



User Rights Amendment Principles 1999 (No. 2)

I, BRONWYN KATHLEEN BISHOP, Minister for Aged Care, make these Principles under section 96-1 of the *Aged Care Act 1997*.

Dated 21st October 1999.

Minister for Aged Care

A handwritten signature in black ink, which appears to read 'Bronwyn Bishop'. The signature is written in a cursive, flowing style. It is positioned over a horizontal line that spans the width of the signature area.



User Rights Amendment Principles 1999 (No. 2)

made under the

Aged Care Act 1997

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1 Name of Principles

These Principles are the *User Rights Amendment Principles 1999 (No. 2)*.

2 Commencement

These Principles commence on the commencement of Schedule 1 to the *Aged Care Amendment (Omnibus) Act 1999*.

3 Amendment of *User Rights Principles 1997*

Schedule 1 amends the *User Rights Principles 1997*.

Schedule 1 Amendments

(section 3)

[1] Section 23.3, note, after the dot point for accommodation bond balance

insert

- accommodation charge
- accommodation charge agreement

[2] Section 23.3, note, after the dot point for care

insert

- charge exempt resident

[3] Part 2, Division 1

relocate as Division 6 in Part 2 and renumber the sections within the Division consecutively starting with 23.18

[4] Part 2, Divisions 2 to 6

renumber as Divisions 1 to 5 and renumber the sections within the Divisions consecutively starting with 23.4

[5] Part 4, before Division 1

insert

Division 1A Purpose of Part

23.27A Purpose of Part (Act s 57-1)

This Part (including the general prudential requirements and the prudential scheme set out under them) is, with the provisions of the Act, intended to deal with all requirements about payment and protection of accommodation bonds.

[6] After section 23.30

insert

23.30A Matters relevant to extending time limit

For subsection 57-2 (2) of the Act, the Secretary may have regard to any matters the Secretary considers relevant in extending the time mentioned in paragraph 57-2 (1) (c) of the Act.

[7] Subsection 23.31 (1)

substitute

- (1) This section applies to a care recipient who:
- (a) has agreed to pay the accommodation bond wholly or partly as a lump sum; and
 - (b) leaves the residential care service after being provided with care for more than 2 months; and
 - (c) does not pay the accommodation bond before leaving the residential care service.

[8] Part 4, Division 5A

omit

[9] Subsection 23.71 (2)

substitute

- (2) However, despite subsections (3) and (4), the maximum retention amount for a care recipient for a later year is the same as the maximum retention amount for the first year.

[10] Subsection 23.72 (1), definition of *earlier CPI number*

substitute

earlier CPI number, for a financial year, means:

- (a) the CPI number for the last March quarter before the beginning of the financial year (the *most recent earlier CPI number*); or
- (b) if the CPI number for the March quarter of an earlier financial year that started after 30 June 1997 is higher than the most recent earlier CPI number — the higher CPI number.

[11] Subsection 23.72 (4)

omit each mention of

\$10

insert

\$60

[12] Subsection 23.72 (4)*omit*

\$5

insert

\$30

[13] Subsection 23.73 (2)*omit***[14] Subsection 23.80 (2), except the note***substitute*

- (2) The information may be about:
 - (a) whether the approved provider collects any accommodation bonds; and
 - (b) the amount of the bonds collected (including a nil amount); and
 - (c) repayment of accommodation bonds paid by residents while they were charge exempt residents.
- (3) The Minister must not ask for, and the approved provider must not give, personal information relating to an individual care recipient.

[15] Part 4, Division 15*omit*

[16] After Part 4

insert

Part 4A Accommodation charges

Division 1 Purpose of Part

23.81A Purpose of Part (Act s 57A-1)

This Part is, with the provisions of the Act, intended to deal with all requirements about payment and protection of accommodation charges.

Division 2 Information for care recipients

23.81B Purpose of Division (Act s 57A-2)

This Division specifies the information about accommodation charges that an approved provider must provide to a care recipient before the care recipient enters the provider's residential care service.

23.81C Information about accommodation charges

- (1) The approved provider must tell the care recipient whether the residential care service charges an accommodation charge if the care recipient is not a concessional resident or a charge exempt resident.

-
- (2) If the residential care service charges an accommodation charge and the care recipient is not a concessional resident or a charge exempt resident, the approved provider must give the care recipient the following information about the accommodation charge:
- (a) the requirement, if the care recipient has given the provider enough information to decide the value of the care recipient's assets, for the care recipient to be left, after paying the accommodation charge, with assets having a value of at least the care recipient's minimum permissible asset value;
 - (b) details of the interest rate to be charged on amounts owed under the accommodation charge agreement or resident agreement;
 - (c) the amount of the accommodation charge;
 - (d) when an accommodation charge is not required or, if paid, is refundable.

Note Section 57A-2 of the Act sets out basic rules about accommodation charges. In particular, para 57A-2 (1) (h) and (i) deal with circumstances when an accommodation charge is not required or, if paid, is refundable.

