



User Rights Amendment (Charter of Aged Care Rights) Principles 2019

I, Ken Wyatt AM, Minister for Senior Australians and Aged Care, make the following principles.

Dated 20 March 2019

Ken Wyatt AM
Minister for Senior Australians and Aged Care

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1 Name

This instrument is the *User Rights Amendment (Charter of Aged Care Rights) Principles 2019*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2019.	1 July 2019

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Aged Care Act 1997*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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—Charter of Aged Care Rights

Part 1—Charter of Aged Care Rights

User Rights Principles 2014

1 Section 4

Insert:

authorised person of a care recipient means a person authorised to act on the care recipient’s behalf.

2 Paragraph 5(1)(c)

Omit “and responsibilities”.

3 Section 9

Repeal the section (not including the note), substitute:

9 Rights of care recipients provided with residential care

For the purposes of paragraph 56-1(m) of the Act, the rights of a care recipient who is being provided with, or is to be provided with, residential care include the rights mentioned in the “Charter of Aged Care Rights” set out in Schedule 1.

4 Section 11

Repeal the section, substitute:

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

- (1) For the purposes of paragraph 56-1(n) of the Act, an approved provider of residential care must give a care recipient:
 - (a) information about:
 - (i) the care recipient’s rights in relation to the approved provider’s residential care service under the “Charter of Aged Care Rights” set out in Schedule 1; and
 - (ii) the care recipient’s rights and responsibilities in relation to the service under this Part; and
 - (iii) if the care recipient has not entered into a resident agreement—the matters mentioned in paragraphs 59-1(1)(b) to (h) (requirements for resident agreements) of the Act; and
 - (b) a copy of the “Charter of Aged Care Rights” set out in Schedule 1 that meets the requirements of subsection (3).

Note 1: The approved provider is also required to give information to the care recipient, before the care recipient enters the service, about accommodation payments and accommodation contributions (see section 52F-1 of the Act and Division 1 of Part 4 of the *Fees and Payments Principles 2014* (No. 2)).

Note 2: The approved provider must retain records relating to the “Charter of Aged Care Rights” given under paragraph (1)(b) (see section 8A of the *Records Principles 2014*).

- (2) The approved provider must:

- (a) assist the care recipient to understand the information and the “Charter of Aged Care Rights” given under subsection (1); and
 - (b) ensure that the care recipient or an authorised person of the care recipient has been given a reasonable opportunity to sign the copy of the “Charter of Aged Care Rights” given under paragraph (1)(b).
- (3) The copy of the “Charter of Aged Care Rights” given under paragraph (1)(b) must:
- (a) be signed by a staff member (as defined in section 63-1AA of the Act) of the approved provider; and
 - (b) if the care recipient or an authorised person of the care recipient has signed the copy—include the signature; and
 - (c) if the care recipient or an authorised person of the care recipient has not signed the copy—set out the date on which the care recipient or authorised person was given a reasonable opportunity to sign the copy; and
 - (d) set out the full name of:
 - (i) the care recipient; and
 - (ii) if an authorised person of the care recipient was present at the time the copy was given—the authorised person; and
 - (e) set out the date on which the copy was given to the care recipient.
- (4) The approved provider must comply with subsections (1) and (2) before, or when, the care recipient enters the approved provider’s residential care service.

5 Paragraph 14(2)(a)

After “and responsibilities”, insert “, including the rights mentioned in the “Charter of Aged Care Rights” set out in Schedule 1”.

6 Paragraph 16(1)(c)

Omit “and responsibilities”.

7 Paragraph 17(2)(e)

Repeal the paragraph, substitute:

- (e) the care recipient:
 - (i) has not paid to the approved provider, for a reason within the care recipient’s control, any home care fee specified in the home care agreement between the care recipient and the approved provider; and
 - (ii) has not negotiated an alternative arrangement with the approved provider for payment of the home care fee; or
- (f) the care recipient has:
 - (i) intentionally caused serious injury to a staff member (as defined in section 63-1AA of the Act) of the approved provider; or
 - (ii) intentionally infringed the right of a staff member (as defined in section 63-1AA of the Act) of the approved provider to work in a safe environment.

