

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

Aged Care Act 1997

User Rights 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 2014* (the Principles).

The Principles set out the responsibilities of approved providers in providing residential or home care services. For example, the Principles deal with security of tenure for care recipients, access for persons acting for care recipients, and the information the provider must give care recipients in particular situations. The Principles also describe the rights and responsibilities of recipients of both residential care and home care.

From 1 July 2014, these Principles will replace the existing *User Rights Principles 1997*. The new Principles:

- include new provisions about the information that must be given to continuing care recipients (i.e. people who were in care prior to 1 July 2014) moving between services;
- include new provisions relating to care recipients being informed of, and helped to understand, the terms of resident agreements (to align with similar requirements for home care);
- do not include information relating to accommodation bonds and accommodation charges as this information is being moved into the *Aged Care (Transitional Provisions) Principles 2014*;
- do not include information about fees and charges as this will be moved into the *Fees and Payments Principles 2014 (No.2)* (for care recipients who enter care on or after 1 July 2014) and into the *Aged Care (Transitional Provisions) Principles 2014* (for continuing care recipients); and
- have been reworded to improve clarity and consistency between home care and residential care.

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

Consultation

In April 2012, the former 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 former 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 April and May 2014, an exposure draft of this set of 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 User Rights Principles 2014

Part 1 – Preliminary

Section 1 – Name of principles

This section states that the name of the Principles is the *User Rights 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*.

agreed fee means a fee, charge, or other payment agreed between the care recipient and the approved provider that is not prohibited under the Act.

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

Part 2 – Residential care services

Division 1 – Purpose of this Part

Section 5 – Purpose of this Part

This section describes the purpose of Part 2. Part 2 specifies the responsibilities an approved provider of a residential care service has to a care recipient or prospective care recipient, including in relation to:

- security of tenure;
- the access that advocates, community visitors and representatives of care recipients may have to the service;
- the rights and responsibilities of care recipients;
- the restrictions on moving care recipients; and
- the information the provider must give care recipients.

Part 2 also specifies the requirements of a resident agreement which is entered into between a care recipient and an approved provider.

Division 2 – Responsibilities of approved providers of residential care – general

Section 6 – Security of tenure – when approved provider may ask or require care recipient to leave residential care service

Section 6 specifies the security of tenure that must be provided to a care recipient by an approved provider, noting that the circumstances in which a care recipient may be asked to leave a residential care service must also be specified in the resident agreement.

An approved provider may ask a care recipient to leave a residential care service only if:

- the service is closing; or
- the service no longer provides care and accommodation suitable for the care recipient, having regard to the care recipient's longer term needs as assessed by an aged care assessment team (ACAT) or by at least 2 medical or other health professionals who are competent in the assessment of the aged care needs of the care recipient and one of whom is independent of the provider and chosen by the care recipient; or
- the care recipient no longer requires the care provided through the service, as assessed by an ACAT; or
- the care recipient has not paid the approved provider an agreed fee within 42 days of the due date, for a reason within the care recipient's control; or
- the care recipient has intentionally caused serious damage to the service or caused serious injury to staff or other care recipients within the service; or
- the care recipient is absent from the service for 7 or more continuous days for a reason other than those permitted by the Act or an emergency.

Before an approved provider can take action to make a care recipient leave a residential care service, or imply that the care recipient must leave the service, suitable alternative accommodation arrangements must be available. Such accommodation must be affordable to the care recipient and must meet the care recipient's long-term needs as assessed by either an ACAT or at least 2 medical or other health practitioners who are competent to assess the needs of the care recipient. If the assessment is made by 2 medical or other health professionals, one of them must be independent of the approved provider and chosen by the care recipient.

Section 7 – Security of tenure – notice requirements

Notice to be given if care recipient asked to leave residential care service

If an approved provider decides to ask a care recipient to leave the service, the care recipient must be given a written notice that includes:

- the decision including the reasons for the decision;
- the date the care recipient is to leave; and
- the care recipient's rights in relation to being asked to leave, including the right to access the complaints resolution mechanism of the approved provider, any other complaints mechanisms and advocates.

The approved provider must give the notice to the care recipient at least 14 days prior to the care recipient leaving the service.

If the care recipient received a notice to leave because of the care recipient's behaviour and the approved provider and the care recipient subsequently agree that due to improved behaviour, the care recipient does not have to leave the service, then a written notice must be provided to the care recipient stating that the care recipient is no longer required to leave the service.

