

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Aged Care

Aged Care Act 1997

Aged Care Legislation Amendment (Short-term Restorative Care) Principles 2016

Purpose

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.

The Act establishes three different care types: residential care, home care and flexible care. Kinds of flexible care may be specified in the *Subsidy Principles 2014*. The purpose of this instrument is to establish short-term restorative care, a new kind of flexible care that is aimed at increasing the care options available to older people, and improving their capacity to stay independent and living in their homes.

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.

Amendments are required to various principles made under the Act to implement the short-term restorative care programme. This instrument amends the following principles (collectively the Principles):

- *Allocation Principles 2014*, to provide for the allocation of flexible care places to approved providers, be provided as short-term restorative care;
- *Approval of Care Recipients Principles 2014*, to provide for eligibility criteria and approval of care recipients to receive short-term restorative care;
- *Quality of Care Principles 2014*, to set out the services that an approved provider must provide to a care recipient of short-term restorative care in a residential and/or home setting;
- *Subsidy Principles 2014*, to set out matters for payment of flexible care subsidy for short-term restorative care;
- *Accountability Principles 2014*, to allow the Chief Executive Officer (CEO) of the Australian Aged Care Quality Agency (the Quality Agency) to access a short-term restorative care service provided in a residential or home setting for the purposes of accreditation and quality review (this function is being given to the CEO by the Quality Agency instrument below);
- *Quality Agency Principles 2013*, to set out matters relating to the accreditation of short-term restorative care services in a residential setting,

and quality review of short-term restorative care services in a home setting;

- *Quality Agency Reporting Principles 2013*, to set out the requirements for the CEO of the Quality Agency to provide information to the Secretary of the Department about approved providers failing to meet their responsibilities with regards to short-term restorative care services; and
- *User Rights Principles 2014*, to set out care recipients' rights and responsibilities, and requirements that will apply to flexible care agreements between care recipients and approved providers.

In addition, separate instruments will amend the *Aged Care (Subsidy, Fees and Payments) Determination 2014*, the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014* and the *Australian Aged Care Quality Agency (Other Functions) Specification 2015* to set out the amount and calculation of subsidy for short-term restorative care and to provide the CEO of the Quality Agency with functions relating to accreditation and quality review of short-term restorative care services.

Background

As part of the 2015-16 Budget measure *Aged Care – Increasing short term restorative care places*, the Australian Government announced the expansion of flexible aged care initiatives to include a new kind of flexible care called short-term restorative care. The budget measure is implemented primarily through changes to the Principles made under the *Aged Care Act 1997*.

The objective of the short-term restorative care programme is to reverse or slow functional decline in older people through the provision of a package of care and services designed for the individual. The programme is designed to improve the wellbeing of the person, maintain or improve their independence and enable them to remain living at home for as long as possible. The short-term restorative care programme seeks to achieve this through the delivery of a time-limited (up to eight weeks), goal-oriented, multi-disciplinary and coordinated package of services that may be delivered in a home setting, a residential setting, or a combination of both.

Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation. It is proposed that places would be allocated in the second half of 2016, with care beginning to be provided with respect to those allocations from 1 January 2017. This instrument will commence before that date to ensure that places can be allocated to approved providers through the Aged Care Approvals Round prior to the commencement of the short-term restorative care programme.

Consultation

During September and October 2015, the Department held a consultation process with stakeholders and other interested parties consisting of:

- a public Policy Consultation Paper (released on 21 September 2015) which sought feedback from the aged care sector and/or other interested parties on the proposed STRC Programme policy framework;
- three external workshops (two in Melbourne on 29 September 2015 and one in Brisbane on 1 October 2015); and
- a webinar on 8 October 2015.

The Department received 81 written submissions on the Policy Consultation Paper from individuals and a range of organisations including aged care sector peak body representatives, state and territory governments, medical experts, allied health, Aboriginal health services and individual aged care sector providers from across the country, including from rural and remote areas. In addition, nearly 300 people attended the workshops held in Melbourne and Brisbane and over 2,000 people logged on to view the webinar content. Stakeholder feedback received in these submissions and workshops informed the final design of the programme and the drafting of these instruments.

In preparing this instrument, and the other instruments that relate to this policy initiative, the Department also consulted with the Department of Veteran's Affairs, the Department of Human Services and the Australian Aged Care Quality Agency on the parts of the changes relevant to each body. As consultation was undertaken with regards to the policy design of the short-term restorative care programme, an exposure draft of this instrument was not released for public comment.

Regulation Impact Statement (RIS)

Following consultation with the Office of Best Practice Regulation (OBPR), a RIS is not required as per OPBR reference number 18241.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Explanation of the provisions

Section 1

This section provides how the proposed instrument is to be cited, that is, as the *Aged Care Legislation Amendment (Short-term Restorative Care) Principles 2016*.

Section 2

This section sets out the commencement of the instrument. The commencement date is the day after registration.

Section 3

This section provides that the authority for making the Principles varied by this instrument is the *Aged Care Act 1997*, and the *Australian Aged Care Quality Agency Act 2013* (which provides that the Minister may make Quality Agency Principles providing for matters that are required or permitted by that Act to be provided, or necessary or convenient to be provided in order to carry out or give effect to that Act).

Under subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act), 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.

Accordingly, the power in section 96-1 of the *Aged Care Act 1997* to make Principles is relied on, in conjunction with subsection 33(3) of the Acts Interpretation Act, to vary seven of the Principles varied by this instrument. Section 53 of the *Australian Aged Care Quality Agency Act 2013* is relied upon in conjunction with the Acts Interpretation Act to vary the *Quality Agency Principles 2013*.

Section 4

This section 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 – Allocation of short-term restorative care places

Allocation Principles 2014

The following items amend the *Allocation Principles 2014* (the Allocation Principles). The Allocation Principles set out matters relating to allocation of aged care places to approved providers of aged care, including matters that the Secretary must take into account when considering applications for allocations of places. The purpose of these amendments is to set out matters relating to the allocation to approved providers of flexible care places in the form of short-term restorative care.

Item 1: Section 4

This item inserts new definitions of ***flexible care agreement***, ***home care setting***, ***residential care setting***, ***short-term restorative care*** and ***STRC Programme*** into section 4 of the Allocation Principles. The new definitions pick up on the definitions used in the *Subsidy Principles 2014*. This is a consequential amendment that reflects the inclusion of new defined terms in the Subsidy Principles by **item 23** below, and ensures that any references to these terms in the Allocation Principles are consistent with the other aged care principles.

Item 2: Section 27

Division 2 of Part 4 of the Allocation Principles sets out matters that the Secretary (or the Secretary's delegate) must consider in deciding which allocation of places would best meet the needs of the aged care community in a region. Currently Division 2 relates to residential care subsidy or home care subsidy only. Items 2 to 7 amend Division 2 to set out matters regarding the assessment of applications for the allocation of places in respect of flexible care subsidy for the provision of short-term restorative care.

Item 2 replaces the references to residential care subsidy and home care subsidy with "a particular type of subsidy". This is a consequential change due to the inclusion of matters relating to flexible care subsidy by **items 4 to 7** below.

Item 3: Subsection 28(1)

Section 28 sets out the matters that the Secretary must consider when deciding on applications for the allocation of places. This item is a technical amendment that clarifies that the matters currently set out in subsection 28(1) relate only to residential care and home care subsidy. No policy changes are made to subsection 28(1).

