

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

Aged Care Act 1997

Classification 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 *Classification Principles 2014* (the Principles).

The Principles deal with the classification of care recipients, specifically:

- the procedures for determining classification levels for care recipients receiving residential care or residential care provided as respite care;
- care recipients that do not require classification (care recipients in a multi-purpose service);
- the classification levels for care recipients being provided with residential care or respite care;
- appraisals of the level of care needed for care recipients;
- how, if an approved provider has been suspended from undertaking appraisals, the provider may make an application for the lifting of the suspension; and
- the date of effect, expiry and renewal of classifications.

From 1 July 2014, these Principles will replace the existing *Classification Principles 1997*. The main differences between these principles are as follows:

- existing provisions have been clarified (without changing the policy intent);
- the distinction between high and low level residential care has been removed (except in relation to respite care);
- the concept of paying an 'interim low' rate of subsidy has been removed because with the removal of the distinction between high and low level residential care, Aged Care Assessment Team approvals will no longer be limited to low;
- cross-references to principles that will no longer exist have been removed; and
- minor technical amendments have been made to ensure consistency across aged care principles.

There have been no changes to the scores for the Aged Care Funding Instrument (ACFI) question ratings. Similarly there have been no changes to the substance of the provisions relating to the expiry and renewal of classifications.

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

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 it.

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.

During March and April 2014, an exposure draft of these Principles was made available for comment on the Department of Social Services' website, along with an explanatory document entitled *Overview: Proposed changes from 1 July 2014 to the Aged Care Principles made under the Aged Care Act 1997 - April 2014*. Comments on the draft Principles were invited and taken into account in the finalisation of these Principles.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that no RIS is required (OBPR ID 16682).

Commencement

The Principles commence on 1 July 2014.

Details of the Classification Principles 2014

Part 1 – Preliminary

Section 1 – Name of principles

This section states that the name of the Principles is the *Classification Principles 2014* (the Principles).

Section 2 – Commencement

This section states that the Principles commence on 1 July 2014.

Section 3 - Authority

This section provides that the authority for making the Principles is section 96-1 of the *Aged Care Act 1997* (the Act).

Section 4 – Definitions

This section defines certain terms used in the Principles.

Act means the *Aged Care Act 1997*.

ADL domain refers to the group of questions in the Answer Appraisal Pack relating to activities of daily living.

Answer Appraisal Pack means the 1 July 2014 version of the Aged Care Funding Instrument (ACFI) Answer Appraisal Pack, which consists of a care recipient's ACFI assessment and the required supporting documentation for their classification. The Answer Appraisal Pack may be accessed online at <http://www.dss.gov.au>.

application for classification means an application for the classification of a care recipient in accordance with section 25-1 of the Act.

Assessment Pack means the 1 July 2014 version of the Aged Care Funding Instrument (ACFI) Assessment Pack, which contains guidelines for ACFI assessments and copies of assessment tools. The Assessment Pack may be accessed online at <http://www.dss.gov.au>.

behaviour domain refers to the group of questions in the Answer Appraisal Pack relating to behaviour.

CHC domain refers to the group of questions in the Answer Appraisal Pack relating to complex health care.

domain refers to a collection of questions in the Answer Appraisal Pack relating to daily living activities, behaviour or complex health care.

domain aggregate range refers to the result derived from applying the steps described in subsection 6(2) of these Principles.

domain category refers to a domain category mentioned in one of the tables in Schedule 2, ranging from nil to high.

multi-purpose service is a flexible care service defined in the *Subsidy Principles 2014*. In summary, section 114 of the *Subsidy Principles 2014* defines a multi-purpose service to be one where:

- residential care is provided through the service; and
- at least one of the following services is also provided through the service: a health service; a home and community care service; a dental service; a transport service; a home care service; a service for which a Medicare benefit is payable or that provides a pharmaceutical benefit; or a service that the Minister nominates, in an agreement with the a State or Territory, as an appropriate service.