Division 3 Other rules about accommodation charges

23.81D Purpose of Division (Act s 57A-2)

This Division specifies other rules about the accommodation charge.

23.81E Accommodation charge agreement required even if waiver is sought

- (1) This section applies if:
 - (a) the care recipient is not a concessional resident or a charge exempt resident; and

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- (b) the approved provider or care recipient has applied to the Secretary for a determination, under subsection 57A-9 of the Act, that the care recipient must not be charged an accommodation charge because paying the accommodation charge would cause the care recipient financial hardship.
 - (2) An accommodation charge agreement must still be made if:
 - (a) the application has not been decided; and
 - (b) the approved provider intends to charge an accommodation charge if the application is refused.
 - (3) The agreement must state that the accommodation charge is payable if:
 - (a) the Secretary declines to make the determination; or
 - (b) the determination is made but later ceases to be in force.
 - (4) If the care recipient has a physical incapacity, a person nominated by the care recipient may sign the agreement for the care recipient.
 - (5) If the care recipient has a cognitive impairment, a person who is authorised to sign documents for the care recipient may sign the agreement for the care recipient.

23.81F Matters relevant to extending time limit

For subsection 57A-2 (2) of the Act, the Secretary may have regard to any matters the Secretary considers relevant in extending the time mentioned in paragraph 57A-2 (1) (e) of the Act.

Division 4**Periods when accommodation charge not payable****23.81G Purpose of Division (Act s 57A-2 and 96-1)**

The purpose of this Division is to specify periods for which an approved provider must not charge the daily accommodation charge.

23.81H Period of respite care

If the care recipient is transferred from respite care, the approved provider must not charge the daily accommodation charge for the period when the care recipient is in respite care.

23.81I Period of suspension of certification of service

If the certification of the approved provider's residential care service is suspended under paragraph 66-1 (i) of the Act, the approved provider must not charge the daily accommodation charge for the period when the suspension is in force.

23.81J Period of prohibition on charging accommodation charge

If charging of accommodation charge for a residential care service conducted by an approved provider is prohibited under paragraph 66-1 (j) of the Act, the approved provider must not charge the daily accommodation charge for the period when the prohibition is in force.

23.81K Period of financial hardship

If a determination under subsection 57A-9 (1) of the Act is in force for a care recipient, an approved provider must not charge the daily accommodation charge for the period beginning on the date of effect of the determination and ending on the day when the determination ceases to be in force under subsection 57A-9 (7) of the Act.

**Division 5 Contents of accommodation
charge agreements****23.81L Purpose of Division (Act s 57A-3)**

This Division specifies additional matters that must be set out in an agreement for it to be an accommodation charge agreement.

**23.81M Amount of accommodation charge — no
financial hardship**

- (1) This section applies if the care recipient is not a concessional resident or a charge exempt resident and an accommodation charge is not paid because the approved provider or care recipient has applied to the Secretary for a determination, under section 57A-9 of the Act, that the care recipient must not be charged an accommodation charge because paying the accommodation charge would cause the care recipient financial hardship.

- (2) The accommodation charge agreement must state the amount of accommodation charge payable by the care recipient if:
 - (a) the Secretary declines to make the determination; or
 - (b) the determination is made but later ceases to be in force.

23.81N Providing information to third parties

- (1) The accommodation charge agreement must state that, if a care recipient wishes to move from one residential care service (the *original service*) to another residential care service (the *new service*), the approved provider of the original service may ask the care recipient for permission to provide the information mentioned in subsection (2) to the approved provider of the new service.
- (2) The information is:
 - (a) whether the care recipient has agreed to pay an accommodation charge; and
 - (b) if so, the amount agreed; and
 - (c) the number of days for which the charge accrued under section 57A-7 of the Act.

Division 6

Maximum daily accommodation charge

23.81O Purpose of Division (Act s 57A-6)

This Division specifies an amount as the maximum daily amount at which accommodation charge accrues under section 57A-6 of the Act.

23.81P Specified amounts for maximum daily accommodation charge

- (1) For paragraph 57A-6 (1) (c) of the Act, the following amounts are specified for a person who has entered an aged care service at a high level of care:
- (a) for an assisted resident — X;
 - (b) for any other care resident — Y.

Note The specified amount applies only if para 57A-6 (1) (a) or (b) does not apply.

- (2) In subsection (1):

X is:

- (a) for the financial year starting on 1 July 1999 — \$6; or
- (b) for a later financial year — the amount worked out under section 23.81Q for the financial year.

Y is:

- (a) for the financial year starting on 1 July 1999 — \$12; or
- (b) for a later financial year — the amount worked out under section 23.81Q for the financial year.