Item 4: After subsection 28(1)

This item sets out matters that the Secretary must consider when deciding which allocation of places in respect of short-term restorative care would best meet the needs of the aged care community in the region for the purpose of section 14-2 of the Act. These matters include:

- the applicant's demonstrated experience in delivering restorative care that would meet the objectives of the short-term restorative care programme and ensure appropriate outcomes for care recipients. The programme's objectives are set out in the *Subsidy Principles 2014*;

- if the applicant has been a provider of aged care: whether the applicant has complied with its responsibilities as a provider and obligations arising from the receipt of Commonwealth payments for providing aged care. Those responsibilities and obligations are set out in Chapter 4 of the Act; and
- the model of service delivery proposed by the applicant in order to meet the objectives of the STRC programme. This includes:
 - how the applicant proposes to effectively engage with prospective care recipients, and their carers, to prepare flexible care agreements for the care recipients. Requirements for flexible care agreements are set out in the *Subsidy Principles 2014*. Examples for this criterion may include care plan design strategies that an applicant may have developed that identify who will be engaged in the planning process and to what extent they will be engaged;
 - how the applicant will use its connections to the community (including primary care and other service providers) and how those connections will support a multi-disciplinary approach to delivering care. This may include other health services such as physiotherapy, podiatry and general practitioners, as well as other aged care services. This reflects the objectives of the STRC programme, as short-term restorative care aims to be goal-oriented and multi-disciplinary;
 - how the applicant proposes to deliver short-term restorative care in a home care setting or residential care setting (or both). The care needs of the person may differ depending on whether they live in their own home or in a residential care facility. A successful applicant should be able to provide care in either a home care setting or residential care setting, because short-term restorative care may be delivered in the home, in a residential setting or a combination of both, dependent on the care needs of the individual; and
 - how the applicant proposes to seamlessly transition a care recipient between care settings. Care recipients receiving short-term restorative care may move into a residential setting at the conclusion of the episode of care, may remain in their homes and receive home care, or may receive short-term restorative care in a rehabilitation setting. The aim of this provision is to ensure that approved providers can transfer a care recipient between different care settings, if that is what the individual requires.

The policy intent of these considerations is to ensure that successful applicants can demonstrate clear plans of how they propose to deliver care that will meet the objectives of the short-term restorative care programme. The delegate may choose to give different weights to certain considerations. For example, priority may be given to approved providers who have complied with their responsibilities and obligations arising from their status as an approved provider, and who have relevant experience and expertise to provide short-term restorative care.

Item 5: Subsection 28(2)

This item makes a consequential change to subsection 28(2) so that

subsection 28(2) refers to the new paragraphs which refer to care for the aged, as well as the already existing paragraphs. This is consequential to the changes made to section 28 by **item 4** above.

Items 6 and 7: Sections 29, 30 and 31

Sections 29, 30 and 31 currently set out additional matters that the Secretary must consider in regards to allocations of places that attract residential care subsidy or home care subsidy. Items 6 and 7 make consequential amendments to clarify that the matters in sections 29, 30 and 31 relate only to residential and home care, not flexible care delivered as short-term restorative care. No policy changes are made to sections 29, 30 or 31.

Item 8: Section 73

Currently sections 73 and 74 set out the matters that the Secretary must consider for paragraph 18-5(3)(b) of the Act in deciding whether to revoke the allocation of a place to an approved provider. Item 8 repeals and re-makes section 73 to make a consequential change to the wording of that provision, and inserts a new section 73A.

The new section 73A sets out, for the purposes of subsection 18-5(1) of the Act, the period for which the allocation of a short-term restorative care place may remain unused before being revoked. Subsection 18-5(1) of the Act provides that the Secretary may revoke the allocation of a place if the approved provider has not, for a continuous period as set out in the Allocation Principles, provided care in respect of the place. This item specifies that period as six months. This means if an approved provider does not provide short-term restorative care for a continuous period of six months after the place is allocated, the Secretary may choose to revoke the place.

The intention of this provision is to ensure that the growing needs of Australia's ageing population continue to be addressed. It achieves this by preventing places from remaining unused for extended periods of time. Where a place has remained unused for a continuous period of six months, the approved provider to whom it is allocated will need to justify why it should remain allocated to them, and not be revoked for reallocation in a location where it will be used.

Section 73 is repealed and substituted to incorporate a change that is consequential on the insertion of section 73A. Currently section 73 specifies the purpose of Division 3 of Part 9 as setting out matters that the Secretary must consider in deciding whether to revoke the allocation of a place to an approved provider. Due to the insertion of section 73A, section 73 is re-made to reflect that the purpose of Division 9 is also to specify the period for which the allocation of a short-term restorative care place may remain unused before being revoked.

Part 2 – Approval of care recipients

Approval of Care Recipients Principles 2014

The following items amend the *Approval of Care Recipients Principles 2014* (the Approval of Care Recipients Principles). The Approval of Care Recipients Principles

set out eligibility requirements for a person to receive residential, home or flexible care. The purpose of these amendments is to set out the eligibility requirements for a person to receive flexible care in the form of short-term restorative care, and to set out the circumstances in which a person's approval to receive short-term restorative care lapses.

Item 9: Section 4

Item 9 inserts new definitions into the Approval of Care Recipients Principles. It defines the terms ***episode of short-term restorative care***, ***multi-purpose service*** and ***short-term restorative care*** as having the same meaning as that given to these terms by section 4 of the *Subsidy Principles 2014*.

Item 9 also inserts a definition for ***Commonwealth home care package***, which means a package of care and services for which home care subsidy is payable under the Act or the *Aged Care (Transitional Provisions) Act 1997*.

Item 10: At the end of Part 2

Item 10 inserts a new section 8A, which sets out the eligibility criteria for a person to receive short-term restorative care.

A person is eligible to receive flexible care as short-term restorative care if the person:

- has been assessed (for example, by an Aged Care Assessment Team (ACAT) or Aged Care Assessment Service (ACAS, as they are known in Victoria)) as experiencing functional decline that is likely to be reversed or slowed through receiving short-term restorative care. The term 'functional decline' is left undefined so that it is broad enough to cover any person who has a declining ability to manage their activities of daily living and manage their own health. No list of medical conditions is prescribed for eligibility, as a person's care needs will be unique to their individual situation and may include a person's medical, physical, social and psychological needs;
- is at risk of losing independence to such a degree that without receiving short-term restorative care, the person will likely require home care, residential care or flexible care provided through a multi-purpose service. It reflects the intention of the STRC programme, which is to provide care and support to a person before their care needs have increased such that a permanent care solution is required. It is also reflective of the data analysis undertaken by the Australian Institute of Health and Welfare (AIHW) which demonstrated that this type of restorative care provision stabilised functional decline and prevented the need for higher levels of care;
- is not already receiving home care (through a home care package), residential care or flexible care in the form of transition care;
- is not on leave from a residential care service or a flexible care service through which the person is receiving flexible care in the form of transition care.
 - This criterion, along with the criterion in paragraph (c) above, means that a person who is already receiving another form of Commonwealth-subsidised aged care will not be eligible to receive short-term

restorative care. This is because the STRC programme aims to intervene at an early stage before a person has entered into permanent aged care. If a person is already receiving care, or is on leave from an aged care service, then that person's care needs would be met more appropriately through that type of aged care. People currently receiving residential aged care are not eligible as a residential aged care service should be providing restorative care to a care recipient if required by the care recipient. Similarly, people receiving home care in the form of a home care package have inbuilt flexibility within their package that allows the provider and the care recipient to adjust the package to adapt to changing care needs;

- would not be eligible to receive flexible care in the form of transition care. This criterion reflects the different purpose of the transition care programme compared to the STRC programme. A person who would be eligible to receive transition care would have their care needs met more appropriately by the transition care programme;
- has not received transition care during the six months prior to the date of assessment;
- was not, during the three months prior to the assessment, hospitalised for a condition relating to the functional decline mentioned in paragraph (a) above;
- is not receiving end of life care; and
- in receiving the proposed episode of care, will not have received short-term restorative care more than twice in any 12 month period. The policy intent is that a care recipient will be able to receive short-term restorative care a maximum of two episodes per year. This reflects the intention of the STRC programme to have an early intervention focus by providing short-term intensive care and services. If a person still requires care and services after two episodes of short-term restorative care, another kind of aged care may be more appropriate for that person.

Items 11 and 12: Paragraph 14(a) and 14(b)

Section 23-3(1)(a) of the Act provides that a person's approval as a recipient of flexible care lapses if the person is not provided with the care within the entry period specified in the Approval of Care Recipients Principles or if no such period is specified—12 months starting on the day after the approval was given.

Section 14 currently provides that the purpose of Part 5 of the Approval of Care Recipients Principles is to specify, for section 23-3 of the Act, the entry period for flexible care in the form of transition care, and the circumstances in which a person's approval of a recipient to transition care lapses. Items 11 and 12 make consequential amendments to section 14 to insert references to short-term restorative care, as Part 5 will also include provisions relating to short-term restorative care inserted by **items 13 to 15** below.

Item 13: Section 15

Item 13 makes a consequential change to section 15 by re-numbering the existing

text in section 15 as subsection (1). This change is due to the insertion of a new subsection (2) by **item 14** below.

