

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

Aged Care (Transitional Provisions) Act 1997

Aged Care (Transitional Provisions) Amendment (Removal of Certification and Other Measures) Principles 2015

The *Omnibus Repeal Day (Autumn 2014) Act 2014* amended the *Aged Care Act 1997* (the Act) and the *Aged Care (Transitional Provisions) Act 1997* (TP Act) to repeal the requirement for residential care services to be certified. The repeal of the certification provisions occurred as part of the Government's red tape reduction agenda.

Certification requirements under the Act were duplicative, in that a number of these requirements replicated building regulations administered by state, territory and local governments. Aspects of certification under the Act also replicated certain requirements under the Accreditation Standards administered by the Australian Aged Care Quality Agency.

The *Aged Care (Transitional Provisions) Amendment (Removal of Certification and Other Measures) Principles 2015* (Amending Principles) address consequential changes required as a result of the repeal of certification from the Act and the TP Act, and unrelated unintended drafting errors made in the *Aged Care (Transitional Provisions) Principles 2014*.

The Amending Principles remove obsolete references to certification from the conditions of eligibility for the accommodation charge top-up supplement, and conditions relating to accommodation bonds and accommodation charges.

For the purposes of eligibility for the concessional resident supplement, it is necessary to distinguish between care recipients who entered a service after it was certified and those who entered before. The Amending Principles address this matter.

In addition, the Amending Principles make technical corrections in relation to the accommodation and concessional resident supplements and correct minor technical errors in relation to the veterans' and homeless supplements that arise due to the *Aged Care and Other Legislation Amendment Act 2014*.

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

Commencement

These Amending Principles commence the day after they are registered on the Federal Register of Legislative Instruments.

Reliance on subsection 33(3) of the *Acts Interpretation Act 1901*

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke,

amend, or vary any such instrument.

Consultation

The amendments in Part 1 are consequential amendments that flow from the *Omnibus Repeal Day (Autumn 2014) Act 2014*. As such no specific consultations were undertaken in regard to the changes in this instrument.

The amendments in Part 2 make technical corrections, while Part 3 makes minor technical amendments. As Part 2 and Part 3 are of a machinery nature and do not substantially alter existing arrangements no consultation has occurred (section 18, *Legislative Instruments Act 2003*).

Regulation Impact Statement

The Office of Best Practice Regulation has advised that no Regulation Impact Statement is required in respect of the repeal of certification requirements (OBPR ID: 16379) or the technical corrections to the amount of concessional resident supplement (OBPR ID: 17938) or accommodation supplement payable (OBPR ID: 17541).

Details of the *Aged Care (Transitional Provisions) Amendment (Removal of Certification and Other Measures) Principles 2015*

Clause 1 states that the name of the instrument is the *Aged Care (Transitional Provisions) Amendment (Removal of Certification and Other Measures) Principles 2015*.

Clause 2 sets out the commencement date of the Amending Principles.

Clause 3 provides that the authority for the making of the instrument is section 96-1 of the *Aged Care (Transitional Provisions) Act 1997*.

Clause 4 provides that 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 – Amendments

Part 1 – Amendments relating to removal of certification

Aged Care (Transitional Provisions) Principles 2014

Item 1 – Section 4

This item inserts a definition for ‘certified’, which allows the TP Principles to deal with certification matters for transitional residents, such as concessional residents and assisted residents.

Items 2 and 3 – section 33

These items make technical corrections to clarify the eligibility requirements for the transitional supplement in light of the repeal of certification on 17 October 2014 by the *Omnibus Repeal Day (Autumn 2014) Act 2014*. These amendments ensure continuity with previous arrangements by ensuring the certification amendments made on 17 October 2014 do not alter eligibility for the transitional supplement. The new subsection 33(2) provides that whether a care recipient entered care before 17 October 2014 will determine whether or not transitional supplement should be paid for a day.

These items do not affect eligibility for the transitional supplement during the period of 17 October 2014 to the date of registration. The calculation and payment of transitional supplement according to new subsection 33(2) will only commence from the date of commencement and not from 17 October 2014.