23.81Q Calculation of indexation increase

- (1) In this section:

CPI number means the All Groups Consumer Price Index number (that is, the weighted average of the 8 Australian capital cities) published by the Australian Statistician.

earlier CPI number, for a financial year, means:

- (a) the CPI number for the last March quarter before the beginning of the financial year (the **most recent earlier CPI number**); or
- (b) if the CPI number for the March quarter of an earlier financial year that started after 30 June 1998 is higher than the most recent earlier CPI number — the higher CPI number.

indexed element means the element X or Y mentioned in subsection 23.81P (2).

latest CPI number, for a financial year, means the CPI number for the March quarter in the financial year.

March quarter means the period of 3 months that ends on 31 March.

relevant amount, in a financial year, means the amount of the indexed element for the financial year.

- (2) If, for a financial year, the latest CPI number is more than the earlier CPI number, the amount of each indexed element is increased on 1 July of the next financial year.
- (3) The amount of the increased indexed element is the amount worked out in accordance with the formula:

$$\frac{\text{relevant amount} \times \text{latest CPI number}}{\text{earlier CPI number}}.$$

Division 7

Making financial hardship determinations

23.81R Purpose of Division (Act s 57A-9)

This Division specifies:

- (a) matters relevant to the making of a determination by the Secretary that a person must not be charged an accommodation charge because payment of an accommodation charge would cause the person financial hardship; and
- (b) some circumstances that, for section 57A-9 of the Act, constitute financial hardship.

23.81S Income assessment required before determination made

The Secretary may make a determination for a care recipient only if the care recipient's income has been assessed under the *Social Security Act 1991* or *Veterans' Entitlements Act 1986*.

23.81T Effect of determination

A determination may be expressed to take effect from a date before it is made.

23.81U Circumstances constituting financial hardship

- (1) In this section:

unrealisable asset has the meaning given by subsections 11(12), (13) and (14) of the *Social Security Act 1991*.

- (2) Payment of an accommodation charge would cause a person financial hardship if, for example:

- (a) the payment would cause hardship to the person's partner or a dependent child of the person; or
- (b) the value of the person's assets, other than unrealisable assets, is less than the minimum permissible asset value.

- (3) In working out if the person is a concessional resident, payment of an accommodation charge would cause a person financial hardship if:

- (a) the person has been a homeowner; and
- (b) a carer of the person has occupied the home for the past 2 years and, at the applicable time, was eligible to receive an income support payment; and

- (c) the value of the person's assets, other than the home, was less than:
 - (i) the amount obtained by rounding to the nearest \$500.00 (rounding \$250.00 upwards) an amount equal to 2.5 times the basic age pension amount at that time; or
 - (ii) such other amount as is specified in, or worked out in accordance with, these Principles.
- (4) For paragraph (3) (b), *applicable time* has the meaning given by subsection 44-7 (2) of the Act.

Division 8 Revoking financial hardship determinations

23.81V Purpose of Division (Act s 57A-10)

This Division specifies the circumstances in which the Secretary may revoke a determination made under section 57A-9 of the Act.

Note For provisions about making of determinations under s 57A-9 of the Act, see Div 7 of this Part.

23.81W Revocation of a determination

The Secretary may revoke a determination made under section 57A-9 of the Act if the Secretary is satisfied that:

- (a) the circumstances of the care recipient have changed; and
- (b) paying an accommodation charge would not cause the care recipient financial hardship.

Example of change of circumstances for paragraph (a):

Assets of the care recipient that were unrealisable assets are no longer assets of that kind.

Division 9 Interest on accommodation
charge

23.81X Purpose of Division (Act s 57A-12)

For subsection 57A-12 (2) of the Act, this Division specifies the maximum rate at which interest may be charged under an accommodation charge agreement on the outstanding balance of an accommodation charge.

23.81Y Interest if accommodation charge not paid when due

The maximum rate is a rate not more than twice the below threshold rate determined under subsection 1082 (1) of the *Social Security Act 1991*.

Division 10 Information about
accommodation charges

23.81Z Purpose of Division (Act s 63-2)

The purpose of this Division is to specify circumstances in which an approved provider must give the Minister information about accommodation charges.

23.81ZA Information to be given to the Minister

- (1) If the Minister asks an approved provider, in writing, to give the Minister information that the Minister needs to prepare a report under section 63-2 of the Act, the provider must comply with the request.

- (2) The Minister must specify a reasonable time for the provider to comply with the request.
- (3) The information may be about:
 - (a) whether the approved provider collects any accommodation charges; and
 - (b) the amount of the charges collected (including a nil amount); and
 - (c) repayment of accommodation charges paid by residents while they were charge exempt residents.
- (4) The Minister must not ask for, and the approved provider must not give, personal information relating to an individual care recipient.

Note The disclosure of personal information is, generally speaking, prohibited (see Act, s 62-1).

[17] Part 5, section 23.83B

omit

[18] Schedule 1, heading

substitute

**Schedule 1 Charter of residents’
rights and
responsibilities**
(sections 23.12 and 23.14)