Item 14: At the end of section 15

Section 15 currently sets out an alternative lapsing period (instead of the 12 months specified in the Act) for a specific type of flexible care, namely transition care.

Item 14 adds a new subsection to section 15 that sets out, for the purpose of paragraph 23-3(1)(a) of the Act, the entry period for a person who is approved to receive short-term restorative care. This item specifies that period as six months. This means that if a person does not begin to receive short-term restorative care within six months of being approved to receive that care, the person's approval lapses and the person will need to be re-assessed in order to receive short-term restorative care.

Item 15: Subsection 16(2)

Subsection 23-3(3) of the Act states that a person's approval as a recipient of flexible care lapses if the person ceases, in the circumstances specified in the Approval of Care Recipients Principles, to be provided with the care in respect of which he or she is approved.

Item 15 repeals the existing subsection 16(2), which related only to transition care, and inserts new subsections 16(2) and 16(3) which relate to short-term restorative care. The new subsection 16(2) states that approval for flexible care provided as short-term restorative care lapses if:

- the episode of short-term restorative care ends; or
- care is not provided for at least one day after the six month entry period for the person's approval ends; and
- the provision of care was not suspended by the care recipient in accordance with the new subsections 111C(3) to (5) of the *Subsidy Principles 2014* (which are inserted by **item 27** below).

For example, Genevieve is approved to receive short-term restorative care on 5 January. The entry period commences on 6 January (the day after her approval was given). Her approval will lapse if she:

- stops receiving short-term restorative care (and she has not suspended the provision of care). This ends the episode of care and causes her approval to lapse. This is the case even if she ceases receiving care prior to the end of the six month entry period; **or**
- does not enter short-term restorative care within six months after receiving that approval (i.e., by 6 July of that year). This is because paragraph 23-2(1)(a) of the Act provides that a person's approval as a recipient of flexible care lapses if the person is not provided with care within the entry period, which subsection 15(2) defines as six months.

In this scenario, Genevieve's eligibility to receive short-term restorative care will need to be reassessed if she wishes to continue receiving short-term restorative care after her approval has lapsed.

After the six month entry period has ended, Genevieve's approval will lapse. This is the case whether she has received care for the maximum number of days for which subsidy is payable, or whether she received care for a fewer number of days. The maximum number of days is 56 days, as set out in new subsection 111A(4) of the *Subsidy Principles 2014*, inserted by **item 27** below.

This policy is consistent with the policy for transition care, which requires a new approval for each new episode of care. While the lapsing rules set out in section 16 do not exclude a person from accessing two episodes of short-term restorative care within 12 months, they do require a new approval to receive the second episode of short-term restorative care.

The approval does not lapse if a care recipient is not receiving care only for the reason that they have suspended the provision of care. In the example above, if Genevieve enters care on 5 May (before the entry period concludes on 6 July) and she suspends the provision of care from 10 July to 13 July, her approval does not lapse even though she is not being provided with care on the days in between 10 July – 13 July.

Subsidy Principles 2014

The following items amend the *Subsidy Principles 2014* (Subsidy Principles). The Subsidy Principles set out matters relating to the payment of subsidy to approved providers for care provided to care recipients. These amendments clarify that care provided as short-term restorative care does not constitute residential care or home care (as short-term restorative care is a kind of flexible care).

Item 16: Before Part 1 of Chapter 2

Section 41-3 of the Act defines **residential care**. Paragraph 41-3(2)(d) of the Act provides that 'residential care' does not include care that is specified in the Subsidy Principles not to be residential care.

Item 16 inserts a new Part 1A into Chapter 2 of the Subsidy Principles. The purpose of Part 1A is to specify that flexible care in the form of short-term restorative care is not 'residential care' within the meaning of the Aged Care Act.

Item 17: Before Part 1 of Chapter 3

Section 45-3 of the Act defines **home care**. Paragraph 45-3(2)(b) of the Act provides that the Subsidy Principles may specify care that does not constitute home care for the purposes of the Act.

Item 17 inserts a new Part 1A into Chapter 3 of the Subsidy Principles. The purpose of Part 1A is to specify that flexible care in the form of short-term restorative care is not 'home care' within the meaning of the Aged Care Act

Part 3 – Care and services to be provided

Quality of Care Principles 2014

The following items amend the *Quality of Care Principles 2014* (the Quality of Care Principles). The Quality of Care Principles set out responsibilities of approved providers in providing care and services, including the standards applicable to the care provided to care recipients. These amendments set out the care and services that an approved provider must provide to a care recipient of short-term restorative care in a residential and/or home setting, and the quality standards applicable to that care.

Item 18: Section 4

This item adds three definitions to the definitions section. It defines the terms **home care setting**, **residential care setting** and **short-term restorative care** as having the same meaning for the *Quality of Care Principles 2014* as the meaning given to the terms by section 4 of the *Subsidy Principles 2014*.

Item 19: After Part 3

This item adds a new part containing two divisions that specify:

- the care and services that an approved provider of flexible care in the form of short-term restorative care may provide; and
- the Flexible Care Standards for flexible care in the form of short-term restorative care.

Section 15B provides that if the short-term restorative care is provided in a residential care setting then the provider must:

- for each item in a table in Part 1 of Schedule 5, provide the care or service specified in the item to any care recipient who needs it; and
- provide the care or services in a way that meets the applicable Flexible Care Standards.

Section 15C provides that if the short-term restorative care is provided in a home care setting then the provider must provide a package of care and services selected from the care and services specified in Division 1 of Part 2 of Schedule 5. The care recipient and the approved provider may also agree to include other care and services if:

- the approved provider is able to provide the care and services within the limits of the resources available; and
- the item is not an excluded item.

Section 15C also requires that care and services must be:

- consistent with the care recipient's care needs identified in the care plan developed in accordance with the applicable Flexible Care Standards; and
- provided in a way that meets the applicable Flexible Care Standards.

Section 15E and 15F provide that the Accreditation Standards applicable to short-term restorative care will be the same as the Accreditation Standards that apply to the equivalent provision of residential care or home care. That is, the Accreditation Standards in Schedule 2 will apply to short-term restorative care provided in a residential setting as they do to residential care provided through a residential care service and the Home Care Standards in Schedule 4 will apply to short-term restorative care provided in a home care setting as they do to home care provided through a home care service.

Item 20: At the end of the principles

This item adds a new schedule that describes the care and services that may be provided to a recipient of short-term restorative care. Part 1 sets out the care and services that may be provided in a residential care setting and Part 2 sets out the care and services that may be provided in a home care setting.

Part 1 describes:

- the hotel services that an approved provider of short-term restorative care must provide for all care recipients who need them, if the short-term restorative care is provided in a residential care setting (Division 1 of Part 1 of Schedule 5);
- the care and services that an approved provider of short-term restorative care must provide for all care recipients who need them, if the short-term restorative care is provided in a residential care setting (Division 2 of Part 1 of Schedule 5); and
- care and services that an approved provider of short-term restorative care must provide for all care recipients who need them, if the short-term restorative care is provided in a residential care setting, but for which care recipients may be charged an additional fee (Division 3 of Part 1 of Schedule 5).

Part 2 describes:

- the care, support and clinical services that an approved provider of short-term restorative care may provide if the short-term restorative care is provided in a home care setting (Division 1 of Part 2 of Schedule 5); and
- the items of care that must not be included in the package of care and services provided to a recipient of short-term restorative care that is provided in a home care setting (Division 1 of Part 2 of Schedule 5).

Part 4 – Payment of flexible care subsidy

Subsidy Principles 2014

The following items amend the Subsidy Principles to set out matters relating to eligibility for flexible care subsidy for care provided as short-term restorative care, and the basis on which that flexible care subsidy is to be paid.

Item 21: Section 4

This item inserts new definitions into Part 4 of the Subsidy Principles. The new terms that are defined are:

- **episode of short-term restorative care:** is defined with reference to the new section 111C (see item 27);
- **home care setting:** short-term restorative care takes place in a home care setting if it is not provided in a residential care service. This definition is broad and may include settings such as private hospitals or rehabilitation settings;
- **payment period:** in relation to short-term restorative care, payment period is defined with reference to the newly created section 111B (see item 27);
- **residential care setting:** short-term restorative care takes places in a residential care setting if it is provided through a residential care service;
- **short-term restorative care:** is defined by the newly created section 106A (see item 27); and
- **STRC programme:** this term is defined as the program administered by the Commonwealth and known as the Short-term Restorative Care Programme.

