

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

Aged Care Act 1997

Aged Care (Principles and Determinations) Repeal Instrument 2014

The *Aged Care Act 1997* (the Aged Care 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.

On 20 April 2012, the former Government announced the *Living Longer Living Better* aged care reform package to reshape aged care. Included in the package of reforms was the enactment of the *Aged Care (Living Longer Living Better) Act 2013* which amends the Aged Care Act and enacts the *Aged Care (Transitional Provisions) Act 1997* (the Transitional Provisions Act).

From 1 July 2014, the Transitional Provisions Act will operate alongside the Aged Care Act. The Transitional Provisions Act will provide for ‘continuing care recipients’, that is those who were receiving care through an aged care service before 1 July 2014 and have not since 1 July 2014 left that service for more than 28 days (other than while on leave) or have not moved services and elected to be subject to the new arrangements. The Transitional Provisions Act deals only with arrangements for fees, subsidies and payments which are required to be preserved for continuing care recipients.

All other provisions which apply consistently to both continuing care recipients and care recipients who enter care on or after 1 July 2014, are contained only within the Aged Care Act. The Aged Care Act will also describe the subsidy and fee arrangements for care recipients who enter care on or after 1 July 2014.

As part of these changes, new Principles and Determinations (delegated legislation) are required to support both the Aged Care Act and the Transitional Provisions Act.

Therefore, most Principles and Determinations made under the Aged Care Act and in operation as at 30 June 2014 will be repealed in order for new Principles and Determinations to commence on 1 July 2014. The Principles and Determinations that were made by the Minister will be repealed through a single instrument – the *Aged Care (Principles and Determinations) Repeal Instrument 2014* (the Repeal Instrument).

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make a legislative instrument, that power shall be construed as including a power to revoke the instrument. This provides the Minister with the power to make this Repeal Instrument.

The Repeal instrument repeals the following Principles and Determinations.

Principles

- *Accountability Principles 1998*
- *Advocacy Grant Principles 1997*
- *Allocation Principles 1997*
- *Approval of Care Recipients Principles 1997*
- *Approved Provider Principles 1997*
- *Classification Principles 1997*
- *Committee Principles 2013*
- *Community Visitors Grant Principles 1997*
- *Complaints Principles 2011*
- *Extra Service Principles 1997*
- *Fees and Payments Principles 2014*
- *Flexible Care Subsidy Principles 1997*
- *Home Care Subsidy Principles 2013*
- *Information Principles 1997*
- *Quality of Care Principles 1997*
- *Records Principles 1997*
- *Residential Care Grant Principles 1997*
- *Residential Care Subsidy Principles 1997*
- *Sanctions Principles 1997*
- *User Rights Principles 1997*

Determinations

- *Aged Care (Residential Care - Amount of Basic Subsidy) Determination 2013 (No. 1)*
- *Aged Care (Residential Care Subsidy - Amount of Accommodation Supplement) Determination 2014 (No. 1)*
- *Aged Care (Residential Care Subsidy - Amount of Concessional Resident Supplement) Determination 2014 (No. 1)*
- *Aged Care (Residential Care Subsidy - amount of charge exempt resident supplement) Determination 2008*
- *Aged Care (Residential Care Subsidy - Amount of Respite Supplement) Determination 2014 (No. 1)*
- *Aged Care (Residential Care Subsidy - Amount of Oxygen Supplement) Determination 2013 (No. 1)*
- *Aged Care (Residential Care Subsidy - Amount of Enteral Feeding Supplement) Determination 2013 (No. 1)*
- *Aged Care (Residential Care Subsidy - Amount of Transitional Supplement) Determination 2014 (No. 1)*
- *Aged Care (Residential Care Subsidy - Amount of Transitional Accommodation Supplement) Determination 2014 (No. 1)*
- *Aged Care (Residential Care Subsidy - Dementia and Severe Behaviours and Veterans' Supplement Amounts) Determination 2013*
- *Aged Care (Residential Care Subsidy - Amount of Basic Daily Fee Supplement) Determination 2012 (No. 1)*
- *Aged Care (Payroll Tax Supplement) Determination 2001*
- *Aged Care (Residential care subsidy - amount of accommodation charge top-up supplement) Determination 2008 (No. 2)*

