



Extra Service Principles 2014

I, Mitch Fifield, Assistant Minister for Social Services, make the following principles.

Dated 23 June 2014

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Part 1—Preliminary

1 Name of principles

These principles are the *Extra Service Principles 2014*.

2 Commencement

These principles commence on 1 July 2014.

3 Authority

These principles are made under section 96-1 of the *Aged Care Act 1997*.

4 Definitions

In these principles:

Act means the *Aged Care Act 1997*.

assisted resident has the meaning given by clause 1 of Schedule 1 to the *Aged Care (Transitional Provisions) Act 1997*.

concessional resident has the meaning given by clause 1 of Schedule 1 to the *Aged Care (Transitional Provisions) Act 1997*.

extra service amount has the meaning given by section 58-5 of the *Aged Care (Transitional Provisions) Act 1997*.

GST has the same meaning as in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

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

supported resident has the meaning given by clause 1 of Schedule 1 to the *Aged Care (Transitional Provisions) Act 1997*.

Note: A number of expressions used in these principles are defined in the Act, including the following:

- (a) distinct part;
- (b) extra service agreement;
- (c) extra service status;
- (d) key personnel;
- (e) people with special needs.

5 Meaning of *low-means care recipient*

A care recipient is a **low-means care recipient** on a day if:

- (a) the care recipient is being provided with residential care through a residential care service on that day; and
- (b) either:

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- (i) the care recipient is eligible for accommodation supplement under section 44-28 of the Act for that day; or
- (ii) on the day (the *entry day*) on which the care recipient entered the residential care service, the care recipient's means tested amount was less than the maximum accommodation supplement amount for the entry day.

Note: *Maximum accommodation supplement amount* has the meaning given by subsection 44-21(6) of the Act.

Part 2—Criteria for grant of extra service status

6 Purpose of this Part

This Part specifies:

- (a) for subsection 32-4(2) of the Act—matters to which the Secretary must have regard in considering whether the criteria referred to in paragraphs 32-4(1)(a), (b), (c) and (ca) of the Act are satisfied in relation to an application for extra service status in respect of a residential care service or a distinct part of a residential care service; and
- (b) for paragraph 32-4(1)(e) of the Act—other matters that must be satisfied before the Secretary can grant such an application.

7 Unreasonable reduction of access

- (1) For subsection 32-4(2) of the Act, the matters to which the Secretary must have regard in considering whether the criterion in paragraph 32-4(1)(a) of the Act is satisfied are as follows:
 - (a) the proportion (if any) determined under section 12-5 of the Act as the proportion of residential care that must be provided to low-means care recipients, supported residents, concessional residents and assisted residents in the State, Territory or region concerned;
 - (b) the number of allocated places in the State, Territory or region;
 - (c) the number of extra service places in the State, Territory or region;
 - (d) the estimated number of places in the State, Territory or region providing care mainly or exclusively to people with special needs.
- (2) The Secretary may also have regard to any other relevant matter.

8 Standard of accommodation, services and food

- (1) For subsection 32-4(2) of the Act, the matters to which the Secretary must have regard in considering whether the criterion in paragraph 32-4(1)(b) of the Act is satisfied are as follows:
 - (a) the proposed standard of accommodation, services and food in the relevant residential care service, taken as a whole;
 - (b) in relation to accommodation—the nature of the accommodation, including:
 - (i) the size of care recipients' rooms and communal areas; and
 - (ii) the quality of the fixtures, fittings and furnishings; and
 - (iii) the availability of in-room amenities (including ensuite bathrooms); and
 - (iv) the availability of communal facilities; and
 - (v) the extent of choice of accommodation features (such as choice of sitting areas); and
 - (vi) the extent of choice of amenities offered to care recipients;

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- (c) in relation to services and food—the range, quality, and quantity or frequency of items offered, including the extent of choice offered to care recipients.

- (2) The Secretary may also have regard to any other relevant matter.