Item 22: At the end of section 103

Section 103 specifies the kinds of care for which flexible care subsidy may be payable, and currently provides that flexible care subsidy is payable for flexible care provided through a multi-purpose service, an innovative care service or flexible care provided as transition care. This item inserts a new subsection (d) at the end of section 103 to provide that flexible care subsidy is also payable for flexible care provided as short-term restorative care.

Item 23: At the end of Division 3 of Part 1 of Chapter 4

This item inserts a new section 106A which describes short-term restorative care. New section 106A provides that short-term restorative care is a form of flexible care. Paragraph (a) provides that the purpose of short-term restorative care is to reverse or slow functional decline in older people through care and services tailored to care recipients.

Paragraph (b) provides that short-term restorative care may be provided in either a residential care setting or home care setting, depending on the needs of individual care recipients.

Paragraph (c) explains that short-term restorative care can be characterised as goal orientated, multidisciplinary and time-limited.

The definition of short-term restorative care reflects the goal of the STRC programme, which is to stabilise or improve functional decline in older people through the provision of a package of care and services designed specifically for that individual. The delivery of care and services is intended to be flexible, allowing a person to move between home and residential care settings, and aims to improve the wellbeing of the person so that the person can avoid entering aged care permanently.

Item 24: Section 107

Part 2 of Chapter 4 sets out the basis on which flexible care subsidy is paid, and section 107 gives a broad overview of Part 2 of Chapter 4. This item amends section 107 to refer to short-term restorative care, and adds a new Division 2 to

Part 2 of Chapter 4. The purpose of the new Division 2 to Part 2 of Chapter 4 is to highlight the clauses in Part 2 of Chapter 4 that refer to flexible care provided through a multi-purpose service.

Item 25: Before section 110

Section 110 specifies the circumstances in which a flexible care subsidy is payable to an approved provider in respect of flexible care provided through an innovative care service. This item places section 110 in a newly created Division 3 to Part 2 of Chapter 4. The purpose of the new Division 3 to Part 2 of Chapter 4 is to highlight that section 110 relates to flexible care provided through an innovative care service.

Item 26: Before section 111

Section 111 specifies the circumstances in which flexible care subsidy is payable to an approved provider in respect of flexible care provided as transition care. This item places section 111 in a newly created Division 4 to Part 2 of Chapter 4. The purpose of the new Division 4 to Part 2 of Chapter 4 is to highlight that section 111 relates to flexible care provided as transition care.

Item 27: At the end of Part 2 of Chapter 4

This item introduces a Division 5 to Part 2 of Chapter 4, which sets out the arrangements for payment periods for flexible care subsidy for short-term restorative care. This item also introduces new provisions which set out the arrangements for the payment of flexible care subsidy for the delivery of short-term restorative care. The arrangements for payment of flexible care subsidy are intended to operate in a similar way to the payment of home care subsidy under Division 47 of the Act.

New section 111A sets out the periods in respect of which flexible care subsidy is payable. Subsection (1) provides that for short-term restorative care, flexible care subsidy is payable for every day that the approved provider is eligible under subsection (3).

Subsection (2) clarifies that flexible care subsidy is payable in respect of every flexible care service which provides short-term restorative care.

Subsection (3) sets out the conditions which need to be met for an approved provider to be eligible for flexible care subsidy for the provision of short-term restorative care. The approved provider is eligible for flexible care subsidy if it provides short-term restorative care to a care recipient in accordance with an agreed care plan.

Subsection (4) provides that the maximum number of days for which flexible care subsidy is payable for the provision of an episode of short-term restorative care is 56 days. 'Episode of short-term restorative care' is defined by new section 111C (see below). Although 56 days is the maximum prescribed number of days for which subsidy is payable, a person's episode of care may be shorter than 56 days if that is what that person requires.

New section 111B defines **payment period** for the purposes for the new Chapter 4, Division 5 as a calendar month.

New section 111C explains the meaning of ***episode of short-term restorative care***. This definition is required because flexible care subsidy is payable in respect of an episode of short-term restorative care.

Subsection (1) provides that an episode of short-term restorative care is a period in which approved provider provides flexible care in the form of short-term restorative care.

Subsection (2) specifies that the period during which short-term restorative care is provided must be:

- continuous; or
- broken by only one or more days for which the provision of care is suspended in accordance with subsections (3) and (5).

Subsection (3) provides that, for the purposes of subsection (2), the provision of short-term restorative care may be broken but still constitute a single episode of short-term restorative care if the care recipient:

- requests the suspension of that short-term restorative care; and
- will be absent overnight from the residential care setting or home care setting where the short-term restorative care is being provided.

Subsection (4) provides that the approved provider must comply with a request made by a care recipient under subsection (3).

Subsection (5) provides that the provision of short-term restorative care cannot be suspended under subsection (3) for more than a total of seven days. If so, the episode of short-term restorative care will have ended. This means that a care recipient may leave care for up to seven days without ceasing the episode of care. The purpose of this provision is to allow flexibility for care recipients who may need to suspend care for some reason, such as if the person wishes to travel interstate to attend a family event.

The effect of subsections 111A(4) and 111C(5) together is that although subsidy is payable for a maximum length of 56 days, a care recipient may suspend the provision of care for up to 7 days within that time. The time that the care recipient is not receiving care may extend that time beyond 56 days; however, subsidy is only payable for up to 56 days on which the care recipient is actually receiving care.

For example: Todd begins receiving short-term restorative care on 1 March. The approved provider is eligible to receive subsidy for 56 days of care provided. If Todd suspends the provision of care on 4 April, he can re-enter care within 7 days (i.e., up to 11 April) without breaking his episode of care. The approved provider can receive subsidy for the 34 days between 1 March to 3 April, as well as another 22 days of care from 11 April to 2 May of that year.

In the above example, the suspension period includes the commencement day, however does not include the day on which the provision of care to the care recipient recommences. During any period of suspension, subsidy is not payable.

A care recipient may suspend the provision of care for any reason, and care may be suspended on consecutive or non-consecutive days.

- For example, during the maximum eight-week period during which the care recipient is receiving short-term restorative care, the care recipient may suspend care for seven consecutive days, meaning that the episode of care is over a 63-day period. Alternatively, the care recipient may suspend their agreement for two days on three separate occasions (total of six days). In this case, the episode of care would be over a 62-day period.
- In either case, the provider will only be paid for up to 56 days (i.e., the days during which care was not suspended).

New section 111D provides that flexible care subsidy may be paid in advance for the provision of short-term restorative care.

Subsection (1) states that, as the Secretary sees fit and subject to subsection (2), the payment of flexible care subsidy for short-term restorative care may be paid in advance.

Subsection (2) provides the method through which the Secretary is to work out the amount of flexible subsidy to be paid in advance for the provision of short-term restorative care. Specifically, the Secretary is to work out the amount payable by estimating the amount of flexible care subsidy that will be payable for the days in that period (defined as a calendar month in the new section 111B) and in the following payment period.

Subsection (3) sets out how the Secretary is to work out the amount of an advance to be paid in respect of subsequent payment periods. The Secretary is to work out this amount by:

- estimating the amount of flexible care subsidy payable for the days in the period; and
- varying that amount to take into account any likely overpayments or underpayments in respect of advances previously paid under the section.

New section 111E sets out the method through which an approved provider can claim flexible care subsidy for the provision of short-term restorative care.

Subsection (1) provides that in order to receive flexible care subsidy for the provision of short-term restorative care, the approved provider must give the Secretary:

- a claim, in the form approved by the Secretary, for flexible care subsidy that is, or may become, payable to the aged care service for that payment period; and
- any other related information stated in the form, or that the Secretary requests in relation to the payment of flexible care subsidy.

Subsection (2) provides that an advance of flexible care subsidy is not payable if the approved provider has not given the Secretary a claim under subsection (1) relating to the second last preceding month for the service. An example that is provided is that an advance of subsidy is not payable for March if the Secretary has not been given a claim for January of the same year.

New section 111F provides the circumstances in which an approved provider may vary a claim made within a respect of a payment period.

Subsection (1) provides that an approved provider may vary the claim in respect of a payment period within:

- 2 years of the payment period ending; or
- any longer period as determined by the Secretary.