- *Aged Care Act 1997 - Determination under section 44-16(3) (ACA Ch. 3 No. 15/2008)*
- *Aged Care (Residential Care Subsidy - Adjusted Subsidy Reduction) Determination 2013 (No. 1)*
- *Aged Care (Residential Care Subsidy - Homeless Supplement Amount) Determination 2013*
- *Aged Care (Residential Care Subsidy - Amount of Pensioner Supplement) Determination 2014 (No. 1)*
- *Aged Care (Residential Care Subsidy - Amount of Viability Supplement) Determination 2013 (No. 1)*
- *Aged Care (Residential care subsidy - amount of hardship supplement) Determination 2009 (No. 1)*
- *Aged Care (Home Care Subsidy Amount) Determination 2013*
- *Aged Care (Flexible Care Subsidy Amount - Multi-Purpose Services) Determination 2013 (No. 2)*
- *Aged Care (Flexible Care Subsidy Amount - Transition Care) Determination 2013 (No. 2)*
- *Aged Care (Flexible Care Subsidy Amount - Innovative Care) Determination 2013 (No. 2)*
- *Aged Care Act 1997 - Determination under section 52-1 for flexible care subsidy for Retirement Villages Care Pilot (ACA Ch.3 No. 12/2006)*
- *Aged Care Act 1997 - Determination of amount of flexible care subsidy under section 52-1 for the MSV Changing Needs pilot in Victoria (ACA Ch. 3 No. 5/2004)*
- *Aged Care Act 1997 - Determination of amount of flexible care subsidy under section 52-1 for the MSV Carnegie pilot in Victoria (ACA Ch. 3 No. 5/2004)*
- *Aged Care (Maximum Accommodation Payment Amount) Determination 2014*
- *Aged Care Act 1997 - Determination under Section 32-7 (ACA Ch. 2 No. 20/2003)*

The Repeal Instrument is 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.

In early 2014 consultation was undertaken on those Principles that reflected significant policy changes. As part of this consultation it was noted that existing Principles and Determinations would be repealed and replaced with new Principles and Determinations from 1 July 2014.

As this Repeal Instrument is machinery only and does not include any policy issues, an exposure draft of the Repeal Instrument 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

This instrument commences on 1 July 2014.

Statement of Compatibility with Human Rights

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

Aged Care (Principles and Determinations) Repeal Instrument 2014

The *Aged Care (Principles and Determinations) Repeal Instrument 2014* (the Repeal Instrument) is compatible with the human rights and freedoms recognised and declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Repeal Instrument repeals a number of legislative instruments in the form of Principles made under section 96-1 of the *Aged Care Act 1997* and Determinations made under various provisions of that Act.

New Principles and Determinations will replace the repealed instruments with effect from 1 July 2014 when Schedules 3, 4 and 5 of the *Aged Care (Living Longer Living Better) Act 2013* commence. That Act amends the *Aged Care Act 1997* (the Aged Care Act) and enacts the *Aged Care (Transitional Provisions) Act 1997* (the Transitional Provisions Act).

From 1 July 2014, the Transitional Provisions Act will operate alongside the Aged Care Act. The Transitional Provisions Act will provide for ‘continuing care recipients’, that is those who were receiving care through an aged care service before 1 July 2014 and have not since 1 July 2014 left that service for more than 28 days (other than while on leave) or have not moved services and elected to be subject to the new arrangements. The Transitional Provisions Act deals only with arrangements for fees, subsidies and payments which are required to be preserved for continuing care recipients.

The Aged Care Act will deal with matters that relate to care recipients who enter care on or after 1 July 2014 and matters that apply equally to care recipients irrespective of whether or not they are continuing care recipients.

The new Principles and Determinations that will replace those being repealed by this Repeal Instrument will reflect the changes to primary legislation that commence on 1 July 2014.

Human rights implications

The Principles and Determinations that are being repealed by this Repeal Instrument engage a number of human rights and freedoms recognised and declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

These rights and freedoms include the right of care recipients 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.

Although the Instrument repeals an extensive body of subordinate legislation that engages relevant rights and freedoms, it does so as part of a package of reforms that includes the making of new subordinate legislation dealing with the same matters as the legislation that is being repealed.

Conclusion

The Repeal Instrument does not adversely affect any of the rights and freedoms recognised and declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. Although the Repeal Instrument repeals a number of instruments that engage relevant rights and freedoms, it does so as part of a package of reforms that includes the making of new instruments dealing with the same matters.

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