9 Applicant's record of conduct as a provider of aged care

- (1) This section applies in relation to an application for extra service status if the applicant has been a provider of aged care.
- (2) For subsection 32-4(2) of the Act, the matters to which the Secretary must have regard in considering whether the criterion in paragraph 32-4(1)(c) of the Act is satisfied in relation to the applicant are as follows:
 - (a) whether, during the 3 years immediately before the application was made, the applicant complied with its responsibilities under Parts 4.1, 4.2 and 4.3 of the Act in respect of aged care services operated by the applicant;
 - (b) if the applicant failed to comply with any of the responsibilities referred to in paragraph (a) during the 3 years referred to in that paragraph:
 - (i) the nature and extent of the non-compliance; and
 - (ii) the impact of the non-compliance on the health, welfare or interests of care recipients; and
 - (iii) the action taken by the applicant to remedy the non-compliance and the effectiveness of that action.
- (3) The Secretary may also have regard to any other relevant matter.

10 Assessment of person with whom applicant has relevant key personnel in common

- (1) This section applies in relation to an application for extra service status if the applicant has relevant key personnel in common with a person (the ***associated person***) who is or has been an approved provider.

Note: Subsection 32-4(4) of the Act provides for the circumstances in which an applicant has relevant key personnel in common with a person who is or has been an approved provider.
- (2) For subsection 32-4(2) of the Act, the matters to which the Secretary must have regard in considering whether the criterion in paragraph 32-4(1)(ca) of the Act is satisfied in relation to the associated person are as follows:
 - (a) whether, during the 3 years immediately before the application was made, the associated person failed to comply with any responsibilities or obligations arising from the receipt of any payments from the Commonwealth for providing aged care;
 - (b) if the associated person failed to comply with any responsibilities or obligations referred in paragraph (a) during the 3 years referred to in that paragraph:
 - (i) the nature and extent of the non-compliance; and
 - (ii) the role of the relevant key personnel in common with the applicant in the non-compliance; and

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- (iii) the role of the relevant key personnel in common with the applicant in any rectification of the non-compliance.

- (3) The Secretary may also have regard to any other relevant matter.

11 Other criteria that must be satisfied

- (1) For paragraph 32-4(1)(e) of the Act, this section specifies other matters that must be satisfied in relation to an application for extra service status.

Diversity of choice for care recipients

- (2) The Secretary must be satisfied that, if the application is granted, there will be a significantly increased diversity of choice for current and future care recipients, and their carers and families, in relation to:
- (a) the different kinds of extra services offered in the region; or
 - (b) the different groups of care recipients who are offered extra services in the region.

Examples for paragraph (2)(a):

Kinds of service may relate to extra service places that offer a greater range of choice as to:

- (a) the type, frequency, variety and quality of services and food available; and
- (b) the relevant fee structures applicable.

Examples for paragraph (2)(b):

Groups of care recipients who are offered extra services include:

- (a) care recipients who are affected by dementia; and
- (b) care recipients who are members of a couple; and
- (c) care recipients who are people with special needs.

Continuity of care

- (3) The Secretary must be satisfied that, if the application is granted, the extra service status would provide current and future care recipients in the region with better access to continuity of care.

Example:

The Secretary may also take into account whether the service has made suitable arrangements for continuity of care for existing care recipients during the transition to extra service status.

Part 3—Conditions of grant of extra service status

Division 1—Additional conditions

12 Purpose of this Division

For subsection 32-8(2) of the Act, this Division specifies additional conditions that are taken to be included in the conditions of a grant of extra service status in respect of a residential care service or a distinct part of a residential care service.

Note: The additional conditions are taken to be included in the conditions set out in the notice given to the applicant for the grant under section 32-9 of the Act (see subsections 32-8(1) and (2) of the Act).

