



## User Rights Amendment Principles 2003 (No. 1)

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I, KEVIN JAMES ANDREWS, Minister for Ageing, make these Principles under subsection 96-1 (1) of the *Aged Care Act 1997*.

Dated

27<sup>th</sup> August 2003

Minister for Ageing

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- 1 Name of Principles**  
These Principles are the *User Rights Amendment Principles 2003 (No. 1)*.
- 2 Commencement**  
These Principles commence on 1 September 2003.
- 3 Amendment of *User Rights Principles 1997***  
Schedule 1 amends the *User Rights Principles 1997*.

**Schedule 1 Amendments**  
(section 3)

[1] **Before section 23.82**  
*insert in Part 5*

**Division 1 Amounts additional to maximum daily amount**

[2] **Section 23.82**  
*substitute*

**23.82 Purpose of Division (Act, s 58-1)**

This Division specifies amounts that may be added to the maximum daily amount of resident fees set under section 58-2 of the Act.

[3] **After section 23.83A**  
*insert in Part 5*

**Division 2 Maximum daily amount — other agreed amounts**

**23.83B Purpose of Division (Act, s 58-2)**

This Division specifies the circumstances in which an amount agreed between a care recipient and an approved provider may be included at step 5 of the resident fee calculator in working out the maximum daily amount of resident fees for the care recipient.

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**23.83C Approved care recipients in unfunded places**

- (1) For step 5 of the resident fee calculator in section 58-2 of the Act, the maximum daily amount of resident fees (the *maximum daily fee*) payable by the care recipient may include an amount agreed between the care recipient and the approved provider if:
    - (a) the approved provider complies with subsections (2) and (3) as applicable to the care recipient; and
    - (b) the care recipient agrees to pay the amount before it is incurred; and
    - (c) on the day:
      - (i) the care recipient is an approved care recipient; and
      - (ii) the place in the service through which residential care is provided to the care recipient (the *care recipient's place*) is unfunded.
  - (2) If the approved provider seeks an agreement, from an approved care recipient receiving care through the service in an unfunded place, to charge the care recipient an amount under step 5 (an *additional amount*), the approved provider must, before the care recipient so agrees, inform the care recipient (or his or her representative) in writing that:
    - (a) the proposed maximum daily fee payable by the care recipient is more than the maximum that would have been payable if the care recipient's place were funded; and
    - (b) the approved provider cannot ask the care recipient to leave the service merely because the care recipient does not agree to pay the additional amount.
- Note* After the care recipient has agreed to the additional amount, the approved provider may ask the care recipient to leave the service if the care recipient has not paid the agreed amount in the circumstances mentioned in paragraph 23.5 (3) (b).
- (3) If the approved provider seeks an agreement, from an approved care recipient proposing to enter the service to receive care in an unfunded place, to charge the care recipient an additional amount, the approved provider must, before the care recipient so agrees, inform the care recipient (or his or her representative) in writing that the proposed maximum daily fee payable by the care recipient is more than the maximum that would have been payable if the care recipient's place were funded.
  - (4) In this section:
    - (a) *approved care recipient* means a person who is approved under Part 2.3 of the Act as a recipient of residential care; and
    - (b) a care recipient's place is *funded* if residential care subsidy is payable under Chapter 3 of the Act for the provision of care to the care recipient through the service; and

- (c) a care recipient's place is *unfunded* if residential care subsidy otherwise payable under Chapter 3 of the Act for the provision of care to the care recipient through the service is not payable because of paragraph 42-1 (2) (a) of the Act.

*Note* Under paragraph 42-1 (2) (a) of the Act, an approved provider is not eligible for residential care subsidy in respect of a care recipient if residential care provided to the care recipient is excluded (see section 42-7 of the Act) because the approved provider exceeds the approved provider's allocation of places for residential care subsidy.