



*Aged Care Act 1997*

## **Allocation Principles 1997**

I, JUDI MOYLAN, Minister for Family Services, make the following Principles under subsection 96-1 (1) of the *Aged Care Act 1997*.

Dated *24. 9.* 1997.

A handwritten signature in cursive script that reads 'Judi Moylan'.

Minister for Family Services

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*Aged Care Act 1997*

## **Allocation Principles 1997**

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*Aged Care Act 1997*

## **Allocation Principles 1997**

### **Note: Part 2.2 of the Aged Care Act 1997**

Part 2.2 of the *Aged Care Act 1997* is about the allocation of places through which aged care is provided. An approved provider can receive subsidy under Chapter 3 of the Act only for providing aged care in respect of which a place has been allocated.

Places are distributed between regions, after which applications for allocation are made and the places allocated to successful approved providers. An explanation of the allocation process can be found in section 11-4 of the Act.

The Allocation Principles deals with a number of aspects of the allocation process.

### **Part 1—Preliminary**

#### **4.1 Citation**

These Principles may be cited as the *Allocation Principles 1997*.

#### **4.2 Commencement**

These Principles commence on 1 October 1997.

## Part 2—Interpretation

### 4.3 Definitions

In these Principles:

*Act* means the *Aged Care Act 1997*.

*chairperson*, for a committee, means chairperson of the committee.

*committee* means an Aged Care Planning Advisory Committee established under subsection 12-7 (1) of the Act.

*government officer* means an officer or employee of the Commonwealth or a State.

*key personnel*, for an approved provider, has the same meaning as in subsection 9-1 (2) of the Act.

*person with financial hardship* has the meaning given by section 4.4.

*planning objectives* means the objectives of the aged care planning process mentioned in section 12-2 of the Act.

*State* includes a Territory.

*Note:* The planning objectives relate to providing an open and clear planning process, identifying community needs, and allocating places in a way that best meets the identified needs of the community.

#### Note: Definitions

A number of expressions used in these Principles are defined in the *Aged Care Act 1997* (see Dictionary in Schedule 1), including:

- accommodation bond balance
- aged care
- approved provider
- care
- place
- provisional allocation
- provisional allocation period
- relinquish
- residential care
- respite care.

#### 4.4 Meaning of *person with financial hardship*

- (1) A person is a *person with financial hardship* if:
  - (a) the person:
    - (i) has paid an ongoing fee for the first provision of community care from an approved provider under the Act; or
    - (ii) has paid an ongoing fee for the first provision of community aged care services from a provider under the *Aged or Disabled Persons Care Act 1954*; or
    - (iii) has received care of the kind mentioned in subparagraph (i) or (ii) without paying a fee; and
  - (b) meets the criteria in subsection (2) or (3).
- (2) The person did not own a home in the 2 years before the reference time, and at the reference time:
  - (a) was in receipt of the maximum basic rate of pension or benefit under Part 2.2, 2.3, 2.4 or 2.15 of the *Social Security Act 1991*; or
  - (b) both:
    - (i) was in receipt of the rate of pension payable under Part III of the *Veterans' Entitlements Act 1986*; and
    - (ii) had additional income (within the meaning of section 8 of the *Social Security Act 1991*) not more than the ordinary free limit allowed to a person in receipt of the maximum basic rate of pension or benefit under Part 2.2, 2.3, 2.4 or 2.15 of the *Social Security Act 1991*.
- (3) The person does not meet the criteria in subsection (2), but a provider, or approved provider, has notified the Department that the person may be in financial hardship, taking into account the person's income (within the meaning of section 8 of the *Social Security Act 1991*) and assets.
- (4) The *reference time* for the person is the time when the person:
  - (a) paid the fee mentioned in subparagraph (1) (a) (i) or (ii); or
  - (b) first received the care mentioned in subparagraph (1) (a) (iii).



## Part 3—Planning the allocation of places

### *Division 1—Distributing available places among regions*

#### **4.5 Purpose of Division (Act, s 12-4)**

The purpose of this Division is to specify a requirement with which the Secretary must comply in distributing for a financial year, for each type of subsidy, the places available for allocation in a State among the regions within the State.

*Note:* Regions are determined under section 12-6 of the Act.

