

## **EXPLANATORY STATEMENT**

**Issued by the authority of the Minister for Senior Australians and Aged Care and  
Minister for Indigenous Health**

*Aged Care (Transitional Provisions) Act 1997*

*Aged Care (Transitional Provisions) Amendment (March Indexation)  
Principles 2019*

The *Aged Care (Transitional Provisions) Act 1997* (the Transitional Provisions Act), in conjunction with the *Aged Care Act 1997* (the Act), provides for the funding of aged care services that are providing care to continuing care recipients.

Persons who are approved under the Act to provide aged care services (approved providers) can be eligible to receive subsidy payments under the Transitional Provisions Act in respect of the care they provide to continuing care recipients. Continuing care recipients are those who entered an aged care service before 1 July 2014 and since that time have not left the service for a continuous period of more than 28 days (other than because the person is on leave), or before moving to another service, have not made a written choice to be subject to new rules relating to fees and payments that came into effect on 1 July 2014.

Section 96-1 of the Transitional Provisions Act allows the Minister to make Aged Care (Transitional Provisions) Principles providing for various matters such as the eligibility requirements for the payment of subsidies and supplements in respect of continuing care recipients in residential care and home care.

The *Aged Care (Transitional Provisions) Principles 2014* (the Transitional Provisions Principles) are made under section 96-1 of the Transitional Provisions Act.

The purpose of the *Aged Care (Transitional Provisions) Amendment (March Indexation) Principles 2019* (the Amending Principles) is to amend the Transitional Provisions Principles to update the specified amount of maximum accommodation charge for a post 2008-reform resident as a result of routine indexation.

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

### **Commencement**

The Amending Principles commence on 20 March 2019.

### **Reliance on subsection 33(3) of the *Acts Interpretation Act 1901***

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

**Consultation**

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

**Details of the Aged Care (Transitional Provisions) Amendment (March Indexation) Principles 2018**

**Section 1** states that the name of the instrument is the *Aged Care (Transitional Provisions) Amendment (March Indexation) Principles 2019* (the Amending Principles).

**Section 2** sets out the commencement date for the instrument.

**Section 3** provides that the authority for the making of the instrument is section 96-1 of the *Aged Care (Transitional Provisions) Act 1997* (the Transitional Provisions Act).

**Section 4** provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

**Schedule 1 – Amendments**

***Aged Care (Transitional Provisions) Principles 2014***

**Item 1 – Subsection 118(1) (after table item 22)**

This item inserts a item 23 in the table in subsection 118(1) to specify the amount of maximum daily accommodation charge for a post-2008 reform resident who first entered care before 1 July 2004 and re-enters on or after 20 March 2019 and before 20 September 2019.

The amount is \$20.25

**Item 2 – Subsection 118(2) (after table item 22)**

This item inserts item 23 in the table in subsection 118(2) to specify the amount of maximum daily accommodation charge for a post-2008 reform resident who first entered care on or after 1 July 2004, receives an income support payment and re-enters on or after 20 March 2019 and before 20 September 2019.

The effect of this amendment is to specify, for the purpose of paragraph 57A-6(1)(c) of the Transitional Provisions Act, an amount of maximum daily accommodation charge for these care recipients.

The amount is \$37.24

**Item 3 – Subsection 118(3) (after table item 18)**

This item inserts a item 18 in the table in subsection 118(3) to specify the amount of maximum daily accommodation charge for a post-2008 reform resident who first entered care on or after 1 July 2004, does not receive an income support payment and re-enters on or after 20 March 2019 and before 20 September 2019 into a service which meets the building requirements specified in Schedule 1 to the Transitional Provisions Principles.

The effect of this amendment is to specify, for the purpose of paragraph 57A-6(1)(c) of the Transitional Provisions Act, an amount of maximum daily accommodation charge for these care recipients.

The amount is \$37.24

**Item 4 – Subsection 118(4) (after table item 22)**

This item inserts a item 23 in the table to subsection 118(4) to specify the amount of maximum daily accommodation charge for a post-2008 reform resident who first entered care on or after 1 July 2004, does not receive an income support payment and re-enters on or after 20 March 2019 and before 20 September 2019 into a service which does not meet the building requirements in Schedule 1 to the Transitional Provisions Principles.

The effect of this amendment is to specify, for the purpose of paragraph 57A-6(1)(c) of the Transitional Provisions Act, an amount of maximum daily accommodation charge for these care recipients.

The amount is \$31.29

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

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

### ***Aged Care (Transitional Provisions) Amendment (March 2019 Indexation) Principles 2019***

The *Aged Care (Transitional Provisions) Amendment (March Indexation) Principles 2019* (the Principles) are 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 amend the *Aged Care (Transitional Provisions) Principles 2014* to update the specified amount of maximum accommodation charge for a post 2008-reform resident in a residential aged care facility as a result of routine indexation.

#### **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 includes matters relating to the payment of aged care subsidies and supplements to approved providers for the provision of care and services to people with a condition of frailty or disability who require assistance to achieve and maintain the highest attainable standard of physical and mental health. This instrument increases the maximum amount certain residents can be asked to pay for their accommodation to take account of movements in the consumer price index.

#### **Conclusion**

This legislative instrument is compatible with human rights as it promotes the human right to an adequate standard of living and the highest attainable standard of physical and mental health by maintaining the value of these payments.

**The Minister for Senior Australians and Aged Care and  
Minister for Indigenous Health,  
the Hon Ken Wyatt AM, MP**