



## **User Rights Amendment (Various Measures) Principle 2013**

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I, Jacinta Collins, Minister for Mental Health and Ageing, make the following principle under the *Aged Care Act 1997*.

Dated:            8/7        2013

Jacinta Collins  
Minister for Mental Health and Ageing

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**1 Name of principle**

This principle is the *User Rights Amendment (Various Measures) Principle 2013*.

**2 Commencement**

This principle commences on 1 August 2013.

**3 Authority**

This principle is made under the *Aged Care Act 1997*.

**4 Schedule(s)**

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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# Schedule 1—Amendments

## *User Rights Principles 1997*

### 1 Subsection 23.3(2)

Repeal the subsection, substitute:

- (2) For these Principles, the *maximum permissible interest rate*, for a person’s entry day, means the annual rate worked out in accordance with the following steps.

**Step 1** Work out the general interest charge rate for the person’s entry day under section 8AAD of the *Taxation Administration Act 1953*.

**Step 2** Multiply the result worked out at Step 1 by the number of days in the calendar year in which the person’s entry day falls.

**Step 3** Subtract 3 percentage points from the amount worked out under Step 2.

The result is the *maximum permissible interest rate* for that day.

### 2 Section 23.3 (note relating to definitions)

Repeal the note, substitute:

- Note: A number of expressions used in these Principles are defined in the Act, including the following:
- (a) capital expenditure;
  - (b) close relation;
  - (c) dependent child;
  - (d) partner;
  - (e) permitted (in relation to use of accommodation bonds);
  - (f) personal information.

### 3 Part 3 (heading)

Omit “community care”, substitute “home care”.

### 4 Section 23.20

Omit “community care”, substitute “home care”.

### 5 Paragraph 23.21(b)

Omit “community care”, substitute “home care”.

### 6 Subparagraph 23.21(d)(i)

Omit “community care”, substitute “home care”.

### 7 Subparagraph 23.21(d)(ii)

Omit “can be more appropriately met by other types of services or care.”, substitute “can be more appropriately met by other types of services or care; or”

### 8 After paragraph 23.21(d)

Insert:

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- (e) the care recipient does not meet his or her responsibilities, as described in Schedule 2 – Charter of rights and responsibilities for home care, for a reason within the care recipient’s control.

**9 Section 23.22**

Omit “community care”, substitute “home care”.

**10 Section 23.23**

Omit “community care”, substitute “home care”.

**11 Section 23.24**

Omit “community care”, substitute “home care”.

**12 Subsection 23.25(1)**

Omit “Community Care”, substitute “Home Care”.

**13 Subsection 23.25(2)**

Omit “Community Care”, substitute “Home Care”.

**14 Subsection 23.26(1)**

Omit “community care”, substitute “home care”.

**15 Subsection 23.26(2)**

Omit “community care”, substitute “home care”.

**16 Part 3A**

Repeal the Part.

**17 Subparagraph 23.38(2)(b)(v)**

Repeal the subparagraph, substitute:

- (v) the entry contribution balance as at the end of each calendar month (being a month commencing no earlier than 1 July 2006 and during which the approved provider held an entry contribution balance in respect of the care recipient);

**18 Section 23.38B**

Repeal the section, substitute:

**23.38B Requirement for investment management strategy**

- (1) This section applies to an approved provider that invests an accommodation bond in:
- (a) a financial product covered by paragraphs 57-17A(3)(b) to (e) of the Act;
  - (b) a Religious Charitable Development Fund listed in Schedule 1 (Religious Charitable Development Funds) of Banking exemption No. 1 of 2011 made under the *Banking Act 1959*.

*Note* Financial products for paragraph 57-17A (3) (e) of the Act are set out in section 23.64C of these Principles.

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- (2) An approved provider must implement and maintain a written investment management strategy that sets out:
    - (a) the approved provider's investment objectives; and
    - (b) the approved provider's assessment of the level of risk to the provider's ability to refund accommodation bond balances in accordance with the Act; and
    - (c) a strategy for achieving the investment objectives while ensuring that the approved provider is able to refund accommodation bond balances in accordance with the Act; and
    - (d) the asset classes the approved provider may invest in; and
    - (e) investment limits for each asset class that are consistent with the investment objectives; and
    - (f) key personnel with appropriate skills and experience who are responsible for implementing the investment management strategy.
  - (3) The investment management strategy must be approved by the key personnel who are responsible for the executive decisions of the approved provider.
  - (4) An approved provider must:
    - (a) ensure that any investment of accommodation bonds is in accordance with the provider's investment management strategy; and
    - (b) ensure that the provider's investment management strategy is up to date and complies with the requirements set out in subsection (2); and
    - (c) modify, or replace, its investment management strategy if the provider becomes aware that the investment management strategy no longer complies with the requirements set out in subsection (2).

