

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

Aged Care Act 1997

Grant Principles 2014

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.

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.

Among the Principles made under section 96-1 are the *Grant Principles 2014* (the Principles).

The Principles set out:

- for residential care grants, the criteria for allocations, the criteria for determining priority between allocations, and the means for working out the amount to be allocated;
- for advocacy grants, the criteria to be used by the Secretary for deciding whether to make a grant and the way that applicants must be notified of a decision on an application for an advocacy grant; and
- for community visitors grants, the bodies eligible to apply for a community visitors grant, the criteria to be used by the Secretary in deciding whether to make a grant, the way that applicants must be notified of a decision on an application for a community visitors grant, and the conditions of community visitors grants.

From 1 July 2014, these Principles will replace the existing *Advocacy Grant Principles 1997*, *Community Visitors Grant Principles 1997* and *Residential Care Grant Principles 1997*. Compared to the existing principles, these new Principles:

- simplify the formula for working out the amount of residential care grants;
- for residential care grants, enable the Secretary to consider the proportion of care to be provided not only to people with special needs or who are supported, concessional and assisted residents but also low-means care recipients. Low-means care recipients are people who, from 1 July 2014, are eligible to receive Government assistance with their accommodation costs;
- include transitional arrangements to ensure the legal validity of decisions made on applications received (but not decided) before 1 July 2014;
- remove unnecessary administrative processes used to determine the maximum number of community visitors, because this is necessarily limited by the total value of grants available;
- make changes to the definition of police certificate (consistent with the changes made in the *Accountability Principles 2014*); and
- make minor technical drafting changes to improve the provisions and align with like provisions across the aged care principles.

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

Consultation

In April 2012, the former Government launched a major program of aged care reforms. The reform agenda was developed in close consultation with the aged care sector, including consumers, industry and professional bodies.

As part of the consultation on the proposed changes to the Act, and to delegated legislation, arising from the reforms, the former Government communicated its intention to examine the delegated legislation and, where possible, simplify it.

This intent was communicated in November 2012, with the public release of a paper providing an overview of the proposed legislative changes. A video presentation detailing the proposed reforms was also made available online to assist members of the public to understand these changes.

During late 2012 and in the first half of 2013, briefing sessions were held across Australia to provide information and to explain, in detail, the proposed legislative changes included in the package of Bills introduced into Parliament on 13 March 2013. As part of these consultations, the intention to make related changes to delegated legislation was again discussed. For those interested members of the public unable to attend the briefings, the presentation, supporting handouts, a detailed Question and Answer document and an information video were made available online.

During March and April 2014, an exposure draft of these Principles was made available for comment on the Department of Social Services' website, along with an explanatory document entitled *Overview: Proposed changes from 1 July 2014 to the Aged Care Principles made under the Aged Care Act 1997 - April 2014*. Comments on the draft Principles were invited and taken into account in the finalisation of these Principles.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that no RIS is required (OBPR ID 16682).

Commencement

The Principles commence on 1 July 2014.

Details of the Grant Principles 2014

Part 1 - Preliminary

Section 1 - Name of principles

This section states that the name of the Principles is the *Grant Principles 2014* (the Principles).

Section 2 - Commencement

This section states that the Principles commence on 1 July 2014.

Section 3 – Authority

This section provides that the authority for making the Principles is section 96-1 of the *Aged Care Act 1997* (the Act).

Section 4 – Definitions

This section defines certain terms used in the Principles.

Act means the *Aged Care Act 1997*.

A *community visitor* means anyone who:

- is employed or engaged by a body:
 - that organises for a care recipient who is receiving either residential or home care to make frequent and regular contact with the community;
 - that helps care recipients maintain their independence by organising contact with people in the community; or
 - that assists care recipients from culturally and linguistically diverse backgrounds in maintaining contact with people from similar backgrounds;
- and
- implements the purposes mentioned above via direct contact with the care recipient.

A *community visitors grant agreement* is a written agreement made between the Commonwealth and a body corporate under which the Commonwealth makes one or more grants of money for the purposes of:

- organising for a care recipient who is receiving either residential or home care to make frequent and regular contact with the community;
- helping care recipients maintain their independence by organising contact with people in the community; or
- assisting care recipients from culturally and linguistically diverse backgrounds in maintaining contact with people from similar backgrounds.