#### **4.6 Requirement**

If the Secretary has asked an Aged Care Planning Advisory Committee for advice about the distribution of the places, the Secretary must have regard to the advice in distributing the places.

### *Division 2—Determining proportion of care: other kinds of people*

#### **4.7 Purpose of Division (Act, s 12-5)**

The purpose of this Division is to specify a kind of people for whom, for each type of subsidy, the Secretary may determine for the places available for allocation the proportion of care that must be provided.

#### **4.8 Specification**

People with financial hardship are specified.

*Division 3—Criteria for determining proportion of care*

**4.9 Purpose of Division (Act, s 12-5)**

The purpose of this Division is to specify the criteria the Secretary must consider in determining the proportion of care that must be provided to 1 or more of the groups of people mentioned in subsection 12-5 (1) of the Act.

**4.10 The criteria**

The Secretary must consider the following criteria:

- (a) the need for places in each region for people who are in those groups;
- (b) the current service provision levels, including provisional allocations for people who are in the groups;
- (c) the existing provision of extra service status places in each region;
- (d) the need to distribute places equitably in each region, and in each State, as far as practicable.

## **Part 4—Aged care planning advisory committees**

### *Division 1—General*

#### **4.11 Purpose of Part (Act, s 12-7)**

This Part specifies, for Aged Care Planning Advisory Committees:

- (a) the committees' functions; and
- (b) the committees' membership; and
- (c) other matters relevant to the committees' operations.

### *Division 2—Function of committees*

#### **4.12 Function**

A committee's function is to advise the Secretary on the distribution of places among regions for different types of subsidy and proportions of care.

#### **4.13 Performance of function**

In performing its function, a committee must act with as little formality and as quickly as the requirements of these Principles, and a proper consideration of the issues before the committee, allow.

### *Division 3—Powers*

#### **4.14 Powers**

A committee may do anything necessary or convenient to be done for, or in connection with, performing its function.

*Division 4—Giving advice to Secretary***4.15 Advice about distribution of places among regions**

- (1) If the Secretary requests advice from a committee about the distribution of places among the regions within a State, the committee must assess, and report to the Secretary on, the extent and priority of need among the regions.
- (2) In advising the Secretary, the committee must take the following matters into account:
  - (a) the planning objectives;
  - (b) the findings of any relevant working party it establishes to investigate the needs of particular regions or groups of people;
  - (c) demographic and other statistical data on the balance of care in each region;
  - (d) relevant information obtained by the committee from local and regional sources.

**4.16 Advice about making of certain determinations**

- (1) This section applies if the Secretary requests advice from a committee about the making of determinations under section 12-5 of the Act.

*Note:* Under section 12-5 of the Act, the Secretary may, for each type of subsidy, determine for the places available for allocation the proportion of care that must be provided to stated groups of people: see Part 3 of these Principles.
- (2) The committee must do the following things, and provide advice to the Secretary about them:
  - (a) identify community needs, including the needs of particular groups nominated by the committee;
  - (b) rank the identified needs in priority order;
  - (c) consider the types of care that should be provided in particular regions;
  - (d) consider the most appropriate proportion of places for the different groups of people mentioned in subsection 12-5 (1) of the Act.
- (3) In advising the Secretary, the committee must take into account Government policy and the planning objectives.

*Division 5—Membership of committees***4.17 Members**

- (1) A committee consists of a chairperson and at least 7, and not more than 10, other members.
- (2) The members of a committee are to be appointed by the Secretary.

- (3) The chairperson must be an officer of the Department.
- (4) The chairperson must appoint an officer of the Department to act as chairperson in the chairperson's absence.
- (5) At least 1 member of a committee, other than the chairperson, must be a government officer who has experience in the administration or delivery of aged care services by the Commonwealth or a State.
- (6) At least 6 members of a committee (the *non-government members*) must not be government officers.