Item 4 – Paragraph 35(b)

This item repeals the paragraph and removes the requirement for the service to be certified, as the requirement for certification was repealed in the *Omnibus Repeal Day (Autumn 2014) Act 2014*.

Item 5 – Sections 100, 103, and 110

This item repeals sections 100, 103 and 110 as the sections refer to situations where the residential care service is suspended due to certification matters.

Item 6 – Clause 1 of Schedule 1

This item repeals definitions of ‘Building Code of Australia’ and ‘fire and safety requirements’ as they are no longer required as they were only relevant to sections that were previously repealed in the *Omnibus Repeal Day (Autumn 2014) Act 2014*.

Item 7 – Clause 2 of Schedule 1

This item repeals the clause as it relates to matters considered as part of the Certification Principles 1997, which have been repealed as a result of the changes made in the *Omnibus Repeal Day (Autumn 2014) Act 2014*.

Part 2 – Amendments relating to primary supplements***Aged Care (Transitional Provisions) Principles 2014*****Item 8 – Section 4**

This item inserts a definition for ‘newly built residential care service’. This term is needed for Items 10 and 12 below.

Item 9 – Section 4 (definition of new resident)

This item repeals the definition of ‘new resident’, as the term is no longer required.

Item 10 – Section 4

This item inserts definitions for ‘relevant resident’ and ‘significantly refurbished residential care service’. These terms are needed for Items 12 and 14 below.

Item 11 – Subsection 19(1)

This item clarifies that the type of residential care referred to in this subsection that is to be provided by the residential care service to the care recipient is residential care other than respite care or care provided on an extra service basis.

Item 12 – Paragraph 19(1)(a) and (b)

This item makes technical corrections to clarify the operation of the accommodation supplement, by repealing the paragraphs and substituting new paragraphs (a) to (d).

Item 13 – Subsection 19(2)

This item repeals the subsection as a result of Item 12 above.

Item 14 – Section 20

This item repeals the section and substitutes a new section 20. The section clarifies the matters on which the Minister may base a determination of different amounts (including nil amounts) for concessional resident supplements.

Part 3 – Technical amendments

Aged Care (Transitional Provisions) Principles 2014

Item 15 – Section 29

This item clarifies that the reference is to the TP Act.

Items 16 and 17 – Sections 59 and 62

These items correct the references from paragraph 44-27(e) to paragraph 44-27(1)(e) of the TP Act required as a result of the *Aged Care and Other Legislation Amendment Act 2014*.

Items 17 and 18 – Section 61 and 64

These items repeal the sections as they now duplicate the provisions of subsection 44-27(3) of the TP Act. The duplication arises because of the *Aged Care and Other Legislation Amendment Act 2014*.

Statement of Compatibility with Human Rights

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

Aged Care (Transitional Provisions) Amendment (Removal of Certification and Other Measures) Principles 2015

This *Aged Care (Transitional Provisions) Amendment (Removal of Certification and Other Measures) Principles 2015* is 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 Legislative Instrument

The *Aged Care (Transitional Provisions) Amendment (Removal of Certification and Other Measures) Principles 2015* removes certification references in the *Aged Care (Transitional Provisions) Principles 2014*, clarifies the matters on which the Minister may determine the amount, or method to calculate the amount, of accommodation supplement and concessional resident supplement, and makes minor technical amendments to rectify errors in references in the *Aged Care (Transitional Provisions) Principles 2014* that arise due to the *Aged Care and Other Legislation Amendment Act 2014*.

Human Rights Implications

The legislative instrument is compatible with the right to an adequate standard of living contained in article 11 of the International Covenant on Economic, Social and Cultural Rights. Aged care facilities must continue to comply with state and territory building requirements.

The legislative instrument is also 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 Amending Principles continue to enable the payment of supplements to approved providers for the provision of care and services to people with a condition of frailty or disability who require assistance to achieve and maintain the highest attainable standard of physical and mental health.

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.

Senator the Hon Mitch Fifield
Assistant Minister for Social Services