CrimTrac is further defined as the CrimTrac Agency. CrimTrac works together with Australia's police agencies to deliver the National Police Checking Service.

A *low-means care recipient* has the meaning given by section 5.

A *major city* means one of the major cities of Australia within the meaning of the

Australian Statistical Geography Standard (ASGS): Volume 5—Remoteness Structure, July 2011, produced by the Australian Bureau of Statistics.

A *police certificate* is a written statement of a person's criminal convictions prepared by the police or CrimTrac.

This section notes that a number of other expressions used in these Principles are defined in Schedule 1 of the Act.

Section 5 – Meaning of *low-means care recipient*

This section provides that a *low-means care recipient* is a recipient of residential care who:

- is eligible for an accommodation supplement; or
- on their date of entry to the service, has a means tested amount that is less than the maximum accommodation supplement amount for the entry day.

Part 2 – Residential care grants

Section 6 – Purpose of this Part

This section describes the purpose of Part 2 which is to specify:

- the criteria to be met before a residential care grant is allocated;
- the criteria for determining priority between applications for grants; and
- the method for determining the amounts to be allocated to successful applicants.

Section 7 – Residential care grants – criteria for allocations

Section 7 of the Principles outlines the criteria to be met before the Secretary will allocate residential care grants.

In summary, the Secretary must be satisfied that:

- the majority of those who receive, or will receive, the care to which the grant relates are: supported, concessional or assisted residents; people with special needs; low-means care recipients; people who live where there is a need for additional residential care services; or people who do not live in a major city; and
- the applicant for the grant:
 - has demonstrated its ongoing financial and organisational viability;
 - has demonstrated that it does not have the capacity to fund all or a part of the project without an allocation of a grant;
 - is not a State or Territory or an authority of a State or Territory;
 - if the applicant is currently providing, or has previously provided, Commonwealth-funded aged care - has a very good record, or a demonstrated commitment to improvement, in respect of: its conduct as a provider; complying with its responsibilities; and meeting its obligations arising from the receipt of any payments from the Commonwealth for providing aged care.

Before allocating a residential care grant to an applicant, the Secretary must also be satisfied that no contracts for the construction of premises to be used to provide the residential care to which the project relates have been entered into, and no work has started on the construction of such premises.

Section 8 – Residential care grants – criteria for determining priority between applications

Subsection 8(1) outlines the considerations that the Secretary must have regard to when determining priority between applicants for the allocation of a residential care grant. The Secretary must consider:

- the proportion of care recipients who are, or will be, supported, concessional or assisted residents, people with special needs, or low-means care recipients;
- the location of the service to which the grant relates especially whether it is not in a major city;
- the availability of other aged care services in the area;
- the need for the grant;
- the urgency of the grant due to unforeseen circumstances;
- how the project will assist in meeting the needs of care recipients with dementia;
- whether high quality accommodation will be provided;
- whether significantly improved operational efficiency will be provided;
- the adequacy of interim care arrangements whilst the project is being completed.

Subsection 8(2) provides that the Secretary must give priority to:

- projects that meet an urgent need for building, rebuilding, renovation or restoration work in order to improve or maintain access to residential care, including meeting changing care needs arising from the increased frailty of care recipients or the increased prevalence of dementia; and
- projects that offer the Commonwealth best value for money compared with other projects for which applications for the allocation of residential care grants have been made.

Section 9 – Residential care grants – working out amount to be allocated

The amount of any residential care grant is worked out by the Secretary in accordance with this section.

In working out the amount of the grant, the Secretary may have regard to:

- the purpose of the grant;
- the capacity of the approved provider to borrow money for the project;
- the capacity of the approved provider or the proposed care recipients to contribute to funding the project upon completion;
- the value of any non-monetary contribution by the approved provider to the project; and
- the kind of people who are to be care recipients of the service.