#### **4.18 Qualifications for appointment**

- (1) In choosing a person for appointment as a member of a committee, the Secretary must have regard to the person's:
  - (a) personal knowledge of, and experience in, the delivery of aged care; and
  - (b) ability to contribute to the planning of aged care and give effective advice to the Secretary.
- (2) A person must not be chosen for appointment as a member of a committee solely on the basis of the person's capacity to represent a particular body or group.
- (3) The Secretary must ensure, as far as practicable, that the non-government members of a committee, between them, have knowledge of, or experience in, each of the following:
  - (a) the operations of aged care providers;
  - (b) aged care services from the perspective of consumers of the service;
  - (c) the delivery of aged care to people from culturally or linguistically diverse backgrounds;
  - (d) the delivery of aged care services to people from Aboriginal and Torres Strait Islander communities;
  - (e) the delivery of aged care services to people living in rural and remote areas;
  - (f) the delivery of aged care services to ex-servicemen and ex-servicewomen.

#### **4.19 Term of appointment**

- (1) The Secretary must not appoint a person as a member of a committee for a term of more than 2 years.
- (2) However, a member is eligible for reappointment.

#### **4.20 Resignation**

A member may resign by signed notice of resignation given to the Secretary.

#### **4.21 Termination of appointment**

The Secretary may terminate the appointment of a member if the member:

- (a) engages in misconduct; or
- (b) becomes incapable of performing the duties of a member because of physical or mental incapacity; or
- (c) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors, or makes an assignment of his or her remuneration for their benefit; or
- (d) is convicted of an offence punishable by imprisonment for 1 year or longer; or
- (e) is absent without leave from 2 consecutive meetings of the committee; or
- (f) contravenes section 4.25 or 4.29.

*Note:* Section 4.25 deals with improper use of committee information, and section 4.29 deals with disclosure of interests.

#### **4.22 Leave of absence**

- (1) The Secretary may grant leave of absence to the chairperson of a committee.
- (2) The chairperson of a committee may grant leave of absence to another member.

### *Division 6—Other committee matters*

#### **4.23 Administration**

- (1) The chairperson of a committee is responsible for the committee's general administration.
- (2) The chairperson is, for example, responsible for:
  - (a) calling meetings of the committee; and
  - (b) ensuring that meetings allow sufficient time for members to develop planning strategies, develop recommendations, and review the outcome of previous recommendations; and
  - (c) ensuring that working parties and subcommittees of the committee have clear terms of reference and have a schedule for finishing their tasks and reporting back to the committee.
- (3) The Secretary must arrange for assistance (for example, secretarial services) to be given to a committee to enable it to carry out its function effectively and efficiently.

**4.24 Impartiality of committee**

- (1) A member of a committee is not subject to the direction of anyone else in relation to anything done in his or her capacity as a member.
- (2) A person invited to attend a meeting of a committee to advise or inform it about anything is not subject to the direction of anyone else in relation to the advice or information provided to the committee.

**4.25 Improper use of committee information**

- (1) This section applies to:
  - (a) a person who is or has been:
    - (i) a member of a committee; or
    - (ii) invited to attend a committee meeting to advise or inform it about anything; and
  - (b) information acquired by the person because the person is a person to whom this section applies, including:
    - (i) information identifying a care recipient, approved provider or aged care service; or
    - (ii) information in a document given to the committee; or
    - (iii) information about the committee's deliberations; or
    - (iv) advice or other information given, or a recommendation made, by the committee.
- (2) The person must not use the information for personal or corporate gain, or disclose or communicate it to any of the following people:
  - (a) an approved provider;
  - (b) a person wishing to become an approved provider;
  - (c) one of the key personnel of an approved provider;
  - (d) a person who would be 1 of the key personnel of a person wishing to become an approved provider if the person were an approved provider.

**4.26 Meetings**

- (1) The chairperson of a committee must ensure that the committee meets at least twice each year.
- (2) The chairperson may, at any time, by written notice to the other members, call a meeting at the time and place stated in the notice.
- (3) The Secretary may, by written notice to the members, direct that a meeting be held at the time and place stated in the notice.
- (4) If, at any time, a majority of the members of a committee asks, by written notice given to the chairperson, that the chairperson call a meeting, the chairperson must, as soon as practicable, call a meeting.

- (5) Subject to these Principles, the procedure of a meeting is to be decided by the committee.
- (6) The chairperson may invite a person, other than an applicant for the allocation of places, to attend a committee meeting to advise or inform the committee about anything.

#### **4.27 Presiding member**

- (1) The chairperson of a committee must preside at a meeting at which he or she is present.
- (2) If the chairperson is absent, the member chosen by the members present must preside.