Subsection (2) sets out the criteria the Secretary must be satisfied of when determining that a variation is required after a period of 2 years. Those criteria are:

- if the variation is required due to administrative error made by the Commonwealth or an agent of the Commonwealth; or
- because the Commonwealth or agency of the Commonwealth considers the circumstances differ from those on the basis of which subsidy was claimed; or
- in order to manage STRC programme expenditure, including overpayments.

Part 5 – Approved provider responsibilities

Accountability Principles 2014

The following items amend the *Accountability Principles 2014* (Accountability Principles). The Accountability Principles describe the responsibilities of an approved provider in relation to accountability for the care provided to care recipients through an aged care service. The purpose of these amendments is to specify responsibilities of approved providers of flexible care provided in the form of short-term restorative care. These responsibilities include allowing access by officials to undertake accreditation of short-term restorative care services.

Item 28: Section 4

This item inserts a new definition of **home care setting** into section 4 of the Accountability Principles. The new definition picks up the definition used in the *Subsidy Principles 2014*.

Item 29 and 30: Section 4 (definition of *premises*)

These items make changes to the definition of **premises** to include flexible care services through which short-term restorative care is provided, whether that is in a residential or home care setting. This ensures that premises for which approved providers are held accountable under the Accountability Principles include flexible care services where short-term restorative care is provided.

Item 31 and 32: Section 4 (definition of *relevant official*)

These items make changes to the definition of *relevant official* to include flexible care services through which short-term restorative care is provided, whether that is in a residential or home care setting. These amendments ensure that relevant officials will be able to access flexible care services through which short-term restorative care is provided.

Item 33: Section 4

This item inserts a new definition of *residential care setting* into section 4 of the Accountability Principles. The new definition picks up the definition used in the *Subsidy Principles 2014*.

Item 34: Division 1 of Part 2 (heading)

This item repeals the heading for Division 1 of Part 2 to reflect that flexible care services that provide short-term restorative care in a residential care setting will now be required to allow access to relevant officials in the same way approved providers of residential care are required to do.

Item 35, 36 and 37: Sections 9, 10 and 11

These items make consequential amendments to ensure that the processes for the CEO of the Quality Agency, or quality assessors, to have access to residential care services also apply to flexible care services that provide short-term restorative care in a residential care setting.

Item 38: Division 2 of Part 2 (heading)

This item repeals the heading for Division 2 of Part 2 to reflect that flexible care services that provide short-term restorative care in a home care setting will now be required to allow access to relevant officials in the same way approved providers of home care are required to do.

Item 39, 40, 41 and 42: Sections 16, 17 and 18

These items make consequential amendments to ensure that the processes for the CEO of the Quality Agency, or quality assessors, to have access to home care services also apply to flexible care services that provide short-term restorative care in a home care setting.

Item 43, 44 and 45: Sections 19, 20, 21, 22 and 23

These items make amendments to ensure that the rights and responsibilities of approved providers in respect of access by relevant officials apply equally to approved providers of residential care, home care and flexible care provided in the form of short-term restorative care.

Quality Agency Principles 2013

The following items amend the *Quality Agency Principles 2013* (Quality Agency Principles). The Quality Agency Principles provide for the functions of the Quality Agency in accrediting residential services and conducting quality review of home care services. These amendments ensure that the Quality Agency can assess short-term restorative care services for the purposes of accreditation or quality review.

Item 46: Section 1.4 (definition of *accredited service*)

This item makes changes to the definition of ***accredited service*** to reflect that a flexible care service may be accredited in accordance with the Quality Agency Principles. The definition is not changed in relation to when a residential care service is an accredited service, but merely reflects that flexible care services may also be accredited. Section 5.1 of the Quality Agency Principles, as inserted by **item 126** below, sets out when a flexible care service is taken to be an accredited service, and the note at the end of the definition points the reader to this section of the Principles.

Item 47: Section 1.4 (paragraph (b) of the definition of *assessment contact*)

This item changes the definition of ***assessment contact*** to include flexible care services through which short-term restorative care is provided in a home care setting and matches it to the meaning of assessment contact for home care services.

Item 48: Section 1.4 (at the end of the definition of *care recipient*)

This item inserts a new paragraph into the definition of ***care recipient*** to ensure that a person receiving short-term restorative care through a flexible care service is considered to be a care recipient for the purposes of these Principles.

Item 49: Section 1.4

This item inserts new definitions for ***externally accredited service***, ***flexible care place***, ***flexible care service***, ***Flexible Care Standards*** and ***home care setting***.

The new definitions are required to give effect to the changes outlined below, to include the concept of short-term restorative care into the Quality Agency Principles.

The definitions of 'flexible care service', 'Flexible Care Standards' and 'home care setting' pick up the definitions of those terms used elsewhere in aged care legislation such as the Aged Care Act or the various Principles.

The term 'externally accredited service' is defined by new section 1.6 of the Quality Agency Principles that is inserted by **item 63** below.

The term 'flexible care place', for the purposes of these Principles is restricted to a short-term restorative care place, and no other type of flexible care place.

Item 50 and 51: Section 1.4 (definitions of *identifying information* and *plan for continuous improvement*)

These items make amendments to the definition of ***identifying information*** and ***plan for continuous improvement*** to include the concept of flexible care through

which short-term restorative care is provided. Otherwise the definitions remain unchanged.

Item 52: Section 1.4 (definition of *previously accredited service*)

This item inserts a new definition of *previously accredited service* to include a flexible care service through which short-term restorative care is provided that was previously accredited. This includes situations where that previous accreditation exists because the service was previously externally accredited or taken to have been accredited previously. New section 5.2 inserted by **item 126** below sets out when a flexible care service is taken to have been previously accredited.

Item 53: Section 1.4 (definition of *quality reviewer*)

This item amends the definition of *quality reviewer* to apply the concept to flexible care services as well as home care services.

Item 54: Section 1.4

This item inserts a new definition of *relevant home care service* that picks up the meaning established by section 3.2 of these Principles, which is amended by **item 91** below.

Item 55: Section 1.4 (definition of *representative*)

This item amends the definition of *representative* to apply the concept to flexible care services through which short-term restorative care is provided as well as home care services.

Item 56: Section 1.4

This item inserts a definition of *residential care setting* by reference to the definition that is used in the *Subsidy Principles 2014*.

Item 57: Section 1.4 (at the end of the definition of *self-assessment information*)

This item adds a new paragraph (c) to the definition of *self-assessment information* to reflect that flexible care services through which short-term restorative care is provided will be required to provide certain information during the accreditation process showing the performance against the Flexible Care Standards. This aligns the requirements of flexible care services with the requirements for residential and home care services.

Item 58: Section 1.4

This item inserts a definition of *short-term restorative care* by reference to the definition that is used in the *Subsidy Principles 2014*.

Item 59 and 60: Section 1.4 (definitions of *site audit* and *site visit*)

These items make changes to the definitions of *site audit* and *site visit* to include flexible care services through which short-term restorative care is provided, to align them with the meanings that apply to residential care services and home care services and ensure that short-term restorative care is captured by these definitions.

Item 61 and 62: Section 1.5

These items make structural changes and add a new subsection 1.5(2) that sets out when a flexible care service through which short-term restorative care is provided in a residential setting will be considered a **commencing service**. A flexible care service will be a commencing service if it is provided in a residential care service that is also a commencing service, as defined in subsection 1.5(1), and the flexible care service is not an externally accredited service as defined in section 1.6 inserted by **item 63** below.

Item 63: At the end of Chapter 1

This item sets out the circumstances when a flexible care service through which short-term restorative care is provided will be considered to be an **externally accredited service**.

Where the flexible care service is not an accredited service or a previously accredited service and has not provided short-term restorative care previously (and is not taken to be an accredited service or previously accredited service under section 5.1 of these principles), the service will be considered to be externally accredited if it has an accreditation from either:

- (a) a government agency that is not the Quality Agency; or
- (b) a non-government agency that is approved by the Secretary as being able to provide accreditation under this definition.

A service can only be recognised as an externally accredited service if the approved provider has not previously received Commonwealth aged care subsidy. The purpose of limiting the definition of 'externally accredited service' in this way is to ensure that only new providers are captured by this definition. An approved provider who has previously received aged care subsidy should apply for accreditation of its services through the Quality Agency.

The purpose of including the concept of an externally accredited service is to simplify the accreditation process for aged care providers who may have accreditation from a State or Territory government body.