In working out the amount of the grant, the Secretary cannot treat as capital works costs any of the following:

- costs of routine administration (regardless of whether the costs relate to the project);
- vehicle costs;
- rent, insurance costs and statutory charges;
- normal overhead and operating costs;
- any tax payable in relation to the grant, or as a result of receiving the grant; and
- costs associated with financing the project including the cost of interest.

Part 3 – Advocacy grants

Section 10 – Purpose of this Part

This section provides that the purpose of Part 3 is to set out matters that relate to the making of advocacy grants, including the criteria the Secretary must take into account when deciding whether to make an advocacy grant, and the requirements for notifying applicants of the Secretary's decision.

Section 11 – Advocacy grants – criteria for deciding whether to make grant

An advocacy grant is defined in section 81-1 of the Act to mean a grant by the Commonwealth to a body for the purposes of:

- encouraging understanding of, and knowledge about, the rights of recipients and potential recipients of aged care services on the part of: care recipients; people caring for care recipients; people who provide aged care services; or the general community;
- enabling care recipients to exercise those rights;
- providing free, independent and confidential advocacy services in relation to those rights to people who are, or may become, care recipients or who are representatives of care recipients.

In deciding whether to make an advocacy grant, the Secretary must take into account:

- whether the applicant has the necessary experience, skills, infrastructure and resources to complete the project; and
- whether the applicant can meet the needs of any people with special needs to which the project relates. The term *people with special needs* is defined in section 11-3 of the Act to mean:
 - people from Aboriginal and Torres Strait Islander communities;
 - people from culturally and linguistically diverse backgrounds;
 - people who live in rural or remote areas;
 - people who are financially or socially disadvantaged;
 - veterans;
 - people who are homeless or at risk of becoming homeless;
 - care-leavers;
 - parents separated from their children by forced adoption or removal;
 - lesbian, gay, bisexual, transgender and intersex people; and
 - people of a kind (if any) specified in the Allocation Principles.

This section also notes that sections 81-1 and 81-2 of the Act specify the purposes for which advocacy grants can be made, who can apply, and how they can apply.

Section 12 – Advocacy grants – notifying applicants of decision

This section provides that the Secretary must notify the applicant, in writing, of the decision made on an application for an advocacy grant. If the decision is to make an advocacy grant, the notice must include the amount of the grant and the timeframes of the grant.

Part 4 – Community visitors grants

Section 13 – Purpose of this Part

This section states that the purpose of Part 4 is to outline matters relating to the making of community visitors grants including:

- who is eligible to apply;
- the criteria the Secretary must take into account in deciding whether to make a community visitors grant;
- requirements for notifying applicants of the Secretary's decision; and
- conditions of allocated grants.

Section 14 – Community visitors grants – eligibility to apply

Subsection 82-2(3) of the Act states that approved providers and bodies directly associated with an approved provider are not permitted to apply for an advocacy grant except in the circumstances specified in the Grant Principles.

Section 14 of these Principles describes an exception to this rule. That is, an approved provider or a body associated with an approved provider may apply for an advocacy grant if the body is a local government authority or a charitable or religious body.

Section 15 – Community visitors grants – criteria for deciding whether to make grant

This section outlines the criteria to be applied by the Secretary in deciding whether to make a community visitors grant. In deciding whether to make a community visitors grant the Secretary must take into account:

- whether the applicant has the necessary experience, skills, infrastructure, and resources to complete the project;
- whether the applicant can meet the needs of any people with special needs to which the project relates. The term 'people with special needs' is defined in section 11-3 of the Act;
- whether the location of the applicant's principal place of business or the facilities through which all or part of the project will be carried out are not in a major city; and
- if the applicant for the grant is a body that is directly associated with an approved provider - whether the association with the approved provider would, if a community visitor grant were made to the applicant, adversely affect the way in which the applicant would undertake its project and meet the conditions to which the community visitors grant is subject.

In deciding whether to make a community visitors grant, the Secretary must have due regard to considerations of equity and merit before allocating money appropriated by Parliament.

A note in the section reminds the reader that sections 82-1 and 82-2 of the Act specify the purposes for which a community visitors grant may be made, who may apply, and how an application must be made.

