

## **EXPLANATORY STATEMENT**

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

*Aged Care Act 1997*

*Aged Care Legislation Amendment (Removal of Certification and Other Measures)  
Principles 2015*

The *Omnibus Repeal Day (Autumn 2014) Act 2014* amended the *Aged Care Act 1997* (the Act) and the *Aged Care (Transitional Provisions) Act 1997* (TP Act) to repeal the requirement for residential care services to be certified. The repeal of the certification provisions occurred as part of the Government's red tape reduction agenda.

Certification requirements under the Act were duplicative, in that a number of these requirements replicated building regulations administered by state, territory and local governments. Aspects of certification under the Act also replicated certain requirements under the Accreditation Standards administered by the Australian Aged Care Quality Agency.

The *Aged Care Legislation Amendment (Removal of Certification and Other Measures) Principles 2015* (Amending Principles) address consequential changes required as a result of the repeal of certification from the Act and the TP Act and unrelated unintended drafting errors made in the *Subsidy Principles 2014*.

The Amending Principles remove references to certification from the *Accountability Principles 2014*, *Allocation Principles 2014* and *Fees and Payments Principles 2014 (No.2)*.

Furthermore, eligibility for the dementia and cognition supplement is determined using assessment tools conducted by a prescribed list of clinicians. Clinical psychologists were inadvertently omitted from the list of prescribed clinicians who are permitted to conduct the assessments for care recipients in receipt of home care. The Amending Principles add clinical psychologists to the list of practitioners that may conduct assessments in accordance with the Psychogeriatric Assessment Scales and the Rowland Universal Dementia Assessment Scales. This amendment will provide service providers with greater choice in the range of health professionals able to assess a care recipient.

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

### **Commencement**

These Amending Principles commence the day after they are registered on the Federal Register of Legislative Instruments.

### **Reliance on subsection 33(3) of the *Acts Interpretation Act 1901***

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**

The amendments in Part 1 are consequential and technical amendments that flow from the *Omnibus Repeal Day (Autumn 2014) Act 2014*. As such no specific consultations were undertaken in regard to the changes in this instrument.

The amendments in Part 2 make technical corrections to clarify the legislation. As Part 2 is of a machinery nature and does not substantially alter existing arrangements no consultation has occurred (section 18, *Legislative Instruments Act 2003*).

The amendments in Part 3 are also machinery in nature and do not substantially alter existing arrangements no consultation has occurred (section 18, *Legislative Instruments Act 2003*).

**Regulation Impact Statement**

The Office of Best Practice Regulation has advised that no Regulation Impact Statement is required in respect of the repeal of certification requirements (OBPR ID: 16379) or the technical corrections to the amount of accommodation supplement payable (OBPR ID: 17541) or to include the term clinical psychologist (OBPR ID: 17939).

**Details of the Aged Care Legislation Amendment (Removal of Certification and Other Measures) Principles 2015**

**Clause 1** states that the name of the instrument is the *Aged Care Legislation Amendment (Removal of Certification and Other Measures) Principles 2015*.

**Clause 2** sets out the commencement date of the Amending Principles.

**Clause 3** provides that the authority for the making of the instrument is Section 96-1 of the *Aged Care Act 1997*.

**Clause 4** provides 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**

**Part 1 – Amendments relating to removal of certification**

***Accountability Principles 2014***

**Item 1 – Section 4 (definition of *certification assessor*)**

This item repeals the definition of certification assessor.

**Item 2 – Section 4 (subparagraph (a)(i) of the definition of *relevant official*)**

This item repeals a reference to certification assessor as a relevant official.

**Item 3 – Subdivision A of Division 1 of Part 2**

This item repeals the subdivision as it relates to access to residential care services by certification assessors.

**Items 4 and 5 – Paragraph 19(b) and Section 23**

These items repeal references to paragraph 63-1(1)(j) which relate to allowing access to people to review the certification of the service.

**Item 6 – Subparagraph 23(a)(i)**

This item repeals the subparagraph as it refers to sections 6 to 8 of these Principles which are removed by Item 3 above.

***Allocation Principles 2014***

**Item 7 – Subparagraphs 48(2)(g)(i) and (ii)**

This item repeals references to certification in these subparagraphs.

**Item 8 – Subparagraph 51(1)(d)(i)**

This item repeals the subparagraph as it relates to the certification of the service.

**Item 9 – Subparagraphs 59(2)(d)(i) and (ii)**

This item repeals references to certification in these subparagraphs.

**Item 10 – Paragraph 62(1)(b)**

This item repeals the paragraph as it relates to the certification of the aged care service.

*Fees and Payments Principles 2014 (No. 2)*

**Item 11 – Paragraphs 46(2)(d) and 47(2)(d)**

This item repeals the paragraphs as they relate to residential care services ceasing to be certified.

**Part 2 – Amendments relating to accommodation supplement**

*Subsidy Principles 2014*

**Item 12 – Section 4**

This item inserts definitions for ‘newly built residential care service’, ‘post-2008 reform resident’, ‘relevant resident’ and ‘significantly refurbished residential care service’. These terms are used in section 50 of these Principles, as inserted by Item 13 below.

**Item 13 – Section 50**

This item makes technical corrections to clarify the operation of the accommodation supplement, by repealing the section and substituting a new section 50.

**Part 3 – Other amendments**

*Subsidy Principles 2014*

**Items 14 and 15 – Paragraphs 83(2)(b) and 83(3)(c)**

These items insert clinical psychologist into the list of practitioners that may conduct the relevant assessment used to determine eligibility for the dementia and cognition supplement.

## Statement of Compatibility with Human Rights

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

### ***Aged Care Legislation Amendment (Removal of Certification and Other Measures) Principles 2015***

This *Aged Care Legislation Amendment (Removal of Certification and Other Measures) Principles 2015* is 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 Legislative Instrument**

The *Aged Care Legislation Amendment (Removal of Certification and Other Measures) Principles 2015* removes references to certification from the *Accountability Principles 2014*, *Allocation Principles 2014* and *Fees and Payments Principles 2014 (No.2)* as a result of the *Omnibus Repeal Day (Autumn 2014) Act 2014*, makes a technical correction to the *Subsidy Principles 2014* by clarifying the matters on which a Minister can determine the amount of accommodation supplement, and inserts clinical psychologist in to the list of practitioners that may conduct assessments that determine eligibility for the dementia and cognition supplement.

#### **Human Rights Implications**

This legislative instrument is compatible with the right to an adequate standard of living contained in article 11 of the International Covenant on Economic, Social and Cultural Rights. Aged care facilities must continue to comply with state and territory building requirements.

This legislative instrument is also 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 and article 28 of the Convention on the Rights of Persons with Disabilities. The Amending Principles continue to enable the payment of supplements to approved providers for the provision of care and services to people with a condition of frailty or disability who require assistance to achieve and maintain the highest attainable standard of physical and mental health.

#### **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**