8 Section 19

Repeal the section (not including the note), substitute:

19 Rights of care recipients provided with home care

For the purposes of paragraph 56-2(k) of the Act, the rights of a care recipient who is being provided with, or is to be provided with, home care include the rights mentioned in the “Charter of Aged Care Rights” set out in Schedule 1.

9 Section 20

Repeal the section, substitute:

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

- (1) For the purposes of paragraph 56-2(l) of the Act, an approved provider of home care must give a prospective care recipient:
 - (a) information about:
 - (i) the care recipient’s rights in relation to the approved provider’s home care service under the “Charter of Aged Care Rights” set out in Schedule 1; and
 - (ii) the rights and responsibilities of the care recipient and the approved provider, including the care recipient’s rights and responsibilities in relation to the payment of home care fees; and
 - (b) a copy of the “Charter of Aged Care Rights” set out in Schedule 1 that meets the requirements of subsection (3).

Note: The approved provider must retain records relating to the “Charter of Aged Care Rights” given under paragraph (1)(b) (see section 8A of the *Records Principles 2014*).

- (2) The approved provider must:
 - (a) assist the care recipient to understand the information and the “Charter of Aged Care Rights” given under subsection (1); and
 - (b) ensure that the care recipient or an authorised person of the care recipient has been given a reasonable opportunity to sign the copy of the “Charter of Aged Care Rights” given under paragraph (1)(b).
- (3) The copy of the “Charter of Aged Care Rights” given under paragraph (1)(b) must:
 - (a) be signed by a staff member (as defined in section 63-1AA of the Act) of the approved provider; and
 - (b) if the care recipient or an authorised person of the care recipient has signed the copy—include the signature; and
 - (c) if the care recipient or an authorised person of the care recipient has not signed the copy—set out the date on which the care recipient or authorised person was given a reasonable opportunity to sign the copy; and
 - (d) set out the full name of:
 - (i) the care recipient; and
 - (ii) if an authorised person of the care recipient was present at the time the copy was given—the authorised person; and
 - (e) set out the date on which the copy was given to the care recipient.
- (4) The approved provider must comply with subsections (1) and (2) before the care recipient enters the approved provider’s home care service.

10 Paragraph 22(3)(a)

After “and responsibilities”, insert “, including the rights mentioned in the “Charter of Aged Care Rights” set out in Schedule 1”.

11 Paragraph 23AA(c)

Omit “and responsibilities”.

12 Section 23AD

Repeal the section (not including the note), substitute:

23AD Rights of care recipients—short-term restorative care

For the purposes of paragraph 56-3(1) of the Act, the rights of a care recipient who is being provided with, or is to be provided with, short-term restorative care include the rights mentioned in the “Charter of Aged Care Rights” set out in Schedule 1.

13 Section 23AE

Repeal the section, substitute:

23AE Information to be given to new care recipient about rights and responsibilities—short-term restorative care

- (1) For the purposes of paragraph 56-3(m) of the Act, an approved provider of a flexible care service through which short-term restorative care is provided must give a prospective care recipient:
 - (a) information about:
 - (i) the care recipient’s rights in relation to the service under the “Charter of Aged Care Rights” set out in Schedule 1; and
 - (ii) the rights and responsibilities of the care recipient and the approved provider; and
 - (b) a copy of the “Charter of Aged Care Rights” set out in Schedule 1 that meets the requirements of subsection (3).

Note: The approved provider must retain records relating to the “Charter of Aged Care Rights” given under paragraph (1)(b) (see section 8A of the *Records Principles 2014*).

