

## EXPLANATORY STATEMENT

**Issued by the authority of the Assistant Minister for Social Services**

*Aged Care Act 1997*

*Records 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 *Records Principles 2014* (the Principles).

The purpose of the *Records Principles 2014* is to specify the records that must be kept and retained by approved providers. This includes records relating to care recipients, records about allegations or suspicions of reportable assaults and records about the police certificates of staff members and volunteers.

From 1 July 2014, these Principles will replace the existing *Records Principles 1997*. The main difference between the principles is that the new Principles have been renumbered and some provisions have been re-drafted to reflect contemporary drafting practice (and for consistency with other aged care principles). Minor changes have also been made to reflect the need for approved providers to keep records relating to whether a person is a continuing care recipient or a care recipient entering care on or after 1 July 2014. This is an important consequential change because of the differing arrangements relating to subsidy, fees and accommodation payments for care recipients who enter care before or after 1 July 2014.

### 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 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 early 2014 consultation was undertaken on those aged care principles that reflected significant policy changes. As the *Records Principles 2014* do not substantially differ from the *Records Principles 1997*, an exposure draft of these Principles was not released for public comment.

#### 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 Records Principles 2014**

**Section 1 – Name of principles**

This section provides that the name of the principles is the *Records Principles 2014* (the Principles).

**Section 2 – Commencement**

This section provides 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*.

The phrases *Answer Appraisal Pack*, *application for classification* and *Assessment Pack* all have the meanings given by section 4 of the *Classification Principles 2014*. In summary:

- *Answer Appraisal Pack* is the Aged Care Funding Instrument (ACFI) Answer Appraisal Pack published by the Department, as it exists on 1 July 2014;
- *application for classification* is an application completed in accordance with section 15 of the *Classification Principles 2014* for classification of a care recipient under section 25-1 of the Act; and
- *Assessment Pack* means the ACFI Assessment Pack published by the Department, as it exists on 1 July 2014.

A *charge exempt resident* is defined in section 44-8B of the *Aged Care (Transitional Provisions) Act 1997*. In summary, a charge exempt resident is a resident that occupied a bed in a nursing home on 30 September 1997, entered a residential care service at any time after 30 September 1997, and would have been eligible to pay an accommodation charge for the entry.

A *police certificate* is a written statement of a person's criminal convictions prepared by the police or CrimTrac, which outlines the particulars of any such conviction. The CrimTrac Agency works together with Australia's police agencies to deliver the National Police Checking Service.

*representative*, of a care recipient, has the meaning given by section 5.

*staff member*, of an approved provider, has the meaning given by section 4 of the *Accountability Principles 2014* which is a person who:

- is at least 16 years old; and

- is employed, hired, retained or contracted by the approved provider (whether directly or through an employment or recruitment agency) to provide care or other services under the control of the approved provider to care recipients; and
- has, or is reasonably likely to have, access to care recipients.

**volunteer**, for an approved provider, has the meaning given by section 4 of the *Accountability Principles 2014* which is a person who:

- is not a staff member of the approved provider;
- offers his or her services to the approved provider;
- provides care or other services on the invitation of the approved provider and not solely on the express or implied invitation of the care recipient;
- has, or is reasonably likely to have, unsupervised access to care recipients; and
- is at least 16 years old, or if the person is a full time student, is at least 18 years old.

### **Section 5 – Meaning of *representative***

This section describes the meaning of the word *representative*, in relation to care recipients. A representative is a person:

- nominated by the care recipient as a person who can be told about matters affecting the safety, health and well-being of a care recipient; or
- who nominates himself or herself as a person to be told about matters affecting a care recipient, provided that the approved provider is satisfied that the person has a connection with the care recipient, and is concerned for the safety, health and well-being of the care recipient.

For the purposes of the definition, a person is considered to have a connection with a care recipient if:

- the person is a partner, close relation or other relative of the care recipient;
- the person holds an enduring power of attorney given by the care recipient;
- the person has been appointed by a State or Territory guardianship board (however described) to deal with the care recipient's affairs; or
- the person represents the care recipient in dealings with the approved provider.

A note at the end of the section confirms that nothing in the definition is intended to affect the powers of a substitute decision maker appointed under a law of a State or Territory.

### **Section 6 – Purpose of these principles**

This section describes the purpose of the Principles which is to specify the records that must be kept and retained by an approved provider. A note to the section reminds the reader that under subsection 89-1(2) of the Act, a person who has ceased to be an approved provider must retain records that the person was required to retain under section 88-1 of the Act, other than records that the approved provider is required to transfer to another approved provider under section 16-10 of the Act.