*Note:* The chairperson includes a person acting as chairperson under subsection 4.17 (4): see *Acts Interpretation Act 1901*, s 33A (e).

#### **4.28 Quorum**

At a meeting of a committee, a majority of members forms a quorum.

#### **4.29 Disclosure of interests**

- (1) This section applies to a member of a committee, or a person invited to attend a meeting of a committee to inform or advise it about anything, if:
  - (a) the person has a direct or indirect financial interest in an issue being considered, or about to be considered, by the committee; and
  - (b) the interest could conflict with the proper performance of the person's duties in relation to the issue.
- (2) As soon as practicable after the relevant facts come to the person's knowledge, the person must disclose the nature of the interest to a meeting.
- (3) The disclosure must be recorded in the committee's minutes and, unless the committee otherwise decides, the person must not:
  - (a) be present when the committee considers the issue; or
  - (b) take part in a decision of the committee on the issue.
- (4) A member who also has a direct or indirect financial interest in the issue must not:
  - (a) be present when the committee is considering its decision under subsection (3); or
  - (b) take part in making the decision.

#### **4.30 Voting**

- (1) A question arising at a meeting of a committee must be decided by a majority of the votes of the members present and voting.



- (2) In voting to make a recommendation to the Secretary:
  - (a) each member of the committee present at the meeting has a deliberative vote; and
  - (b) the presiding member also has a casting vote.
- (3) If the committee votes to make a recommendation, the chairperson must send the recommendation to the Secretary and to the Department's office in the relevant State as soon as practicable.

#### **4.31 Resolutions without meeting**

If:

- (a) a majority of the members of a committee agree, in writing, to a proposed resolution; and
- (b) notice of the proposed resolution was given under procedures approved by the committee;

the resolution is a valid resolution of the committee, even though it was not passed at a meeting.

#### **4.32 Proceedings**

A committee must keep a record of its proceedings.

#### **4.33 Reports and recommendations**

A report of a committee and, any recommendations that the committee is directed to make, must:

- (a) be in writing; and
- (b) if the members did not agree about an issue—state the differing points of view of the members.

#### **4.34 Subcommittees and working groups**

- (1) A committee may establish working parties or subcommittees to investigate:
  - (a) the needs of particular regions or groups of people; or
  - (b) particular issues of concern to it.
- (2) A working party may include people who are not members of the committee.
- (3) The following sections apply to a working party or subcommittee (and its members) in the same way as they apply to a committee (and its members):
  - section 4.24 (Impartiality of committee)
  - section 4.25 (Improper use of committee information)
  - section 4.29 (Disclosure of interests).

## Part 5—The allocation process

### *Division 1—Assessment of applications*

#### **4.35 Purpose of Division (Act, s 14-2)**

This Division sets out additional matters that the Secretary must consider, in relation to each application for the allocation of places, in deciding which allocation of places would best meet the needs of the aged care community in a region.

#### **4.36 The applicant**

- (1) For the allocation of places in respect of any type of subsidy, the Secretary must consider whether the applicant:
  - (a) is of good character and reputation; and
  - (b) has the necessary ability to provide, and experience in providing, care for care recipients of the aged care service, including care recipients needing special attention and care recipients who are people with special needs; and
  - (c) is able to manage the aged care service in accordance with sound economic principles; and
  - (d) is able to comply with the conditions to which approvals and grants under the Act are subject; and
  - (e) is able to meet the needs and characteristics of the community in the region.
- (2) For the allocation of places in respect of residential or flexible care, the Secretary must also consider whether the applicant is able to provide:
  - (a) the amount of respite care that is necessary to achieve the planning objectives; and
  - (b) for concessional residents at the level required to meet the needs of the local community.
- (3) For the allocation of places in respect of any type of subsidy, the Secretary must consider whether there are any relationships between the applicant and community organisations in the region, and, if so, the nature of the relationship.

*Note:* The applicant must be an approved provider. The suitability of the applicant to provide aged care is assessed as part of that approval process (see Act, s 8-3).

