amending Principle determines the way in which the amount of the transitional workforce supplement is to be worked out.

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.

Since the September 2013 Election, the Minister has consulted with a number of organisations in relation to the effect of this Principle.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that no Regulation Impact Statement is required (OBPR ID16276).

Commencement

The Amending Principle commences on the day after it is registered on the Federal Register of Legislative Instruments (FRLI).

ATTACHMENT

Details of the Residential Care Subsidy Amendment (Transitional Workforce Supplement) Principle 2014.

Clause 1 states that the name of the Amending Principle is the *Residential Care Subsidy Amendment (Transitional Workforce Supplement) Principle 2014*.

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*.

Clause 4 provides that for 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 21.3 (definition of *Aged Care Workforce Supplement Guidelines*)

This item repeals and substitutes the definition of *Aged Care Workforce Supplement Guidelines* with the definition of *Aged Care Transitional Workforce Supplement Guidelines*, which means the document with that title published by the Department of Social Services (the Department), as existing upon the commencement of the Amending Principle.

Item 2 – Section 21.24

This item repeals and substitutes a section that states that this part provides for additional primary supplements and specifies the circumstances in which they will apply to a care recipient in respect of a payment period.

Item 3 – After Part 10 Division 4

This item inserts Division 5 which relates to arrangements for the payment of the transitional workforce supplement from 12 December 2013 until 30 June 2014, inclusive of both those days.

This item sets out the circumstances in which the transitional workforce supplement applies to a care recipient in respect of a day and circumstances in which the supplement ceases to apply.

The transitional workforce supplement will be payable to an approved provider for a care recipient in respect of a day if:

- the day in question falls within the period 12 December 2013 to 30 June 2014 inclusive of both those days;

- the approved provider provides residential care to the care recipient on the day in question; and
- the approved provider was eligible to receive the workforce supplement on 11 December 2013.

This item also provides that the transitional workforce supplement ceases to apply to a care recipient in respect of a day if either:

- the Secretary decides that the approved provider is no longer eligible for the transitional workforce supplement; or
- the approved provider requests, in writing, the Secretary to cease payment of the transitional workforce supplement.

This item also requires the Secretary to invite the approved provider to make submissions, within 28 days, before deciding whether the approved provider is no longer eligible for the transitional workforce supplement and to take any submissions received within that timeframe into account. The Secretary is also required to have regard to the eligibility criteria specified in the *Aged Care Transitional Workforce Supplement Guidelines* in making a decision regarding an approved provider's continuing eligibility for the supplement.

This item also provides that a decision made by the Secretary that an approved provider is no longer eligible for the transitional workforce supplement is a reviewable decision to which Part 6.1 of the Act applies. This gives the approved provider the right to seek internal reconsideration by the Secretary of the decision and external review of the decision by the Administrative Appeals Tribunal.

This item also provides that the amount of transitional workforce supplement for a particular day is 1% of the basic subsidy amount that is payable in respect of the day for the care recipient.

Statement of Compatibility with Human Rights

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

Residential Care Subsidy Amendment (Transitional Workforce Supplement) Principle 2014

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 purpose of the *Residential Care Subsidy Amendment (Transitional Workforce Supplement) Principle 2014* (the Amending Principle) is to provide for payment of a transitional workforce supplement to eligible approved providers during the period commencing on 12 December 2013 and ending on 30 June 2014.

Human Rights Implications

This 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) of the International Covenant on Economic, Social and Cultural Rights, and article 25 and article 28 of the Convention on the Rights of Persons with Disabilities. This legislative instrument will enable the Australian Government to provide additional funding in the form of a transitional workforce supplement to approved providers who were eligible for the workforce supplement on 11 December 2013. This ensures that providers who have relied on the supplement in providing wage increases to their staff will continue to receive an equivalent level of funding for the remainder of 2013-14. This protects the level and standard of care being provided to clients.

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**