User Guide refers to the 1 July 2014 version of the ACFI User Guide, which is a detailed workbook describing how to complete an ACFI Assessment. The User Guide may be accessed online at <http://www.dss.gov.au>.

A number of other expressions used throughout the Principles are defined in Schedule 1 of the Act.

Part 2 – Classification of care recipients

Section 5 – Purpose of this Part

This section describes the purpose of Part 2 which is to outline the process that must be followed by the Secretary, in determining the appropriate classification level for a residential care recipient.

Section 6 - Procedure for determining classification level - residential care other than respite care

This section provides that for the purpose of determining the appropriate classification level for a recipient of residential care (other than respite care) the Secretary must take the steps described in subsection 6(2).

In summary the Secretary must:

- for the ADL domain and the behaviour domain in the completed application:
 - use the tables in Parts 1 and 2 of Schedule 1 to identify the score for the rating for each question in each domain; and
 - add up the scores to work out an aggregate figure for each domain (the domain aggregate); and
 - use the tables in Parts 1 and 2 of Schedule 2 to identify, for each domain the range within which the domain aggregate falls (the domain aggregate range) and the domain category that applies to that domain aggregate range.
- if the domain category identified for the behaviour domain is the high behaviour category and the completed application does not include a mental and behavioural diagnosis code, reduce the domain category to the medium behaviour category;
- for the CHC domain in the completed application, use the matrix in Part 3 of Schedule 1, which combines ratings for the questions in the domain, to work out

the overall score for the domain and identify the domain category mentioned in the table in Part 3 of Schedule 2 that applies to that score; and

- determine that the appropriate classification level for the care recipient consists of the domain categories identified for each domain.

Notes included in the section remind the reader that:

- subsection 11(1) is also relevant to the classification level for a care recipient receiving residential care other than respite care; and
- the procedures outlined in this section also apply to renewing a classification level for a care recipient receiving residential care other than respite care.

Section 7 - Procedure for determining classification level - respite care

This section outlines the procedure for determining the appropriate classification level for a residential respite care recipient. The Secretary must determine the care recipient's classification level based on the care recipient's approval under the *Approval of Care Recipients Principles 2014*.

Section 10 of the *Approval of Care Recipients Principles 2014* provides that approval of a person as a recipient of residential care may be limited to respite care if respite care is appropriate to the needs of the person, the person's carer or both. If a person's approval is limited to residential care provided as respite care, the approval may be limited to low level residential respite care or high level residential respite care.

A note is included at the end of this section referring readers to subsection 11(2) which also deals with the classification levels for care recipients being provided with residential care as respite care.

Part 3 – Classes of care recipients excluded from classification

Section 8 – Purpose of this Part

This section notes that Part 3 describes the class of care recipients who are excluded from classification under Part 2.4 of the Act and the period for which they are excluded.

Section 9 - Exclusion of class of care recipients

This section provides that flexible care recipients receiving care through a multi-purpose service are excluded from classification. Such care recipients are excluded from classification indefinitely.

Part 4 – Classification levels

Section 10 – Purpose of this Part

This section states that the purpose of Part 4 is to outline classification levels for care recipients being provided with residential care.

Section 11 – Classification levels

For subsection 25-2(1) of the Act:

- the classification level for residential care recipients, other than those receiving respite care, comprises of a domain category for each domain.

- the classification levels for care recipients receiving residential care as respite care are low level residential respite care and high level residential respite care.

Section 12 - Lowest applicable classification level—care other than respite care

This section lists the lowest applicable classification level domain categories for residential care recipients, other than those receiving respite care. With the categories being nil ADL category, nil behaviour category and nil CHC category.

Part 5 – Appraisals of the level of care needed

Section 13 – Purpose of this Part

This section states that Part 5 specifies:

- circumstances where timeframes specified in subsection 25-3(2) of the Act do not apply for an appraisal of the care level required by a residential care recipient, relative to the needs of other care recipients;
- an alternative period for making an appraisal; and
- appraisal procedures.