Item 64: Chapter 2 (heading)

Changes are made to the heading at the start of Chapter 2 to reflect that the provisions here apply to flexible care services through which short-term restorative care is provided as well as residential care services.

Item 65: Part 1 of Chapter 2 (heading)

This item amends the heading at the start of Part 1 of Chapter 2, to remove the reference to residential care services as this Part now relates more broadly to the accreditation of some flexible care services in addition to residential care services.

Multiple items

The following items in Table 1 make consequential amendments to insert references to the Flexible Care Standards in addition to the Accreditation Standards into the various provisions of this Part. These changes ensure that accreditation of flexible care services which provide short-term restorative care is undertaken against the

Flexible Care Standards rather than the Accreditation Standards that apply to residential care services.

Table 1: References to Flexible Care Standards

Item number	Provision amended	Subject matter of provision
66	Paragraph 2.3(1)(c)	Applications for accreditation
67	Subparagraph 2.7(3)(a)(iii)	CEO's decision on application for accreditation
68	Paragraphs 2.8(1)(b), 2.14(2)(b) and 2.17(2)(a)	Decision to accredit commencing service; conducting site audit; contents of site audit report
69	Subparagraph 2.18(3)(a)(v)	CEO's decision on application for re-accreditation
70	Paragraph 2.19(1)(b) and 2.20(1)(a)	CEO's decision on whether any areas for improvement are necessary for the service
72	Paragraphs 2.23(2)(e), 2.24(2)(c), 2.25(2)(d), 2.28(a) and 2.28(b)	Notification of decision on whether or not to accredit or re-accredit service; notification of decision to revoke accreditation; requirements for plan for continuous improvement
73	Section 2.28 (note)	Requirements for plan for continuous improvement
77	Paragraphs 2.34(b), 2.35(1)(a), 2.38(2)(b) and 2.41(2)(a)	Review audit reports
78	Subparagraph 2.42(2)(a)(v)	Decisions following a review audit
79	Paragraphs 2.43(1)(a), 2.44(1)(a), 2.45(2)(d), 2.46(2)(c) and 2.47(2)(d)	Decisions regarding whether to revoke the accreditation of a service, including notification of those decisions; decisions regarding whether or not to vary the accreditation period of a service, including notification of those decisions
85	Section 2.63 (heading)	Procedures that the CEO of the Quality Agency must follow if the CEO finds that an approved provider has failed to comply with the Flexible Care Standards
86	At the end of subsection 2.63(1)	
87	Subparagraph 2.63(2)(b)(iii)	
88	Subsection 2.63(3)	
89	At the end of paragraph 2.64(1)(b)	Action taken by CEO if provider has not complied with timetable for improvement
97	Paragraph 3.7(b)	Conducting a site visit for quality

		review of a short-term restorative care service in a home care setting
99	Paragraph 3.9(2)(a)	Requirements of interim quality review report
101	Paragraph 3.10(2)(a) and (c)	Requirements of final quality review report
104	Subsections 3.11(1), (2) and (4)	Revised plan for continuous improvement
106	Section 3.12	Requirements of a written plan for continuous improvement
114	Section 3.16	Action required by CEO following assessment contact

Item 71: Section 2.22

Section 2.22 sets out the purpose of Division 4 of Part 1 of Chapter 2 of the Principles. This amendment includes a reference to flexible care services through which short-term restorative care is provided, to reflect that the provisions in Division 4 will also cover those services in addition to residential care services.

Item 74: Paragraph 2.30(c)

Item 74 amends paragraph 2.30(c) to ensure that in relation to an accredited service, the term **assessment contact**, which currently only covers residential care services, is now defined to cover flexible care services providing short-term restorative care in a residential care setting. This amendment ensures that the Quality Agency may contact an approved provider who provides short-term restorative care in a residential care setting, to assess the provider’s conduct against the Flexible Care Standards, which are inserted into the Quality of Care Principles by **item 20** above. A similar change is made to the definition of ‘assessment contact’ in relation to home care settings by **items 108, 109 and 110** below.

Item 75: After section 2.30

This item inserts a new section 2.30A, which provides that if a residential care service and a flexible care service through which short-term restorative care is provided in a residential care setting are run by the same approved provider, the CEO of the Quality Agency may perform an assessment contact for both services at the same time. The intention of this provision is to streamline the process for assessment contacts by minimising the number of visits that the Quality Agency will need to make in respect of a particular approved provider, if there are multiple services operated by that approved provider.

Item 76: Section 2.31 (note 1)

This item amends the note to section 2.31 to remove the words “residential care”. This ensures that section 2.31 also applies to flexible care services, and not only residential care services.

Item 80: Subsections 2.58(2), 2.59(1) and 2.59(2)

This item inserts references to a flexible care service through which short-term restorative care is provided. This change extends the provisions regarding appointments of assessment teams to site audits and review audits of flexible care

services providing short-term restorative care, and not just residential care services as was previously stated in these provisions.

Item 81: At the end of subsection 2.61(1)

This item amends section 2.61 to ensure that the provisions covering an objection to the appointment of a person to an assessment team also covers assessment teams that have been appointed to conduct site audits of flexible care services providing short-term restorative care, as well as residential care services.

Item 82: Section 2.62

This item makes a consequential amendment to section 2.62 to make reference to the Flexible Care Standards in this section. This change reflects that Part 5 of Chapter 2 will set out arrangements for how the CEO of the Quality Agency may deal with the failure of an approved provider of short-term restorative care to meet the Flexible Care Standards.

Items 83 and 84: Section 2.62 (note)

These items make minor amendments to the note to section 2.62 to replace an incorrect reference to paragraph 54-1(1)(d) of the Act, and to direct the reader to paragraph 54-1(1)(g) of the Act, which requires an approved provider of a flexible care service providing short-term restorative care to comply with the Flexible Care Standards.

Item 90: Chapter 3 (heading)

This item makes a consequential change to the heading of Chapter 3 to reflect that this Chapter will also apply to flexible care services providing short-term restorative care in a home care setting, and not only home care services as was the case previously.

Item 91: Section 3.2

This item amends section 3.2 to ensure that Part 2 of Chapter 3 (provisions relating to quality review of home care services) will also apply to flexible care services providing short-term restorative care in a home care setting. The new section 3.2 introduces the term **relevant home care service**, which is defined to mean a home care service, or a flexible care service through which short-term restorative care is provided in a home care setting. The definition does not capture externally accredited services, as those services are captured by the definition of 'externally accredited service' inserted by **item 63** above.

Item 92: Subsection 3.3(1)

This item makes a consequential change to subsection 3.3(1) to clarify that the purpose of Part 2 of Chapter 3 is to make provision in relation to 'relevant' home care services. The term **relevant home care service** is defined in section 3.2, amended by item 91 above.

Item 93: At the end of section 3.3

Item 93 inserts a new subsection (3) to section 3.3, which provides that if a home care service and a flexible care service through which short-term restorative care is provided in a home care setting are run by the same approved provider, the CEO of the Quality Agency may conduct a quality review for both services at the same time.

The intention of this provision is to streamline the process for quality review by minimising the number of visits that the Quality Agency will need to make in respect of a particular approved provider, if there are multiple services operated by that approved provider. This provision mirrors the arrangements for assessment contacts of residential care services in the new section 2.30A, inserted by **item 75** above.

Multiple items

The following items in Table 2 make consequential amendments to replace references to 'home care service' with 'relevant home care service', to reflect the newly defined term in **item 91** above.

Table 2: References to 'relevant home care service'

Item	Provision amended	Subject matter of provision
94	Section 3.4	Notification of site visit
95	Subsection 3.5(1)	Approved provider must inform care recipients about site visit
96	Sections 3.6 and 3.7	Requirement to give self-assessment information to CEO; requirements for conducting site visit
98	Subsections 3.8(1) and 3.9(1)	Site visit meetings; interim quality review report
100	Subsection 3.10(1)	Final quality review report requirements
103	Subsection 3.11(1)	Revised plan for continuous improvement (service in home care setting)
107	Section 3.13	Requirement to make plan for continuous improvement available to CEO on request
111	Subsection 3.15(1)	Assessment contacts may be made at any time
113	Section 3.16	Action required by CEO following assessment contact

Item 102: Section 3.11 (heading)

This item amends the heading to section 3.11 to reflect the broader relevance of this section, as the requirements for a plan for continuous improvement will also apply to flexible care services.