Section 8 – Access to residential care service by people acting for care recipients, advocates and community visitors

This section provides that an approved provider must:

- grant access to the service to someone that the care recipient has asked to act on their behalf at any time; and
- allow advocates and community visitors, who are acting for an organisation who receives a grant to provide advocacy or community visits, access to the residential care service during normal business hours. If the person is assisting the care recipient, the person must be granted access to the service at any time.

Section 9 – Rights and responsibilities of care recipients provided with residential care

This section states that the rights and responsibilities of a residential care recipient include those mentioned in the “Charter of care recipients’ rights and responsibilities – residential care” set out in Schedule 1 of these Principles. An approved provider must not act inconsistently with the rights and responsibilities of care recipients.

Section 10 – Other responsibilities – restrictions on moving care recipient within residential care service

This section provides that an approved provider must not move a care recipient to another room, or part of a room, unless:

- the care recipient has requested the move; or
- after being fully consulted and not subjected to any pressure, the care recipient agrees to the move; or
- after being assessed by an ACAT or at least 2 medical or other health practitioners, the move is found necessary on genuine medical grounds. If the care recipient has been assessed by 2 medical or other health practitioners, they must both be competent to assess the aged care needs of the care recipient and one must be independent of the approved provider and chosen by the care recipient; or
- the place occupied by the care recipient becomes an extra service place and the care recipient elects not to pay the extra service fee; or
- the move is necessary to carry out repairs or improvements and the care recipient has the right to return to the room, or part of the room (if it continues to exist) upon completion of the repairs or improvements.

Division 3 – Responsibilities of approved providers of residential care – provision of information

Section 11 – Information to be given to new care recipient about rights and responsibilities

This section requires approved providers to give care recipients information about:

- the care recipient's rights and responsibilities as set out in the “Charter of care recipients’ rights and responsibilities – residential care”;
- the rights and responsibilities set out in this Part of the Principles; and

- if the care recipient has not entered into a resident agreement, the requirements for resident agreements that are described in paragraphs 59-1(b) to (h) of the Act. This includes, for example:
 - the care and services that the approved provider has the capacity to provide to the care recipient;
 - the policies and practices that the approved provider will follow in setting the fees;
 - the circumstances in which the care recipient may be asked to depart from the residential care service and the assistance that the approved provider will provide to the care recipient to obtain alternative accommodation;
 - the complaints resolution mechanisms to be used to address complaints; and
 - the care recipient’s responsibilities as a resident in the residential care service.

The information must be given before, or when, the care recipient enters the service and the approved provider must assist the care recipient to understand the information provided.

Section 12 – Statement of audited accounts

This section requires an approved provider to give a care recipient, if requested, a copy of the provider’s most recent statement of audited accounts for the service. If the service is operated as part of a broader organisation, the provider must give the care recipient the most recent statement of the audited accounts of the organisation’s aged care component (that includes the residential care service).

Section 13 – Information to be given to continuing residential care recipient moving between services

A care recipient in residential aged care on 30 June 2014 remains subject to the fees and payments arrangements in place at that time provided that the care recipient does not spend longer than 28 days outside of residential care, other than on approved leave, or upon moving to another residential care service, does not elect in writing to be subject to the fees and payments arrangements which will be in effect from 1 July 2014. In order to have the choice, the care recipient must move to the second service within 28 days of leaving the first.

Such care recipients are referred to in the Principles as continuing care recipients and this term is defined in Schedule 1 of the Act.

This section describes the written information that an approved provider of a service must give a continuing residential care recipient, if the continuing care recipient intends to move to the provider’s service.

If a continuing care recipient intends to move to another residential care service, the approved provider for the new service must give the following written information to the care recipient:

- that, if the care recipient enters the new service within 28 days after leaving the previous service, the care recipient may make a written choice (before entering the new service) to be covered by the new fees and payments arrangements under Chapter 3A of the Act;

- that the care recipient cannot make a choice to be covered by the new arrangements, after entering the new service, if the care recipient has not made that choice before entering the new service;
- if the care recipient enters the new service 28 days or more after leaving the previous service, the care recipient cannot then make a written choice and will automatically be covered by the new fees and payments arrangements;
- that, if the care recipient can, but does not, make a written choice to be covered by the new arrangements, the care recipient will be covered by the existing fees and payments arrangements under the *Aged Care (Transitional Provisions) Act 1997*;
- that being covered by the new arrangements may result in a change to the fees and payments payable by the care recipient; and
- that, if the care recipient becomes covered by the new arrangements, the care recipient cannot, in the future, decide to be again covered by the existing arrangements.