### **Section 7 – Records about care recipients**

This section describes the kinds of records that must be kept by an approved provider. This includes:

- assessments of care recipients;

- appraisal and reappraisal records for care recipients, such as the Answer Appraisal Packs, assessment tools from the Assessment Pack and sources of evidence mentioned in the Answer Appraisal Pack;
- copies of applications for classification for care recipients that are not transmitted to the Secretary in electronic form;
- individual care plans for care recipients;
- medical records, progress notes and other clinical records of care recipients;
- schedules of fees and charges (including retention amounts relating to accommodation bonds) for previous and current care recipients;
- agreements between care recipients and the approved provider;
- accounts of care recipients;
- records relating to the approved provider meeting prudential requirements;
- records relating to the payment and repayment of refundable deposits, accommodation bonds and entry contributions;
- records relating to care recipients' entry, discharge and leave arrangements, including death certificates where appropriate;
- records relating to a financial hardship determination for a care recipient;
- records of the amount of daily accommodation payments, daily accommodation contributions and accommodation charges paid or payable to the approved provider by care recipients;
- records of the amount of accommodation charge refunded by the approved provider in relation to care recipients who paid an accommodation charge for a period during which they were charge exempt residents;
- in relation to a continuing care recipient to whom the approved provider started to provide home care, flexible care or residential care on or after 1 July 2014 - a record of whether the care recipient made a written choice to be covered by Chapters 3 and 3A of the Act in relation to the service. This is a new requirement arising from the changes to the Act which commence on 1 July 2014; and
- up-to-date records of the name and contact details of at least one representative of each care recipient. If the care recipient or representative has given details of other representatives, their details must also be maintained.

### **Section 8 – Records about allegations or suspicions of reportable assaults**

This section provides that an approved provider must keep consolidated records of all incidents involving allegations or suspicions of reportable assaults. The record for each incident must include:

- the date the approved provider received the allegation, or started to suspect that a reportable assault had occurred;
  - a brief description of the allegation or the circumstances that gave rise to the suspicion; and
  - information about whether a report of the allegation or suspicion has or has not been made to a police officer and the Secretary, as required by the Act.
- Alternatively the record should identify whether the allegation or suspicion was not reported because the special circumstances described in the *Accountability Principles 2014* existed (meaning that mandatory reporting to the police and the Secretary is not required).

### **Section 9 – Records about staff members and volunteers**

This section requires approved providers to keep records that enable the approved provider to demonstrate that the approved provider is meeting its responsibilities as described in the *Accountability Principles 2014* in relation to police certificates and statutory declarations for staff members and volunteers. In particular, the approved provider must keep records to demonstrate that:

- for each person who is a staff member or volunteer there is a police certificate that is not more than 3 years old;
- for any period that a staff member or volunteer is allowed to be without such a certificate, an application for a police certificate has been made; and
- any statutory declaration required to be made by a staff member or volunteer has been made.

### **Section 10 – Duty to keep police certificates**

This section provides that an approved provider must adhere to the *Privacy Act 1988* when keeping any police certificates or copies of police certificates.

### **Section 11 – Kinds of records that must be retained**

This section requires approved providers who no longer provide care to care recipients to still retain the records described in section 7.

A note at the end of section 11 reminds the reader that under subsection 89-1(2) of the Act, a person who has ceased to be an approved provider must retain records that the person was required to retain under section 88-1 of the Act, other than records that the approved provider is required to transfer to another approved provider under section 16-10 of the Act.

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

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

### ***Records Principles 2014***

The *Records 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 specify the records that must be kept and retained by approved providers. This includes records relating to care recipients, records about allegations or suspicions of reportable assaults and records about the police certificates of staff members and volunteers.

### **Human Rights Implications**

The Principles are compatible with the right to the enjoyment of the highest attainable standard of physical and mental health as contained in article 12(1) of the International Covenant on Economic, Social and Cultural Rights and article 25 of the Convention on the Rights of Persons with Disabilities. The Principles require an approved provider to keep records relating to care recipients' physical and mental health, including assessments of care recipients, individual care plans for care recipients and medical records, progress notes and other clinical records of care recipients. Maintenance of such records enables care recipients' care needs to be identified and met.

The Principles engage the right to privacy contained in article 17 of the International Covenant on Civil and Political Rights in that they require an approved provider to keep records relating to care recipients' health and the fees and payments they have been charged for their care, records about allegations or suspicions of reportable assaults on care recipients and records that allow an approved provider to demonstrate that staff members and volunteers have not been convicted of offences that preclude them from having access to care recipients. Insofar as the Principles limit the right to privacy of those whose personal information is required to be kept by an approved provider, the limitation is a necessary, reasonable and proportionate measure to protect the safety, health and well-being (including the financial well-being) of vulnerable care recipients.

### **Conclusion**

This legislative instrument is compatible with human rights as it promotes the human right to the highest attainable standard of physical and mental health. Insofar as the legislative instrument limits the right to privacy, the limitation is necessary, reasonable and proportionate.

**Senator the Hon Mitch Fifield**  
**Assistant Minister for Social Services**