Section 16 – Community visitors grants – notifying applicants of decision

This section provides that the Secretary must notify the applicant, in writing, of the decision made on the application. If the decision is to make a community visitors grant, the notice must include the amount of the grant and the timeframes of the grant.

Section 17 – Community visitors grants – conditions of grant

This section sets out the conditions that a community visitors grant is subject to, noting that a community visitors grant may also be subject to conditions outlined in the grant agreement.

A community visitors grant is subject to the condition that a body that has been allocated a community visitors grant must not employ or engage a person to be a community visitor unless:

- the body is satisfied that a police certificate, issued for the person not more than three years before that day, does not record that the person has been convicted of murder or sexual assault or convicted of, and sentenced to imprisonment for, any other form of assault; and
- if the person has been, at any time after turning 16, a citizen or permanent resident of a country other than Australia - the person has made a statutory declaration stating that the person has never been convicted of murder or sexual assault or convicted of, and sentenced to imprisonment for, any other form of assault.

This section also states that nothing mentioned in this section affects the operation of Part VIIC of the *Crimes Act 1914*. Part VIIC of the *Crimes Act 1914* deals with aspects of the collection, use and disclosure of old conviction information. The main element of this law is a ‘Spent Convictions Scheme’. The aim of the Scheme is to prevent discrimination on the basis of certain previous convictions, once a waiting period (usually 10 years) has passed and provided the individual has not re-offended during this period. The Scheme also covers situations where an individual has had a conviction quashed or has been pardoned.

Part 5 – Transitional provisions

Section 18 – Applications for grants made, but not decided, before 1 July 2014

Prior to 1 July 2014, the matters described in these Principles were described in the *Residential Care Grant Principles 1997*, the *Advocacy Grant Principles 1997* and the *Community Visitors Grant Principles 1997*.

From 1 July 2014, all of these Principles will be revoked and replaced with these Principles. However it is possible that applications may have been made for grants under the principles described above, but a decision not yet made on the grants.

To ensure that there is certainty regarding which set of principles apply, this section makes it clear that that these Principles apply in respect of any applications for residential care grants, advocacy grants or community visitors grants that were made before 1 July 2014 but not decided by that date.

Section 19 – Expiry of this Part

This section states that Part 5 expires on 30 June 2015.

Statement of Compatibility with Human Rights

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

Grant Principles 2014

The *Grant Principles 2014* (the Principles) 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 Principles set out:

- for residential care grants, the criteria for allocations, the criteria for determining priority between allocations, and the means for working out the amount to be allocated;
- for advocacy grants, the criteria to be used by the Secretary for deciding whether to make a grant, and the way that applicants must be notified of a decision on an application for an advocacy grant; and
- for community visitors grants, the bodies eligible to apply for a community visitors grant, the criteria to be used by the Secretary in deciding whether to make a grant, the way that applicants must be notified of a decision on an application for a community visitors grant, and the conditions of community visitors grants.

Human Rights Implications

The Principles are compatible with 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 25 and article 28 of the Convention on the Rights of Persons with Disabilities.

The Principles promote the right to an adequate standard of living by setting out criteria for allocation of residential care grants to contribute towards the capital works costs of residential care services catering for care recipients including people with special needs and low-means care recipients.

The Principles promote the right to the enjoyment of the highest attainable standard of physical and mental health by setting out criteria for allocation of advocacy grants to bodies for purposes including encouraging understanding of, and knowledge about, the rights of recipients and potential recipients of aged care and enabling care recipients to exercise their rights, including their right to receive quality care appropriate to their needs.

The Principles also promote the right to take part in cultural life as contained in article 15 of the International Covenant on Economic, Social and Cultural Rights by setting out criteria for the allocation of community visitors grants to bodies to facilitate frequent and regular contact with the community by care recipients, and to assist care recipients from particular linguistic or cultural backgrounds to maintain contact with people from similar backgrounds.

Conclusion

This legislative instrument is compatible with human rights as it promotes the human right to an adequate standard of living and the highest attainable standard of physical and mental health and the right to take part in cultural life.

**Senator the Hon Mitch Fifield
Assistant Minister for Social Services**