13 Additional conditions

Restrictions on additional charges

- (1) The accommodation, services and food specified in the conditions set out in the notice given under section 32-9 of the Act must be provided to a care recipient who is being provided with care through the residential care service, or the distinct part of the residential care service, without any additional charge, other than:
 - (a) if the care recipient is a continuing residential care recipient—the extra service amount in respect of the care recipient's place in the service; and
 - (b) if the care recipient is not a continuing residential care recipient—the extra service fee approved under Division 35 of the Act for the care recipient's place in the service; and
 - (c) the amount of GST payable, if any, on the supply of a service:
 - (i) that is not a service specified in Schedule 1 to the *Quality of Care Principles 2014*; and
 - (ii) that is provided to the care recipient on an extra service basis under section 36-1 of the Act.

Secretary must be notified that condition is met

- (2) If:
 - (a) the extra service status in respect of the service, or the distinct part of the service, has not become effective; and
 - (b) a condition set out in the notice must be met before the extra service status becomes effective;the approved provider of the service must, at least the required number of days before the day when the provider proposes that the extra service status will become effective, notify the Secretary, in writing, that the provider considers that the service, or the distinct part of the service, will be able to meet the conditions from that day.
- (3) For subsection (2), the required number of days is:
 - (a) if the extra service status is proposed to become effective less than 60 days after the notice is given—7 days; and

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(b) in any other case—28 days.

Care recipients must be offered choice to occupy place on extra service basis

- (4) Each care recipient who is receiving care in the service, or the distinct part of the service, on a non-extra service basis immediately before the extra service status becomes effective must be offered the choice to occupy his or her place on an extra service basis.

Care recipients who do not choose extra service basis care must be treated as non-extra service care recipients

- (5) Each care recipient who is receiving care in the service, or the distinct part of the service, on a non-extra service basis immediately before the extra service status becomes effective:

- (a) may continue to receive care on a non-extra service basis; and
- (b) must be treated as a non-extra service care recipient;

while the care recipient is provided with care through the service if the care recipient does not choose to receive care on an extra service basis.

Division 2—Variation of conditions

14 Purpose of this Division

For subsection 32-8(6) of the Act, this Division sets out a requirement that the Secretary must consider in deciding whether to agree to a variation of the conditions to which a grant of extra service status is subject.

15 Extent of change in accommodation, food and services must be considered

- (1) The Secretary must consider the extent of any change in the level of accommodation, food and services that would result from the proposed variation.
- (2) The Secretary may also consider any other relevant matter.

Part 4—Extra service fees

Division 1—Approval of extra service fees

16 Purpose of this Division

This Division specifies:

- (a) for paragraph 35-1(2)(b) of the Act—requirements that must be met by proposed extra service fees for places included in a residential care service, or a distinct part of a residential service, that has, or is proposed to have, extra service status; and
- (b) for subsection 35-2(1) of the Act—requirements that must be met by certain applications for approval of proposed extra service fees.

17 Requirements that must be met by proposed extra service fees

- (1) The Aged Care Pricing Commissioner must be satisfied, in relation to a proposed extra service fee, that the accommodation, food and services proposed to be provided to a care recipient for the proposed fee have not been included in any other fees or amounts that may be charged by way of an accommodation payment or with the agreement of the care recipient.
- (2) In considering the matters referred to in subsection (1) in relation to a proposed extra service fee, the Aged Care Pricing Commissioner must have regard to the following:
 - (a) the amount of the proposed fee;
 - (b) the food and services that will be provided for the proposed fee;
 - (c) any benefits relating to accommodation that will be provided for the proposed fee.

Examples for paragraph (2)(b):

- (a) food options;
 - (b) entertainment options;
 - (c) enhanced personal services;
 - (d) specific products;
 - (e) organised outings.
- (3) The Aged Care Pricing Commissioner may also consider any other relevant matter.

18 Requirements for certain applications for approval of extra service fees

- (1) This section applies in relation to an application for approval of extra service fees for one or more places included in a residential care service, or a distinct part of a residential care service, if the application is not included in an application under Division 32 of the Act for the grant of extra service status in respect of the service or the distinct part of the service.
- (2) For subsection 35-2(1) of the Act, the application for approval of the extra service fees must be made at least 60 days before the day on which it is proposed that the extra service fees are to take effect.