Item 105: Section 3.17

This item amends the definition of 'plan for continuous improvement' by replacing a reference to a home care service with 'relevant home care service', to reflect the newly defined term in **item 91** above. This change means that the requirement to have a written plan for continuous improvement will apply to approved providers of short-term restorative care provided in a home care setting.

Items 108, 109 and 110: Section 3.14 (heading), section 3.14 and paragraph 3.14(c)

These items together amend section 3.14 to ensure that the term **assessment**

contact, which currently only covers home care services, is now defined to cover flexible care services providing short-term restorative care in a home care setting. These amendments ensure that the Quality Agency may contact an approved provider who provides short-term restorative care in a home care setting, to assess the provider's conduct against the Flexible Care Standards, which are inserted into the Quality of Care Principles by **item 20** above. A similar change is made to the definition of 'assessment contact' in relation to residential care settings by **item 74** above.

Item 112: After section 3.15

This item inserts a new section 3.15A, which provides that if a home care service and a flexible care service through which short-term restorative care is provided in a home care setting are run by the same approved provider, the CEO of the Quality Agency may perform an assessment contact for both services at the same time. The intention of this provision is to streamline the process for assessment contacts by minimising the number of visits that the Quality Agency will need to make in respect of a particular approved provider, if there are multiple services operated by that approved provider. This provision mirrors the arrangements for assessment contacts of residential care services in the new section 2.30A, inserted by **item 75** above.

Items 115 and 116: Section 3.17

These items amend section 3.17 to reflect that the purpose of Part 4 of Chapter 3 is to set out how the CEO of the Quality Agency is to deal with the failure of an approved provider of short-term restorative care in a home care setting to meet the Flexible Care Standards.

Items 117 and 118: Section 3.17 (note)

These items make minor amendments to the note to section 3.17 to replace an incorrect reference to paragraph 54-1(1)(f) of the Act, and to direct the reader to paragraph 54-1(1)(g) of the Act, which requires an approved provider of a flexible care service providing short-term restorative care to comply with the Flexible Care Standards.

Item 119, 120, 121 and 122: Section 3.18 (heading); subsection 3.18(1); subparagraph 3.18(2)(b)(iii); subsection 3.18(3)

Items 119, 120, 121 and 122 make amendments to section 3.18 to ensure that the CEO of the Quality Agency may take action in relation to an approved provider of short-term restorative care in a home care setting who fails to meet the Flexible Care Standards.

Items 123 and 124: Paragraph 3.19(1)(a), and paragraph 3.19(1)(b)

These items amend paragraph 3.19(1)(b) to insert references to the Flexible Care Standards and replace the reference to 'home care service' with 'relevant home care service'. These changes mean that the arrangements that are set out in this provision for the CEO of the Quality Agency to take action if improvements are not satisfactory will now apply to providers of short-term restorative care provided in a home care setting. The reference to 'relevant home care service' picks up the new definition inserted by **item 91** above.

Item 125: Subsections 4.1(1) and (3)

Section 4.1 currently provides that an entrusted person must not disclose identifying information to an approved provider of a residential care service or a home care service. 'Entrusted person' and 'identifying information' are defined in section 1.4. This item amends section 4.1 to insert references to a flexible care service through which short-term restorative care is provided. This change means that the requirements in this provision will apply to short-term restorative care provided in a home care setting.

Item 126: At the end of the principles

Item 126 inserts transitional provisions that set out arrangements for the accreditation of flexible care services that provide short-term restorative care through an existing residential care service.

The new section 1.5 provides that if a flexible care service provides short-term restorative care through an existing residential care service that is already accredited, the flexible care service can be taken to be accredited. In other words, the existing accreditation can apply to the flexible care service.

The new section 1.6 provides similar arrangements in relation to a residential care service that is a previously accredited service (see the amended definition of **previously accredited service** inserted by **item 52** above). If the residential care service had previously been accredited, the flexible care service can be taken to have also been previously accredited.

The purpose of these transitional provisions is to prevent the duplication of administrative processes for approved providers and the Quality Agency. Where both short-term restorative care and residential care are to be delivered from the same service, the service will only need to be accredited once, and existing accreditation status will flow through to newly created flexible care services.

Quality Agency Reporting Principles 2013

The *Quality Agency Reporting Principles 2013* (the Quality Agency Reporting Principles) set out reporting requirements for the CEO of the Quality Agency in relation to providing reports to the Secretary of the Department for the purposes of Part 4.4 of the Act. The following items amend the Quality Agency Reporting Principles to ensure that existing reporting requirements set out in those principles will also apply to flexible care services providing short-term restorative care in a residential care setting.

Item 127: Section 5

This item adds three definitions to the definitions section. It defines the terms **home care setting**, **residential care setting** and **short-term restorative care** as having the same meaning for the *Quality Agency Reporting Principles 2013* as the meaning given to the terms by section 4 of the *Subsidy Principles 2014*.

Item 128: Part 2 (heading)

The item replaces the heading of the Part to reflect that the Part will now include

information in relation to certain flexible care services in addition to information relating to residential care services.

Item 129: Section 6

The item expands the purpose of the Part to reflect that Part 2 will now also specify the circumstances in which the CEO of the Quality Agency must provide information to the Secretary, and the kind of information that must be provided, in relation to flexible care services through which short-term restorative care is provided in a residential care setting. Previously the Part only related to residential care services.

Items 130 and 131: Section 7 (heading) and section 8 (heading)

These items replace the headings of sections 7 and 8 to reflect that those provisions no longer relate exclusively to residential care services.

Item 132: Subsection 12(1)

This item expands the application of the section. Previously the section only applied if the CEO of the Quality Agency became aware of evidence of a failure by an approved provider of residential care service to comply with one or more of the approved provider's responsibilities under Part 4.1, 4.2 or 4.3 of the Aged Care Act. Now the section also applies to approved providers of a flexible care service through which short-term restorative care is provided in a residential care setting.

Item 133: Paragraph 13(1)(a)

This item expands the potential application of the section. Previously the section would only apply if the CEO of the Quality Agency had found that an approved provider of a residential care service had failed to meet one or more expected outcomes in the Accreditation Standards. The section may now apply if the CEO of the Quality Agency finds an approved provider of a flexible care service through which short-term restorative care is provided in a residential care setting has failed to meet one or more expected outcomes in the Flexible Care Standards that apply to the service.

Item 134: Paragraph 13(2)(c)

Consistent with the broader application of the section brought about by the previous item, this item makes changes to paragraph 13(2)(c) to ensure that the statement of the CEO can refer to the applicable standards (i.e., the Flexible Care Standards).

Item 135: At the end of paragraph 14(1)(b)

Consistent with the broader application of the Part, this item makes changes to paragraph 14(1)(b) to include reference to the Flexible Care Standards in addition to the Accreditation Standards.

Item 136: Part 3 (heading)

The item replaces the heading of Part 3 to reflect that the Part will now include information in relation to certain flexible care services in addition to information relating to home care services.

Item 137: Section 17

The item expands the purpose of Part 3 to reflect that Part 3 will now also specify the circumstances in which the CEO of the Quality Agency must provide information to

the Secretary, and the kind of information that must be provided, in relation to flexible care services through which short-term restorative care is provided in a home care setting. Previously the Part only related to home care services.

Item 138: Section 18

Consistent with the broader application of Part 3, this item includes a new reference to flexible care service through which short-term restorative care is provided in a home care setting.

Item 139: Subsection 19(1)

This item expands the application of the section. Previously the section only applied if the CEO of the Quality Agency became aware of evidence of a failure by an approved provider of home care service to comply with one or more of the approved provider's responsibilities under Part 4.1, 4.2 or 4.3 of the Aged Care Act. Now the section also applies to approved providers of a flexible care service through which short-term restorative care is provided in a home care setting.

Item 140: Paragraph 20(1)(a)

This item expands the potential application of the section. Previously the section would only apply if the CEO of the Quality Agency had found that an approved provider of a residential care service had failed to meet one or more expected outcomes in the Accreditation Standards. The section may now apply if the CEO of the Quality Agency finds an approved provider of a flexible care service through which short-term restorative care is provided in a home care setting has failed to meet one or more expected outcomes in the Flexible Care Standards that apply to the service.

Item 141: Paragraph 20(2)(c)

Consistent with the broader application of the section brought about by the previous item, this item makes changes to paragraph 20(2)(c) to ensure that the statement of the CEO can refer to the applicable standards (i.e., the Flexible Care Standards).