The approved provider of the new service must also give the continuing care recipient a copy of the publication “New Arrangements for Aged Care – from 1 July” as it exists on 1 July 2014. This document is published by the Department of Social Services and is available online.

Division 4 – Resident agreements

Section 14 – Entry into resident agreement

This section requires that a care recipient must be informed of, and helped to understand, the terms of the resident agreement (including any other agreements included in the resident agreement) in particular:

- the rights and responsibilities of the care recipient;
- the services to be provided to the care recipient; and
- the fees and charges to be paid under the agreement.

If a care recipient is unable to enter into a resident agreement with an approved provider, a representative of the care recipient may do this on the care recipient’s behalf.

Section 15 – Provisions of resident agreement

This section describes what must be included in a resident agreement.

A resident agreement must provide that if, within 14 days after signing the agreement, the care recipient notifies the provider, in writing, that the care recipient wishes to withdraw from the agreement;

- the agreement has no effect;
- the care recipient is liable for any fees and charges arising from care provided under the agreement; and
- the provider is liable to refund any other amounts paid by the care recipient under the agreement.

A resident agreement must also:

- provide that the agreement may be varied if this is necessary to implement the *A New Tax System (Goods and Services Tax) Act 1999* provided that the approved provider gives reasonable written notice to the care recipient about the variation;
- provide that other variations may be made, by mutual consent, following adequate consultation between the care recipient and the provider;
- provide that any variation to the agreement must not be inconsistent with the Act, *A New Tax System (Goods and Services Tax) Act 1999* or the *Extra Service Principles 2014*;
- provide that the care recipient has the right to occupy a place at the service beginning on the day the agreement commences or any other day agreed to and for either the period stated in the agreement or the rest of the care recipient's life;
- include any other matters negotiated between the care recipient and the approved provider; and
- be expressed in plain language and be readily understandable by the care recipient.

A note to the section reminds the reader that a resident agreement may also include terms of other agreements including:

- an extra service agreement;
- an accommodation agreement;
- an accommodation bond agreement; and
- an accommodation charge agreement.

Part 3 – Home care services

Division 1 – Purpose of this Part

Section 16 – Purpose of this Part

This section describes the purpose of Part 3 which is to specify the responsibilities an approved provider of home care has to a care recipient or prospective care recipient, including in relation to:

- security of tenure;
- access for advocates;
- rights and responsibilities of care recipients; and
- the information that must be provided to care recipients.

Part 3 also specifies requirements for a home care agreement entered into between a care recipient or prospective care recipient and an approved provider.

Division 2 – Responsibilities of approved providers of home care – general

Section 17 – Security of tenure

This section specifies the security of tenure that must be provided to a care recipient by an approved provider.

An approved provider may cease to provide home care to the care recipient if:

- the care recipient cannot be cared for in the community with the resources available to the approved provider;

- the care recipient provides written notification to the approved provider that the care recipient wishes to move to a location where home care is not provided by the approved provider or no longer wishes to receive the home care;
- the care recipient's condition has changed to the point that home care is no longer required, or the ACAT has assessed that the care recipient's needs can be more appropriately met by another type of service or care; or
- for a reason within the care recipient's control, the care recipient has not complied with his or her responsibilities as described in the "Charter of care recipients' rights and responsibilities – home care" set out in Schedule 2 of the Principles.

Section 18 – Access to home care service by advocates

This section states that an approved provider must allow an advocate access to the provider's home care service. An advocate is a person working for a body that has been paid an advocacy grant (under the Act) to provide advocacy services to care recipients.

Section 19 – Rights and responsibilities of care recipients provided with home care

This section states that the rights and responsibilities of a care recipient of home care include the rights and responsibilities mentioned in the "Charter of care recipients' rights and responsibilities – home care" which is set out in Schedule 2 to these Principles. An approved provider must not act in a way that is inconsistent with any rights and responsibilities specified in these Principles.

Division 3 – Responsibilities of approved providers of home care – provision of information

Section 20 – Information to be given to new care recipient about rights and responsibilities

This section states that an approved provider of a home care service must:

- give a prospective care recipient information the rights and responsibilities of the care recipient and the provider, including information about the payment of home care fees;
- give such information to the prospective care recipient prior to confirmation of the commencement date for the home care; and
- assist the care recipient to understand the information provided.