- (2) The approved provider must:
 - (a) assist the care recipient to understand the information and the “Charter of Aged Care Rights” given under subsection (1); and
 - (b) ensure that the care recipient or an authorised person of the care recipient has been given a reasonable opportunity to sign the copy of the “Charter of Aged Care Rights” given under paragraph (1)(b).
- (3) The copy of the “Charter of Aged Care Rights” given under paragraph (1)(b) must:
 - (a) be signed by a staff member (as defined in section 63-1AA of the Act) of the approved provider; and
 - (b) if the care recipient or an authorised person of the care recipient has signed the copy—include the signature; and

- (c) if the care recipient or an authorised person of the care recipient has not signed the copy—set out the date on which the care recipient or authorised person was given a reasonable opportunity to sign the copy; and
 - (d) set out the full name of:
 - (i) the care recipient; and
 - (ii) if an authorised person of the care recipient was present at the time the copy was given—the authorised person; and
 - (e) set out the date on which the copy was given to the care recipient.
- (4) The approved provider must comply with subsections (1) and (2) before the care recipient enters the approved provider’s flexible care service.

14 Paragraph 23AF(2)(a)

After “and responsibilities”, insert “, including the rights mentioned in the “Charter of Aged Care Rights” set out in Schedule 1”.

15 Schedules 1 to 3

Repeal the Schedules, substitute:

Schedule 1—Charter of Aged Care Rights

Note: See sections 9, 19 and 23AD.

1 Meaning of *I*, *me* and *my*

If a clause of this Schedule uses the expression *I*, *me* or *my*, the clause applies to a care recipient who is provided with:

- (a) residential care; or
- (b) home care; or
- (c) flexible care in the form of short-term restorative care.

2 Care recipient’s rights

I have the right to:

1. safe and high quality care and services;
2. be treated with dignity and respect;
3. have my identity, culture and diversity valued and supported;
4. live without abuse and neglect;
5. be informed about my care and services in a way I understand;
6. access all information about myself, including information about my rights, care and services;
7. have control over and make choices about my care, and personal and social life, including where the choices involve personal risk;
8. have control over, and make decisions about, the personal aspects of my daily life, financial affairs and possessions;
9. my independence;
10. be listened to and understood;
11. have a person of my choice, including an aged care advocate, support me or speak on my behalf;

12. complain free from reprisal, and to have my complaints dealt with fairly and promptly;
13. personal privacy and to have my personal information protected;
14. exercise my rights without it adversely affecting the way I am treated.

Part 2—Record-keeping requirements

Records Principles 2014

16 Section 4

Insert:

Charter of Aged Care Rights means the “Charter of Aged Care Rights” set out in Schedule 1 to the *User Rights Principles 2014*.

17 After section 8

Insert:

8A Records about Charter of Aged Care Rights given to care recipients

- (1) An approved provider must keep a record relating to each copy of the Charter of Aged Care Rights given to a care recipient under:
 - (a) for approved providers of residential care—paragraph 11(1)(b) or subsection 33(1) of the *User Rights Principles 2014*; or
 - (b) for approved providers of home care—paragraph 20(1)(b) or subsection 33(1) of the *User Rights Principles 2014*; or
 - (c) for approved providers of a flexible care service through which short-term restorative care is provided—paragraph 23AE(1)(b) or subsection 33(1) of the *User Rights Principles 2014*.
- (2) Subsection (1) does not apply to an approved provider if:
 - (a) for approved providers of residential care—the care recipient does not enter the approved provider’s residential care service; or
 - (b) for approved providers of home care—the care recipient does not enter the approved provider’s home care service; or
 - (c) for approved providers of a flexible care service through which short-term restorative care is provided—the care recipient does not enter the approved provider’s flexible care service.

Schedule 2—Responsibilities of approved providers

Part 1—Approved providers of residential care

User Rights Principles 2014

1 After paragraph 5(1)(c)

Insert:

- (ca) not acting inconsistently with the legal and consumer rights of care recipients (see paragraph 56-1(m) of the Act);

2 After section 9

Insert:

9A Responsibility not to act inconsistently with legal and consumer rights of care recipients

For the purposes of paragraph 56-1(m) of the Act, an approved provider of residential care must not act in a way which is inconsistent with the legal and consumer rights of a care recipient.

