

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

Aged Care Act 1997

*User Rights Amendment (Publication of Accommodation Payment Information)
Principles 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 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 *User Rights Principles 1997* (the User Rights Principles).

Part 4.2 of the Act sets out the responsibilities of an approved provider to the users and proposed users of the provider's aged care service. The User Rights Principles outline these responsibilities.

The purpose of the *User Rights Amendment (Publication of Accommodation Payment Information) Principles 2014* (the Amending Principles) is to amend the User Rights Principles to specify, for the purposes of sections 56-1 and 56-3 of the Act, an additional responsibility of approved providers of residential care and flexible care provided through a multi-purpose service.

If an approved provider intends to charge care recipients accommodation payments from 1 July 2014, they will have a responsibility to publish, from 19 May 2014, the information required by sections 7 and 8 of the *Fees and Payment Principles 2014* as that instrument will be in force from 1 July 2014. The information required to be published is information about the key accommodation features of the rooms in their service and the maximum accommodation payment amount that the provider could charge a person for a particular room if the person enters the service on or after 1 July 2014. The maximum accommodation payment amount must be expressed as both a refundable accommodation deposit amount and the equivalent daily accommodation payment amount.

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

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

In April 2012, the Government launched a major program of aged care reforms. The reform agenda was developed in close consultation with the aged care sector, including consumers, industry and professional bodies.

As part of the consultation on the proposed changes to the Act, and to delegated legislation, arising from the reforms, the Government communicated its intention to examine the delegated legislation and, where possible, simplify the delegated legislation.

This intent was communicated in November 2012, with the public release of a paper providing an overview of the proposed legislative changes. A video presentation detailing the proposed reforms was also made available online to assist members of the public to understand these changes.

During late 2012 and in the first half of 2013, briefing sessions were held across Australia to provide information and to explain, in detail, the proposed legislative changes included in the package of Bills introduced into Parliament on 13 March 2013. As part of these consultations, the intention to make related changes to delegated legislation was again discussed. For those interested members of the public unable to attend the briefings, the presentation, supporting handouts, a detailed Question and Answer document and an information video were made available online.

In 2013 significant changes were made to the Act.

Regulation Impact Statement

Regulation Impact Statement OPBR ID 14985 which was made in relation to the *Fees and Payments Principles 2014* also relates to these Amending Principles. OBPR has advised that no amendment to the RIS is required.

Commencement

The Amending Principles commence on 19 May 2014.

ATTACHMENT

Details of the User Rights Amendment (Publication of Accommodation Payment Information) Principles 2014.

Part 1 - Preliminary

Clause 1 – Name of principles

This section states that the name of the principles is the *User Rights Amendment (Publication of Accommodation Payment Information) Principles 2014*.

Clause 2 – Commencement

This section provides that the principles commence on 19 May 2014.

Clause 3 - Authority

This section states that the authority under which these principles are made is section 96-1 of the *Aged Care Act 1997* (the Act).

Clause 4 – Schedule

This section states 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

User Rights Principles 1997

Item 1 – At the end of Division 5 of Part 2

This item adds an additional section at the end of Division 5 of Part 2 of the principles. Section 23.17B will require an approved provider of a residential care service who intends to charge care recipients accommodation payments for a room or part of a room on or after 1 July 2014 to comply with the publication requirements set out in sections 7 and 8 of the *Fees and Payments Principles 2014* from 19 May 2014 as if those sections, which will come into force on 1 July 2014, had commenced.

Item 2 – After Part 3

This item inserts after Part 3 a new Part 3A, which comprises sections 23.26A and 23.26B.

Section 23.26A states that the purpose of Part 3A is to specify an additional responsibility of an approved provider of a flexible care service that is a multi-purpose service.

Section 23.26B will require an approved provider of a flexible care service that is a multi-purpose service who intends to charge care recipients accommodation payments for a room or part of a room on or after 1 July 2014 to comply with the publication requirements set out in sections 7 and 8 of the *Fees and Payments Principles 2014*

from 19 May 2014 as if those sections, which will come into force on 1 July 2014, had commenced.

Statement of Compatibility with Human Rights

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

User Rights Amendment (Publication of Accommodation Payment Information) Principles 2014

The *User Rights Amendment (Publication of Accommodation Payment Information) Principles 2014* (the Amending 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

This legislative instrument refers to amendments to the *Fees and Payments Principles 2014* (Fees and Payments Principles) made on 28 January 2014 and scheduled to come into force on 1 July 2014.

From 1 July 2014, sections 7 and 8 of the Fees and Payments Principles will require approved providers of residential care services and eligible flexible care services (multi-purpose services) to publish information about the key accommodation features of the rooms in their services and the maximum accommodation payment amount that the provider could charge a person for a particular room. The maximum accommodation payment amount must be expressed as both a refundable accommodation deposit amount and the equivalent daily accommodation payment amount.

The purpose of the Amending Principles is to specify, for the purposes of sections 56-1 and 56-3 of the *Aged Care Act 1997*, that it is a responsibility of an approved provider who intends to charge care recipients accommodation payments on or after 1 July 2014 to comply with sections 7 and 8 of the Fees and Payments Principles from 19 May 2014 as if those sections were in force. This is designed to ensure that prospective care recipients who intend to enter a residential care service or a multi-purpose service on or after 1 July 2014 can obtain information beforehand about the key features and costs of the available accommodation to enable them to make an informed choice between services, or between rooms within a service.

Human Rights Implications

The Amending Principles are compatible with the right to an adequate standard of living contained in article 11(1) of the International Covenant on Economic, Social and Cultural Rights, and article 28 of the Convention on the Rights of Persons with Disabilities, as the amendments will assist care recipients to make informed choices about their accommodation to maximise their quality of life.

Conclusion

This legislative instrument is compatible with human rights as it promotes the human right to an adequate standard of living.

Senator the Hon Mitch Fifield
Assistant Minister for Social Services