Section 21 – Information to be given to continuing home care recipient to be provided with new home care service

A care recipient receiving a home care package on 30 June 2014 remains subject to the fee arrangements in place at that time in home care provided that he or she does not spend longer than 28 days outside of home care, other than on approved leave, or upon moving to another home care service, does not elect in writing to be subject to the fee arrangements which will be in effect from 1 July 2014. In order to have the choice, the care recipient must move to the second service within 28 days of leaving the first.

Such care recipients are referred to in the Principles as continuing care recipients and this term is defined in Schedule 1 of the Act.

This section describes the written information that an approved provider of a service must give a continuing home care recipient, if the continuing care recipient intends to move to the provider's service.

If a continuing care recipient intends to receive services from another a home care service, the approved provider for the new service must give the following written information to the care recipient:

- that, if the care recipient moves to the new service within 28 days after leaving the previous home care service, the care recipient may make a written choice (before moving to the new service) to be covered by the new fee arrangements under Chapter 3A of the Act;
- that the care recipient cannot make a choice to be covered by the new arrangements, after moving to the new service, if the care recipient has not made that choice before moving to the new service;
- if the care recipient enters the new service 28 days or more after leaving the previous service, the care recipient cannot then make a written choice and will automatically be covered by the new fee arrangements;
- that, if the care recipient can, but does not, make a written choice to be covered by the new arrangements, the care recipient will be covered by the existing fee arrangements under the *Aged Care (Transitional Provisions) Act 1997*;
- that being covered by the new arrangements may result in a change to the fees payable by the care recipient; and
- that, if the care recipient becomes covered by the new arrangements, the care recipient cannot, in the future, decide to be again covered by the existing arrangements.

The approved provider of the new service must also give the continuing care recipient a copy of the publication "New Arrangements for Aged Care – from 1 July" as it exists on 1 July 2014. This document is published by the Department of Social Services and is available online.

Division 4 – Home care agreements

Section 22 – Entry into home care agreement

This section specifies the requirements for new home care agreements between a care recipient and an approved provider. If a care recipient is unable to enter into a home care agreement then the care recipient's representative may enter into an agreement on their behalf.

A home care agreement must be offered to a care recipient prior to a start date being agreed.

A care recipient must be informed and helped to understand the terms of the agreement including:

- the rights and responsibilities of the care recipient;
- the services the care recipient can expect to be provided; and
- the applicable fees and other charges.

Section 23 – Provisions of home care agreement

This section specifies the provisions that a home care agreement must contain.

A home care agreement must be expressed in plain language and be readily understandable by the care recipient. In addition, a home care agreement must contain:

- the date when the provider will start to provide home care to the care recipient;
- statements specifying whether the care will be delivered on a consumer directed care basis, the care and services to be provided and the level of home care to be provided;
- a statement about the rights of the care recipient to decide the kind of care and services to be provided;
- a statement that the provider will provide a care plan (including any changes to that plan) to the care recipient; and
- a clear itemised statement of any fees that are payable by the care recipient including how those fees are calculated.

A home care agreement must also include:

- provision for financial information to be given to the care recipient including a statement that the approved provider must, within 7 days after a request by the care recipient, give the care recipient:
 - a clear and simple presentation of the financial position of the service, including the costs of home care, that explains any ongoing fees payable by the care recipient; and
 - a copy of the most recent statement of the audited accounts of the service (or if the service is operated as part of a broader organisation, the most recent audited accounts of the organisation's aged care component that includes the service);
- a guarantee that all reasonable steps will be taken to protect the confidentiality, so far as legally permissible, of information provided by the care recipient;
- details of how the provider will use confidential information and each person or body to whom the information will be disclosed by the provider;
- a statement that the care recipient may temporarily suspend the provision of home care from a particular date; and
- the conditions for terminating the home care by either party.

A home care agreement must:

- provide that the agreement may be varied if this is necessary to implement the *A New Tax System (Goods and Services Tax) Act 1999* provided that the approved provider gives reasonable written notice to the care recipient about the variation;
- provide that other variations may be made, by mutual consent, following adequate consultation between the care recipient and the provider;
- provide that any variation to the agreement must not be inconsistent with the Act, *A New Tax System (Goods and Services Tax) Act 1999* or the *Extra Service Principles 2014*; and
- state that the care recipient is entitled to make a complaint (without fear of reprisal) and the mechanisms for making such a complaint.

Part 4 – Miscellaneous

Section 24 – Access to complaints resolution mechanism

This section states that an approved provider must grant access to the service to anyone authorised by the Secretary to investigate and assist in the resolution of a complaint in relation to the service.