Part 2—Approved providers of home care

User Rights Principles 2014

3 After paragraph 16(1)(c)

Insert:

- (caa) not acting inconsistently with the legal and consumer rights of care recipients (see paragraph 56-2(k) of the Act);
- (cab) preventing the provider from causing damage to the care recipient’s home and other property (see paragraph 56-2(l) of the Act);
- (cac) providing such information as is reasonably necessary to assist care recipients to choose the best possible care and services (see paragraph 56-2(l) of the Act);
- (cad) the written plan of care and services that the provider must give care recipients within a specified period of time (see paragraph 56-2(l) of the Act);
- (cae) the provision of invoices that are clear and in a format that is understandable (see paragraph 56-2(l) of the Act);
- (caf) the review of home care fees, both periodically and on request by a care recipient (see paragraph 56-2(l) of the Act);

4 At the end of Division 2 of Part 3

Insert:

19AA Responsibility not to act inconsistently with legal and consumer rights of care recipients

For the purposes of paragraph 56-2(k) of the Act, an approved provider of home care must not act in a way which is inconsistent with the legal and consumer rights of a care recipient.

19AB Responsibility to prevent damage to care recipient’s property

For the purposes of paragraph 56-2(l) of the Act, an approved provider of home care must take reasonable steps to prevent the provider, or a person employed or otherwise engaged by the provider, from causing damage to a care recipient’s home and other property in the course of providing the home care.

19AC Responsibility to provide information to assist care recipients to choose best care and services

For the purposes of paragraph 56-2(l) of the Act, an approved provider of home care must provide such information as is reasonably necessary to assist a care recipient to choose the care and services that best meet his or her goals and assessed needs and preferences, within the limits of the resources available.

19AD Responsibility to provide written plan of care and services

For the purposes of paragraph 56-2(1) of the Act, an approved provider of home care must give to a care recipient a written plan of the care and services that the care recipient will receive:

- (a) before the care recipient commences receiving home care; or
- (b) within 14 days after the care recipient commences receiving home care.

19AE Responsibility to provide clear and understandable invoices

For the purposes of paragraph 56-2(1) of the Act, an approved provider of home care must provide a care recipient with invoices that are clear and in a format that is understandable.

19AF Responsibility to review fees periodically and on request

For the purposes of paragraph 56-2(1) of the Act, an approved provider of home care must:

- (a) periodically review the home care fees that each care recipient is liable to pay; and
- (b) if requested by a care recipient on the grounds that the care recipient's financial circumstances have changed—review the home care fees that the care recipient is liable to pay.

Part 3—Approved providers of flexible care in the form of short-term restorative care

User Rights Principles 2014

5 After paragraph 23AA(c)

Insert:

- (ca) not acting inconsistently with the legal and consumer rights of care recipients (see paragraph 56-3(l) of the Act);
- (cb) preventing the provider from causing damage to the care recipient's home and other property (see paragraph 56-3(m) of the Act);
- (cc) providing such information as is reasonably necessary to assist care recipients to choose the best possible care and services (see paragraph 56-3(m) of the Act);
- (cd) the written plan of care and services that the provider must give care recipients within a specified period of time (see paragraph 56-3(m) of the Act);
- (ce) the provision of invoices that are clear and in a format that is understandable (see paragraph 56-3(m) of the Act);
- (cf) the review of fees on request by a care recipient (see paragraph 56-3(m) of the Act);

6 After section 23AD

Insert:

23ADA Responsibility not to act inconsistently with legal and consumer rights of care recipients

For the purposes of paragraph 56-3(l) of the Act, an approved provider of a flexible care service through which short-term restorative care is provided must not act in a way which is inconsistent with the legal and consumer rights of a care recipient.