Section 14 - Circumstance and alternative period

The effect of this section is that if a care recipient leaves a residential care service within seven days of the commencement of the care, the rules relating to when an appraisal must be made are adjusted.

In most cases, subsection 25-3(2) of the Act provides that an appraisal must not be made during the first seven days that a care recipient is in care and must not be given to the Secretary during the first 28 days that the provider is providing care.

However, this section provides that if a care recipient leaves a residential care service within seven days, the appraisal may be made during the period of care and given to the Secretary within 28 days after the care commenced.

Section 15 – Appraisal procedure

Subsection 25-3(3) of the Act provides that an appraisal must be in a form approved by the Secretary, and must be made in accordance with the procedures (if any) specified in the Classification Principles.

In accordance with that subsection, this section provides that the person making the appraisal must:

- complete an Answer Appraisal Pack in accordance with the User Guide, using accurate and reliable information and using any applicable assessment tools in the Assessment Pack; and
- complete an application for classification using the completed Answer Appraisal Pack.

The User Guide, Assessment Pack and Answer Appraisal Pack are all available on the Department’s website.

Part 6 – Suspending approved providers from making appraisals and reappraisals

Section 16 – Purpose of this Part

Section 25-4C(3)(b) of the Act provides that the Secretary may lift the suspension of an approved provider from making appraisals and reappraisals if the approved provider applies, in writing, to the Secretary to do so. The application must be in a form approved by the Secretary and meet any requirements specified in the Classification Principles.

The purpose of this Part is to describe requirements that must be met by an application for the lifting of a suspension of an approved provider from making appraisals and reappraisals.

Section 17 – Requirements for applications for the lifting of suspensions

This section lists the information that must be included in an application to lift a suspension from making appraisals and reappraisals. The application must include information about:

- what action has been taken by the approved provider to correct false, misleading or incorrect information provided in an appraisal or reappraisal;
- how the provider has consulted with staff, care recipients and care recipients' relatives regarding the giving of the false, misleading or incorrect information; and
- what action the provider proposes to take to ensure that false, misleading or incorrect information is not given in future appraisals or reappraisals.

Part 7 – When respite care classifications take effect

Section 18 – Purpose of this Part

This section describes the purpose of Part 7 which is to specify when a classification of a respite care recipient takes effect.

Section 19 – Day of effect

This section states that the classification of a respite care recipient takes effect on the first day the care recipient enters respite care.

Part 8 – Expiry and renewal of classifications

Section 20 – Purpose of this Part

This section states that Part 8 specifies the following:

- expiry dates for certain classifications;
- the circumstances in which a care recipient's needs are considered to have significantly changed; and
- the process the Secretary must follow when renewing a care recipient's classification.

Section 21 – Different expiry dates

This section describes different expiry dates for care recipients being provided with respite care and care recipients eligible for the dementia and severe behaviours supplement.

Care recipient being provided with respite care

Item 7 of the table in subsection 27-2(1) of the Act provides that the expiry date for the classification of a care recipient being provided with residential care as respite care is the day on which the period during which the care recipient was provided with the respite care ends. Paragraph 27-2(6)(a) of the Act provides that a different expiry date may be specified in the *Classification Principles 2014*.

Subsection 21(1) of the Principles describes a different expiry date which is the first day after the earlier of:

- the day in a financial year where the number of days on which the care recipient has been provided with residential respite care in that financial year equals the number of days specified in paragraph 23(1)(c) of the *Subsidy Principles 2014*; or
- the day the care recipient's approval as a care recipient ceases.

