

User Rights Amendment (Various Measures) Principle 2013

FRLI: F2013L01352

Portfolio: Health

Tabled: House of Representatives and Senate, 12 November 2013

Summary of committee concerns

2.241 The committee seeks further information in order to assess this instrument's compatibility with the right to health and the right to an adequate standard of living.

Overview

2.242 This instrument makes changes to the User Rights Principles 1997 in response to the introduction of 'home care' under the *Living Longer Living Better* aged care reforms. Among other things, the instrument removes references to 'community care', which has been replaced by home care, and replaces these with references to 'home care'; and broadens the permitted uses for accommodation bonds for capital funding for investment in building stock.

2.243 The instrument also expands the power of an approved provider of home care to reallocate a care recipient's place. This amendment enables an approved provider to reallocate the care recipient's place to another care recipient if:

- (e) the care recipient does not meet his or her responsibilities, as described in Schedule 2 – Charter of rights and responsibilities for home care,¹⁸¹ for a reason within the care recipient's control.¹⁸²

Compatibility with human rights

Statement of compatibility

2.244 The instrument is accompanied by a statement of compatibility that states that it is compatible with the right to health,¹⁸³ the right to an adequate standard of living,¹⁸⁴ and the right to access to information.¹⁸⁵

2.245 The statement notes that the instrument will limit the rights of recipients of home care by permitting an approved provider to reallocate a care recipient's place in a home care service to another person if the care recipient does not meet his or

181 See <http://www.health.gov.au/communitycharter>.

182 Item 8, which inserts new section 23.21(e) into the User Rights Principles 1997.

183 Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and article 25 of the Convention on the Rights of Persons with Disabilities.

184 Article 11(1) of the ICESCR and article 28 of the CRPD.

185 Article 21 of the CRPD.

her responsibilities, 'for example by abusing care workers or by not paying care fees for a reason within the care recipient's control'.¹⁸⁶ It suggests that:

This amendment balances the rights of care recipients to health and to an adequate standard of living with the rights of others, such as care workers, that may be limited if a care recipient does not meet his or her responsibilities.

2.246 The statement of compatibility concludes that the limitation is therefore reasonable, necessary and proportionate.

Committee view on compatibility

Right to health/right to an adequate standard of living

2.247 The committee notes that the reallocation of home care services has the potential to result in significant limitations on a care recipient's right to health and their right to an adequate standard of living.

2.248 The committee recognises the importance of ensuring the protection of the rights of care workers and others in a home care environment. However, the committee is concerned that the reallocation of a care recipient's place may not always be a proportionate response to a failure to meet the responsibilities as set out in the *Charter of Rights and Responsibilities for Home Care* in schedule 2 to the User Rights Principles. The committee notes that the standards contained in the *Charter* are expressed in very broad and general terms, which would appear to give home care providers substantial latitude in their interpretation and application.

2.249 The committee intends to write to the Minister for Health to seek clarification as to how the limitation is compatible with the right to health and an adequate standard of living. In particular, the committee seeks clarification regarding:

- **the criteria that will be applied for determining when a care recipient has breached their *Charter* responsibilities with the consequence that their place in a home care service is reallocated;**
- **the mechanisms available for a care recipient to appeal or seek review of a decision to reallocate their place in a home care service.; and**
- **what, if any, assistance will be provided to a care recipient to find suitable alternative accommodation.**

186 Statement of compatibility, p 11.