23ADB Responsibility to prevent damage to care recipient's property

For the purposes of paragraph 56-3(m) of the Act, an approved provider of a flexible care service through which short-term restorative care is provided in a home care setting must take reasonable steps to prevent the provider, or a person employed or otherwise engaged by the provider, from causing damage to a care recipient's home and other property in the course of providing the flexible care service.

23ADC Responsibility to provide information to assist care recipients to choose best care and services

For the purposes of paragraph 56-3(m) of the Act, an approved provider of a flexible care service through which short-term restorative care is provided in a home care setting must provide such information as is reasonably necessary to

assist a care recipient to choose the care and services that best meet his or her goals and assessed needs and preferences, within the limits of the resources available.

23ADD Responsibility to provide written plan of care and services

For the purposes of paragraph 56-3(m) of the Act, an approved provider of a flexible care service through which short-term restorative care is provided in a home care setting must give to a care recipient a written plan of the care and services that the care recipient will receive:

- (a) before the care recipient commences receiving short-term restorative care;
or
- (b) within 7 days after the care recipient commences receiving short-term restorative care.

23ADE Responsibility to provide clear and understandable invoices

For the purposes of paragraph 56-3(m) of the Act, an approved provider of a flexible care service through which short-term restorative care is provided in a home care setting must provide a care recipient with invoices that are clear and in a format that is understandable.

23ADF Responsibility to review fees on request

For the purposes of paragraph 56-3(m) of the Act, an approved provider of a flexible care service through which short-term restorative care is provided in a home care setting must, if requested by a care recipient on the grounds that the care recipient's financial circumstances have changed, review the short-term restorative care fees that the care recipient is liable to pay.

Schedule 3—Transitional provisions

User Rights Principles 2014

1 At the end of Part 5

Add:

Division 4—Transitional provisions relating to the User Rights Amendment (Charter of Aged Care Rights) Principles 2019

33 Charter of Aged Care Rights to be given to existing care recipient

- (1) An approved provider must give an existing care recipient a copy of the “Charter of Aged Care Rights” set out in Schedule 1 that meets the requirements of subsection (3).
- (2) The approved provider must:
 - (a) assist the existing care recipient to understand the “Charter of Aged Care Rights” given under subsection (1); and
 - (b) ensure that the existing care recipient or an authorised person of the existing care recipient has been given a reasonable opportunity to sign the copy of the “Charter of Aged Care Rights” given under subsection (1).
- (3) The copy of the “Charter of Aged Care Rights” given under subsection (1) must:
 - (a) be signed by a staff member (as defined in section 63-1AA of the Act) of the approved provider; and
 - (b) if the existing care recipient or an authorised person of the existing care recipient has signed the copy—include the signature; and
 - (c) if the existing care recipient or an authorised person of the existing care recipient has not signed the copy—set out the date on which the existing care recipient or authorised person was given a reasonable opportunity to sign the copy; and
 - (d) set out the full name of:
 - (i) the existing care recipient; and
 - (ii) if an authorised person of the existing care recipient was present at the time the copy was given—the authorised person; and
 - (e) set out the date on which the copy was given to the existing care recipient.
- (4) The approved provider must comply with subsections (1) and (2):
 - (a) if the approved provider is an approved provider of residential care—no later than 30 September 2019; or
 - (b) if the approved provider is an approved provider of a flexible care service through which short-term restorative care is provided in a residential care setting—no later than 30 September 2019; or
 - (c) if the approved provider is an approved provider of home care—no later than 31 December 2019; or

(d) if the approved provider is an approved provider of a flexible care service through which short-term restorative care is provided in a home care setting—no later than 31 December 2019.

(5) In this section:

existing care recipient means:

- (a) for an approved provider of residential care—a care recipient who is being provided with residential care by that provider on 30 June 2019; or
- (b) for an approved provider of home care—a care recipient who is being provided with home care by that provider on 30 June 2019; or
- (c) for an approved provider of a flexible care service through which short-term restorative care is provided—a care recipient who is being provided with flexible care in the form of short-term restorative care by that provider on 30 June 2019.