The effect of this is that the classification of a care recipient receiving residential care as respite care does not automatically lapse at the end of an episode of respite care. A care recipient may have several episodes of respite care during a financial year, up to a total of 63 days (or a longer period if the Secretary increases the number of respite care days for the care recipient). The care recipient's classification will only lapse if the care recipient exhausts the number of respite care days allowed in the financial year or the care recipient's approval to receive respite care, which would normally not lapse, has been time limited.

Care recipient eligible for dementia and severe behaviours supplement

If a care recipient becomes eligible for the dementia and severe behaviours supplement, the care needs of the care recipient are taken to have changed significantly (see paragraph 22(a) of the Principles).

Normally when a care recipient's care needs change significantly and their classification is renewed for that reason, the new classification expires six months after the day on which the renewal took effect (see item 5 in the table in subsection 27-2(1) of the Act).

Subsection 21(2) specifies a different expiry date for the classification of a care recipient whose classification has been renewed because the care recipient becomes eligible for a dementia and severe behaviours supplement. Instead of expiring six months after the day on which the renewal took effect, the new classification continues unless the care recipient ceases being provided with residential care (other than because the care recipient is on leave).

If the care recipient ceases being provided with residential care, the classification expires on the day immediately after the period of 28 days starting on the day on which the care recipient ceases to be provided with residential care. The period of 28 days allows for the possibility that, if a care recipient is moving between residential care services or other care options are being explored, there might be a period when the care recipient is temporarily not receiving residential care.

Section 22 - Circumstances in which care needs are taken to have changed significantly

This section states that a residential care recipient's needs are considered to have significantly changed if the care recipient:

- become eligible for a dementia and severe behaviours supplement; or
- has an incident which may increase the level of care required by two or more domain categories within a domain or at least one domain category within two or more domains; or
- for care recipients whose classification level includes the high ADL category and the medium CHC category, experiences an incident which may change the level of complex health care required to the high CHC category.

According to subsection 27-4(3) of the Act, the care needs of a care recipient may be reappraised if the care recipients' needs have changed significantly.

Section 23 – Procedure for determining renewal of classification

This section states that the process outlined in subsection 6(2) of the Principles must be followed to assess a care recipient's care level when renewing their classification.

Schedule 1 – Scores for question ratings

Schedule 1 describes the scores for question ratings:

- Part 1 of the Schedule describes the score for each rating for each question in the ADL domain;
- Part 2 of the Schedule describes the score for each rating for each question in the behaviour domain; and
- Part 3 of the Schedule sets out the score for each combination of ratings in the CHC domain.

Schedule 2 – Domain categories

Schedule 2 describes the domain categories:

- Part 1 of the Schedule describes the domain category that applies to each domain aggregate range for the ADL domain;
- Part 2 of the Schedule describes the domain category that applies to each domain aggregate range for the behaviour domain; and
- Part 3 of the Schedule sets out the domain category that applies to each overall score for the CHC domain.

Statement of Compatibility with Human Rights

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

Classification Principles 2014

The *Classification Principles 2014* (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

Among the Principles made under section 96-1 of the Act are the *Classification Principles 2014* (the Principles).

The Principles deal with the classification of care recipients, specifically:

- the procedure for determining classification levels for care recipients receiving residential care or residential care provided as respite care;
- care recipients who do not require classification (care recipients in multi-purpose services, which are funded on a cashed-out basis);
- the classification levels for care recipients being provided with residential care or respite care;
- appraisals of the level of care needed for care recipients;
- how, if an approved provider has been suspended from undertaking appraisals, the provider may make an application for the lifting of the suspension; and
- the date of effect, expiry and renewal of classifications.

A care recipient's classification determines the level of subsidy payable to the approved provider to meet the care recipient's assessed care needs.

Human Rights Implications

The Principles are 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. The Principles are designed to ensure that an approved provider receives an appropriate level of subsidy, based on a care recipient's assessed needs, to enable the approved provider to provide the care and services required to meet those care needs.

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.

Senator the Hon Mitch Fifield
Assistant Minister for Social Services