Division 2—Amount of extra service fee

19 Purpose of this Division

For paragraph 35-3(4)(b) of the Act, this Division provides for how to work out the maximum amount by which an extra service fee may be increased.

20 Maximum amount by which extra service fee may be increased

The maximum amount by which an extra service fee (the *current fee*) may be increased is the sum of:

- (a) 20% of the current fee; and
- (b) the amount by which the current fee would change if it were indexed in accordance with the percentage change in the All Groups Consumer Price Index number (that is, the weighted average of the 8 capital cities) published by the Australian Statistician for the 12 months ending immediately before the application to increase the current fee was made.

Division 3—Other matters

21 Purpose of this Division

For paragraph 95B-1(2)(d) of the Act, this Division confers an additional function on the Aged Care Pricing Commissioner.

22 Disclosure of information to Secretary

It is a function of the Aged Care Pricing Commissioner to disclose to the Secretary:

- (a) the amount of any extra service fee approved by the Aged Care Pricing Commissioner under Division 35 of the Act; and
- (b) the residential care service in respect of which the extra service fee was approved; and
- (c) the accommodation, food and services that are to be provided to a care recipient for the approved fee; and
- (d) the date on which the approval was given; and
- (e) any other information relating to approved extra service fees required by the Secretary to assist the Secretary to perform a function or duty, or exercise a power, under the Act or the *Aged Care (Transitional Provisions) Act 1997*.

Part 5—Extra service agreements

Division 1—Entering extra service agreements

23 Purpose of this Division

For subsection 36-2(2) of the Act, this Division sets out requirements that must not be contravened in entering into an extra service agreement with a care recipient.

24 Requirements that must not be contravened

The following requirements must not be contravened:

- (a) the care recipient must be informed of, and helped to understand, the terms of the extra service agreement;
- (b) the extra service agreement must be expressed in plain language and be readily understandable by the care recipient.

Division 2—Contents of extra service agreements

25 Purpose of this Division

For paragraph 36-3(2)(a) of the Act, this Division sets out provisions that must be contained in an extra service agreement.

26 Provisions that must be contained in extra service agreements

- (1) An extra service agreement must contain provisions that are in accordance with the policy stated in subsections (2) to (5).
- (2) If the extra service status of the residential care service, or the distinct part of the residential care service, through which the care recipient is provided with care is revoked or suspended, the approved provider must not charge the care recipient the extra service amount in respect of the care recipient's place for any period after the revocation or during the suspension.
- (3) The extra service agreement may be varied:
 - (a) by the approved provider, if:
 - (i) the variation is necessary to implement the *A New Tax System (Goods and Services Tax) Act 1999*; and
 - (ii) the approved provider has given reasonable notice in writing about the variation to the care recipient; or
 - (b) in any other case, by the mutual consent of the care recipient and the approved provider, expressed in writing and signed by the parties.However, the agreement must not be varied in a way that is inconsistent with the *A New Tax System (Goods and Services Tax) Act 1999*, the *Aged Care Act 1997*, the *Aged Care (Transitional Provisions) Act 1997* or these principles.
- (4) The extra service fee paid by the care recipient cannot be increased unless the care recipient is notified in writing of the proposed increase at least 30 days before the proposed increase is to take effect.
- (5) The extra service agreement is terminated if:
 - (a) the care recipient ceases to be provided with care in the extra service place (other than by going on leave); or
 - (b) the extra service status for the residential care service, or the distinct part of the residential care service, through which the care recipient is provided with care ceases to have effect.

Note: Residential care may not be provided other than on an extra service basis to a care recipient through a residential care service, or a distinct part of a residential care service, that has extra service status except if:

- (a) the care recipient was being provided with care through the service, or the distinct part of the service, immediately before the extra service status became effective; and
- (b) the care recipient does not enter into an extra service agreement or terminates an extra service agreement within 3 months after the date of effect of the agreement.

See paragraph 32-8(3)(b) and section 36-4 of the Act.