Schedule 1 – Charter of care recipients’ rights and responsibilities – residential care

Part 1 of this Schedule describes the rights of residential care recipients. As required by paragraph 56-1(m) of the Act, an approved provider must not act inconsistently with any of the rights and responsibilities specified in these Principles including this Charter.

The rights described in the Charter include the right to:

- full and effective use of his or her personal, civil, legal and consumer rights;
- an appropriate quality of care;
- information in relation to the state of the care recipient’s health and about any available treatments;
- be treated with dignity and respect and to live without exploitation, abuse or neglect;
- live without being discriminated or victimised;
- personal privacy; and
- be treated and accepted as an individual.

Part 2 of the Charter lists the responsibilities of a care recipient in a residential care service. These responsibilities include:

- to respect the rights and needs of others within the residential care service community;
- to respect the rights of staff to work in an environment free from harassment;
- to care for his or her health and well-being as far as he or she is capable; and
- to inform medical practitioners of relevant medical history and current state of health, as far as he or she is able to.

Schedule 2 – Charter of care recipients’ rights and responsibilities – home care

Part 1 of the Charter describes the rights of home care recipients. As required by paragraph 56-2(k) of the Act, an approved provider must not act inconsistently with any of the rights and responsibilities specified in these Principles including this Charter.

The rights described in the Charter include rights relating to:

- general matters – such as the right to be treated and accepted as an individual and to have individual preferences respected;
- participation – such as the right to be involved in identifying the most appropriate home care and to participate in making decisions that affect him or her;
- care and services – such as the right to receive reliable, coordinated, safe, quality care and services which are appropriate to his or her assessed needs;
- personal information – such as the right to privacy and confidentiality of his or her personal information and the right to access his or her information;

- communication – such as the right to be helped to understand information given, to be given a copy of the Charter and to be offered a written agreement that includes all agreed matters;
- comments and complaints – such as the right to be given information on how comments and complaints can be made and to be able to comment or complain without fear of retribution; and
- fees – such as the right to have fees determined in a way that is transparent, accessible and fair and the right to receive invoices that are clear and can be understood.

Part 2 of the Charter lists the responsibilities of a home care recipient. These responsibilities include:

- general responsibilities – such as respecting the rights of care workers and treating care workers without exploitation, abuse, discrimination or harassment;
- responsibilities relating to care and services – such as abiding by the terms of the home care agreement and accepting responsibility for his or her actions and choices even though they may involve an element of risk;
- communication responsibilities – such as providing the approved provider with enough information so that the provider can develop, deliver and review a care plan;
- responsibilities relating to access – such as allowing care workers safe and reasonable access at the times specified in the care plan or otherwise by agreement; and
- responsibilities relating to fees – such as paying any fees as specified in the agreement or to negotiate an alternative arrangement if any changes occur in his or financial circumstances.

Statement of Compatibility with Human Rights

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

User Rights Principles 2014

The *User Rights 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

The Principles set out the responsibilities of approved providers under the *Aged Care Act 1997* (the Act) in providing residential and home care services. For example, the Principles deal with security of tenure for care recipients, access for persons acting for care recipients, and the information the provider must give care recipients in particular situations. The Principles also describe the rights and responsibilities of recipients of residential care and home care in the Charter of care recipients' rights and responsibilities—residential care and the Charter of care recipients' rights and responsibilities—home care.

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 state that each recipient of residential care has the right to receive quality care appropriate to his or her needs. The Principles also state that each recipient of home care has the right to receive reliable, coordinated, safe, quality care and services which are appropriate to his or her assessed needs.

The Principles are compatible with the right to culture as contained in article 15 of the International Covenant on Economic, Social and Cultural Rights and article 27 of the International Covenant on Civil and Political Rights. The Principles state that each recipient of residential care has the right to continue his or her cultural and religious practices and to keep the language of his or her choice, without discrimination. The Principles also state that each recipient of home care has the right to receive care and services that take account of his or her cultural, linguistic and religious preferences.

The Principles are compatible with the right to privacy as contained in article 17 of the International Covenant on Civil and Political Rights and article 22 of the Convention on the Rights of Persons with Disabilities. The Principles state that each recipient of residential care has the right to personal privacy. The Principles also state that each recipient of home care has the right to be treated with dignity, with his or her privacy respected.

Conclusion

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

The legislative instrument will assist in promoting a key object of the Act, namely to protect the health and well-being of recipients of aged care services.

Senator the Hon Mitch Fifield
Assistant Minister for Social Services