Item 142: Section 21 (heading)

This item replaces the heading of the section to reflect that this section no longer relates exclusively to home care services.

Item 143: Paragraph 21(1)(a) and Item 144: At the end of paragraph 21(1)(b)

These items expand the potential application of the section. Previously the section only applied if the approved provider of a home care service was given a timetable for making improvements and at the end of the period the CEO of the Quality Agency was not satisfied with the level of care and services provided. The section now will also apply if an approved provider of a flexible care service through which short-term restorative care is provided in a home care setting has been given a timetable for making improvements and at the end of the period the CEO of the Quality Agency was not satisfied with the level of care and services provided.

User Rights Principles 2014

The following items amend the *User Rights Principles 2014* (the User Rights Principles). The User Rights 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.

The purpose of these amendments is to set out the rights and responsibilities of recipients of flexible care delivered in the form of short-term restorative care.

Item 145: Section 4

This item adds definitions to the definitions provision. It defines the terms **home care setting**, **residential care setting** and **short-term restorative care** as having the same meaning for the *User Rights Principles 2014* as the meaning given to the terms by section 4 of the *Subsidy Principles 2014*. It defines **flexible care agreement** as an agreement referred to in Division 4 of Part 3A of the *User Rights Principles 2014*.

Item 146: After Part 3

This item inserts a new Part 3 into the User Rights Principles. Part 3A specifies responsibilities relating to user rights for flexible care in the form of short-term restorative care. Part 3A is divided into two divisions.

Section 23AA sets out the purpose of the new Part 3A; i.e., to specify responsibilities of an approved provider of short-term restorative care in relation to care recipients' user rights.

Division 2 sets out the responsibilities that apply. The new section 23AB specifies, for the purpose of paragraph 56-3(a) of the Act, the maximum amount that an approved provider may charge for the provision of care and services in respect of flexible care provided as short-term restorative care.

For short-term restorative care provided in a residential care setting, this amount is equivalent to 85% of the basic age pension amount, worked out on a per day basis. This amount is the same as that set for residential care under Division 52C of the Act.

For short-term restorative care provided in a home care setting, this amount is equivalent to 17.5% of the basic age pension amount, worked out on a per day basis. This amount is the same as that set for residential care under Division 52D of the Act.

Section 23AC provides that an approved provider must allow advocates, who are acting for an organisation who receives a grant to provide advocacy, access to the flexible care service.

Section 23AD specifies that for paragraph 56-3(l) of the Act, the rights and responsibilities of a care recipient who is being provided with short-term restorative care include the rights and responsibilities set out in the new Schedule 3, which is inserted by **item 147** below.

Division 3 of Part 3A sets out the responsibilities of an approved provider of flexible care in the form of short-term restorative care in relation to provision of information to care recipients.

Section 23AE provides that an approved provider must give information to a care recipient of short-term restorative care about the care recipient and approved provider's respective rights and responsibilities. The approved provider must help the care recipient understand the information.

Section 23AF provides that an approved provider must offer a flexible care agreement to a prospective care recipient. That agreement must be offered before a start date for provision of care is agreed upon.

Section 23AG specifies the provisions that a flexible care agreement must contain. These requirements apply regardless of whether short-term restorative care is provided in a home care setting or residential care setting.

The agreement must contain the following:

- the care recipient's goals. This is because short-term restorative care should be tailored to a particular individual's goals and circumstances;
- the care and services to be provided, in the form of an agreed care plan. No requirements are set for the way such a care plan should be set out. An approved provider and a care recipient should discuss what care and services are required and make a plan that sets out what those services will be;
- the period for which care and services will be provided;
- the policies and practices that the approved provider will follow in setting care fees, and a statement of the fees to be paid;
- a statement that the care recipient may suspend the provision of care for up to 7 days; and
- the care recipient's responsibilities (the legislative responsibilities are set out in the new Schedule 3 inserted by **item 147** below).

The agreement must also provide details of the approved provider's complaints resolution mechanism, and state that the care recipient may make a complaint to the Aged Care Complaints Commissioner. The Aged Care Complaints Commissioner is a statutory office-holder whose functions relate to investigations of complaints about aged care services.

The agreement must also be expressed in plain language, and must provide that the agreement may be varied by mutual consent following consultation between the care recipient and approved provider.

Agreements must not be varied in a way that would be inconsistent with the Act or the *Extra Service Principles 2014*. An agreement must not contain any provision that would have the effect of the care recipient being treated less favourably than they would otherwise be treated under any Commonwealth law (for example, the Australian Consumer Law) in relation to a particular matter.

Item 147: At the end of the principles

This item inserts a new Schedule 3 into the User Rights Principles. Currently, Schedules 1 and 2 set out specify the rights and responsibilities of care recipients of residential care and home care. The new Schedule 3 sets out a Charter of Rights and Responsibilities that specifies rights and responsibilities of care recipients receiving flexible care in the form of short-term restorative care.

As required by paragraph 56-3(l) of the Act, an approved provider must not act inconsistently with any of the rights and responsibilities specified in the User Rights Principles including this Charter.

Schedule 3 is divided into two Parts. Part 1 specifies the rights and responsibilities applicable to a care recipient receiving short-term restorative care in a residential care setting. Part 2 specifies the rights and responsibilities applicable to a care recipient receiving short-term restorative care in a home care setting. These rights and responsibilities are intended to mirror those currently set out for residential care services and home care services.

Statement of Compatibility with Human Rights

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

Aged Care Legislation Amendment (Short-term Restorative Care) Principles 2016

The *Aged Care Legislation Amendment (Short-term Restorative Care) Principles 2016* 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 legislative instrument reflects the 2015-16 Budget measure to create a new kind of flexible care called short-term restorative care.

This instrument amends the following principles:

- *Allocation Principles 2014*, to provide for the allocation of flexible care places to approved providers, be provided as short-term restorative care;
- *Approval of Care Recipients Principles 2014*, to provide for eligibility criteria and approval of care recipients to receive short-term restorative care;
- *Quality of Care Principles 2014*, to set out the services that an approved provider must provide to a care recipient of short-term restorative care in a residential and/or home setting;
- *Subsidy Principles 2014*, to set out matters for payment of flexible care subsidy for short-term restorative care;
- *Accountability Principles 2014*, to allow the CEO of the Australian Aged Care Quality Agency (the Quality Agency) to access a short-term restorative care service provided in a residential or home setting for the purposes of accreditation and quality review;
- *Quality Agency Principles 2013*, to set out matters relating to the accreditation of short-term restorative care services in a residential setting, and quality review of short-term restorative care services in a home setting;
- *Quality Agency Reporting Principles 2013*, to set out the requirements for the CEO of the Quality Agency to provide information to the Secretary of the Department about approved providers failing to meet their responsibilities with regards to short-term restorative care services; and

- *User Rights Principles 2014*, to set out care recipients' rights and responsibilities, and requirements that will apply to flexible care agreements between care recipients and approved providers.

Human Rights Implications

The instrument engages the following human rights:

- The right to an adequate standard of living;
- The right to the enjoyment of the highest attainable standard of physical and mental health; and
- The right to protection from exploitation, violence and abuse.

The instrument engages 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 28 and article 25 of the Convention on the Rights of Persons with Disabilities (CRPD). Further, the instrument engages the right to protection from exploitation, violence and abuse as contained in article 20(2) of the International Covenant on Civil and Political Rights (ICCPR), article 19(1) of the Convention on the rights of the Child and article 16(1) of the CRPD.

The instrument provides authority for the Quality Agency CEO to undertake quality reviews of aged care services providing short-term restorative care. This will ensure that the provision of short-term restorative care is subject to quality assurance by the Quality Agency.

Enabling the Quality Agency to undertake quality review of aged care services will ensure that the care recipients enjoy an adequate standard of living and the highest attainable standards of physical and mental health and ensure that they are protected from exploitation, violence and abuse.

Further, the instrument sets out the care and services that an approved provider must provide to a care recipient of short-term restorative care, accreditation of short-term restorative care services and care recipients' rights.

Conclusion

The instrument is compatible with human rights as it promotes the human rights to an adequate standard of living, the highest standard of physical and mental health and protection from exploitation, violence and abuse.

The Hon Sussan Ley MP
Minister for Aged Care