#### **19 Subparagraph 23.40(1)(a)(xvi)**

Repeal the subparagraph, substitute:

- (xvi) the total amount expended by the approved provider (whether or not obtained from accommodation bonds) during the financial year on each of the uses of accommodation bonds permitted under section 23.64B of these Principles;

#### **20 Subparagraph 23.40(1)(a)(xvii)**

Repeal the subparagraph, substitute:

- (xvii) the amount that has been returned to the approved provider during the financial year from the sale, disposal or redemption of financial products covered by paragraphs 57-17A(3)(b) to (e) of the Act or paragraph 23.64B(1)(c) of these Principles that the approved provider invested in after 1 October 2011, whether or not the investment was obtained from accommodation bonds;

#### **21 Section 23.64B**

Repeal the section, substitute:

#### **23.64B Additional permitted uses for accommodation bonds**

- (1) Use of an accommodation bond by an approved provider is permitted if:

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- (a) the accommodation bond is used to meet reasonable business losses that are incurred in the period:
    - (i) beginning when the approved provider begins receiving residential care subsidy in relation to a residential care service or flexible care subsidy in relation to a flexible care service; and
    - (ii) ending 12 months after the approved provider begins to receive the subsidy in relation to that service; or
  - (b) the accommodation bond is used to make a loan to which the following conditions are satisfied:
    - (i) the loan is not made to an individual;
    - (ii) the loan is made on a commercial basis;
    - (iii) there is a written agreement in relation to the loan;
    - (iv) it is a condition of the agreement that the money loaned will only be used as mentioned in paragraphs 57-17A(d) or (e) of the Act; or
  - (c) the accommodation bond is invested in a Religious Charitable Development Fund listed in Schedule 1 (Religious Charitable Development Funds) of Banking exemption No 1 of 2011 made under the *Banking Act 1959*.

**22 Paragraph 23.85(d)**

Repeal the paragraph.

**23 Part 7 (heading)**

Omit “community care”, substitute “home care”.

**24 Division 1 of Part 7 (heading)**

Omit “community care”, substitute “home care”.

**25 Section 23.86**

Omit “community care”, substitute “home care”.

**26 Section 23.87 (heading)**

Omit “community care”, substitute “home care”.

**27 Section 23.88**

Omit “community care”, substitute “home care”.

**28 Section 23.89 (heading)**

Omit “community care”, substitute “home care”.

**29 Subsection 23.89(1)**

Omit “community care”, substitute “home care”.

**30 After subsection 23.89(4)**

Insert:

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(4A) The care recipient must not be charged an ongoing home care fee for any period during which the care recipient is on leave from the home care service and receiving;

- (i) transition care; or
- (ii) residential care provided as respite care.

### **31 Subsection 23.89(5)**

Repeal the subsection, substitute:

(5) For this section:

***income:***

- (a) means income after income tax and medicare levy; and
- (b) does not include:
  - (i) pharmaceutical allowance, rent assistance or telephone allowance payable under the *Social Security Act 1991* or the *Veterans' Entitlements Act 1986*; or
  - (ii) a pension supplement payable under the *Social Security Act 1991* or the *Veterans' Entitlements Act 1986*; or
  - (iii) in relation to a pension payable under the *Veterans' Entitlements Act 1986* (except a service pension), an amount equal to 4% of the amount of the pension.

***transition care*** has the meaning given by section 15.28 of the *Flexible Care Subsidy Principles 1997*.

### **32 Division 3 of Part 7 (heading)**

Omit “Community care”, substitute “**Home care**”.

### **33 Section 23.90**

Omit “community care”, substitute “home care”.

### **34 Section 23.91 (heading)**

Omit “community care”, substitute “**home care**”.

### **35 Paragraph 23.91(1)(b)**

Repeal the paragraph.

### **36 Paragraph 23.91(1)(c)**

Omit “community care”, substitute “home care”.

### **37 Subsection 23.91(2)**

Omit “community care” (wherever occurring), substitute “home care”.

### **38 Subsections 23.91(3), (4), (5) and (6)**

Repeal the subsections.

### **39 Section 23.92 (heading)**

Omit “Community care”, substitute “**Home care**”.



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**40 Subsection 23.92(1)**

Omit “community care” (wherever occurring), substitute “home care”.

**41 Part 8 (heading)**

Omit “community care”, substitute “home care”.

**42 Section 23.93**

Omit “community care”, substitute “home care”.

**43 Section 23.94 (heading)**

Omit “community care”, substitute “home care”.

**44 Subsection 23.94(1)**

Omit “community care” (wherever occurring), substitute “home care”.

**45 Section 23.95 (heading)**

Omit “community care”, substitute “home care”.

**46 Section 23.95**

Omit “community care” (wherever occurring), substitute “home care”.

**47 Paragraph 23.95(a)**

Repeal the paragraph, substitute:

- (a) the agreement must include:
  - (i) a statement about whether the home care will be delivered on a consumer directed care basis;
  - (ii) a statement about the level of home care to be provided to the care recipient;
  - (iii) a clear itemised statement of the fees (if any) payable by the care recipient and how those fees are calculated;
  - (iv) a statement that the care plan, including any changes to the care plan, will be provided to the care recipient;

**48 Paragraph 23.95(e)**

Repeal the paragraph, substitute:

- (e) the agreement must provide for the giving of financial information, relevant to the care and services, to the care recipient;

**49 Schedule 2 (heading and references after heading)**

Repeal the heading and references, substitute:

**Schedule 2 Charter of rights and responsibilities for home care**

(sections 23.24 and 23.25)

**50 Schedule 2, subitem 2(a)**

Omit “community care”, substitute “home care”.

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**51 Schedule 2, subitem 2(b)**

Omit “community care”, substitute “home care”.

**52 Schedule 2, subitem 5(b)**

Omit “Community Care”, substitute “Home Care”.