

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Ageing

Aged Care Act 1997

Allocation Amendment Principles 2009 (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 aged care services (approved providers) can be eligible to receive 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. One set of Principles made under the Act is the *Allocation Principles 1997* (the Allocation Principles).

The purpose of the *Allocation Amendment Principles 2009 (No. 2)* (the Amending Principles) is detailed below. The Amending Principles is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Allocation Amendment Principles 2009 (No. 2)

An approved provider can only receive subsidy under Chapter 3 of the Act for providing aged care in respect of which a place has been allocated. The Commonwealth plans the distribution between regions of the available places in respect of types of subsidies. It then invites applications and allocates the places to approved providers.

One of the matters that the Secretary of the Department of Health and Ageing can determine when allocating places is the proportion of care that must be provided to people with special needs.

Section 11-3 of the Act defines ‘people with special needs’ as follows:

- (a) people from Aboriginal and Torres Strait Islander communities;
- (b) people from non-English speaking backgrounds;
- (c) people who live in rural or remote areas;
- (d) people who are financially or socially disadvantaged; and
- (e) people of a kind (if any) specified in Allocation Principles.

Currently the Allocation Principles specify veterans and people who are homeless or at risk of becoming homeless as groups of people who have special needs for the purposes of the Act.

These Amending Principles specify a further class of people, namely people who are care-leavers. This ensures that the Secretary can cater for the needs of care-leavers when making allocations of places to approved providers.

This amendment fulfils an undertaking made by the Prime Minister in his apology to the Forgotten Australians and former child migrants on 16 November 2009 that the Government would amend the aged care legislation to recognise care-leavers as a special needs group. The amendment is intended to ensure that approved providers are assisted to provide care that

is appropriate and responsive to the care needs of people who experienced childhood in an institution or out-of-home care environment.

Consultation

This amendment reflects an undertaking given by the Prime Minister following recommendations contained in two Senate Committee reports — *Lost Innocents: Righting the Record* and *Forgotten Australians* — and a further Senate Committee report on the progress with the implementation of the recommendations of those reports — *Lost Innocents and Forgotten Australians Revisited*. Extensive consultation was undertaken in relation the reports.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that no Regulation Impact Statement is required.

Details of the amendments to the Allocation Principles are listed at Attachment A.

NOTES ON CLAUSES

Section 1 states that the name of the instrument is the *Allocation Amendment Principles 2009 (No. 2)* (the Amending Principles).

Section 2 states that the Amending Principles commence the day after registration.

Section 3 states that the Amending Principles amend the *Allocation Principles 1997* in accordance with the Schedule.

Schedule 1 Amendments**Item 1**

This item inserts new definitions in section 4.3 of the Allocation Principles to give effect to an undertaking made by the Prime Minister in his apology to the Forgotten Australians and former child migrants on 16 November 2009.

‘Care-leaver’ is defined as a person who was in institutional care or other form of out-of-home care, including foster care, as a child or youth, or both, at some time during the 20th century.

‘Institutional care’ refers to residential care provided by a government or non-government organisation. This is explained as including, but not being limited to, institutions such as any of the following:

- (a) orphanages;
- (b) children’s homes;
- (c) industrial, training or farm schools;
- (d) dormitory or group cottage houses;
- (e) juvenile detention centres;
- (f) mental health or disability facilities.

The note explains the effect of section 14A of the Acts Interpretation Act 1901, which provides that where an amendment inserts a definition in a provision, but does not specify the position in that provision where it is to be inserted, the definition is inserted in the appropriate alphabetical position, determined on a letter-by-letter basis.

These definitions are designed to reflect the terms contained in two Senate Committee reports — *Lost Innocents: Righting the Record* and *Forgotten Australians* — and a further Senate Committee report on the progress with the implementation of the recommendations of those reports — *Lost Innocents and Forgotten Australians Revisited*.

Item 2

This item inserts a new subsection (subsection 4.4D Care-leavers) in the Allocation Principles. The effect of the amendment is to include people who are care-leavers within the definition of “people with special needs” in section 11-3 of the *Aged Care Act 1997* (the Act). Other people defined as “people with special needs” for the purposes of the Act are:

- people from Aboriginal and Torres Strait Islander communities;
- people from non-English speaking backgrounds;
- people who live in rural or remote areas;
- people who are financially or socially disadvantaged;
- veterans; and
- people who are homeless or at risk of becoming homeless.