**4.37 The application—community care**

- (1) This section applies to the allocation of places in respect of community care.
- (2) The Secretary must consider the measures that the applicant proposes to take:
  - (a) in accordance with Parts 4.1 and 4.2 of the Act; and
  - (b) to maintain the rights of individual care recipients; and
  - (c) to provide an economically viable service; and
  - (d) to ensure quality of care; and
  - (e) to ensure that each care recipient is given a planned and coordinated package of care services designed to meet the recipient's needs; and
  - (f) to ensure ongoing consumer consultation and involvement in the provision of care; and
  - (g) to provide ongoing assessment and review of care needs.
- (3) The Secretary must also consider:
  - (a) the extent to which the applicant will:
    - (i) give support for the social functioning of care recipients; and
    - (ii) be able to meet the timetable stated in the application for implementing the provision of aged care; and
  - (b) whether the applicant has carried out adequate community consultation about the aged care service.

**4.38 The application—other care**

- (1) This section applies to the allocation of places in respect of care other than community care.
- (2) The Secretary must consider the measures that the applicant proposes to take:
  - (a) in accordance with Parts 4.1 and 4.2 of the Act; and
  - (b) to protect the rights and freedoms of care recipients, and to maintain their independence; and
  - (c) to provide an economically viable service; and
  - (d) to ensure quality of care; and
  - (e) to provide accommodation and care services that meet the particular needs of individual care recipients; and
  - (f) to provide accommodation and care for care recipients with special needs; and
  - (g) to provide assessment services for care recipients; and
  - (h) in evaluation programs for care recipients.
- (3) The Secretary must also consider:
  - (a) the extent to which the applicant will:
    - (i) provide a non-institutional environment in which care recipients will be encouraged to keep personal possessions; and

- (ii) give support for the social functioning of care recipients, including maintaining contact with family, friends and the community, and providing recreational activities; and
  - (iii) be able to meet the timetable stated in the application for implementing the provision of aged care; and
  - (iv) be able to supply varying levels of care relevant to the needs of care recipients; and
  - (b) the criteria that the applicant proposes to use for the admission of people to the aged care service (for example, whether the applicant would only admit people from a particular area); and
  - (c) whether the applicant has carried out adequate community consultation about the aged care service.
- (4) In considering the measures that the applicant proposes to take to provide an economically viable service, the Secretary must have regard, in particular, to the capital and operating costs of the aged care service.

#### **4.39 Reorganisation of aged care**

If the application involves a reorganisation of a form of aged care (including, for example, the reorganisation of the care or accommodation provided by an existing aged care service), the Secretary must also consider the opportunity for rationalising the overall provision of aged care between regions in the State concerned.

*Examples of opportunities:*

1. Moderating increases in the number of places.
2. Achieving a more equitable geographic distribution of places.
3. Providing particular forms of care for care recipients who need the forms of care.
4. Replacing, closing or upgrading substandard aged care services.

#### **4.40 Links with an individual or body who assesses care needs**

In addition, the Secretary must consider whether the approved provider has links with an individual or body to whom the Secretary has delegated power under Part 2.3 of the Act for the assessment of the needs of potential care recipients.

#### **4.41 Secretary may also consider other matters**

The Secretary may also consider any other matters.

*Division 2—Conditions of allocation—generally***4.42 Purpose of Division (Act, s 14-6)**

This Division sets out conditions that the Secretary must determine for allocations of places to an approved provider generally.

**4.43 Conditions—generally**

- (1) The Secretary must determine conditions to the following effect:
- (a) that a care recipient cannot be discharged and readmitted to attract concessional resident supplement or enable a service to charge the care recipient an accommodation bond;
  - (b) that an aged care service will be recognised as a new service only if the service relocates to:
    - (i) a facility built for the service's relocation; or
    - (ii) a location that has no part of its catchment area in common with the catchment area of the location from which it moves;
  - (c) that Part III of Determination No. ADPCA 10F 3/1995 made under the *Aged or Disabled Persons Care Act 1954*, as in force on 30 September 1997, applies to a care recipient who was a resident of an approved hostel under that Act on that date.

*Examples of circumstances in which a service will not be recognised as a new service:*

- 1. A change of approved provider for the service
  - 2. A change in the number of places allocated to the service
  - 3. A temporary relocation of the service
  - 4. An amalgamation of co-located services.
- (2) However, the Secretary may determine other relevant conditions.

*Division 3—Conditions of allocation—community care places***4.44 Purpose of Division (Act, s 14-6)**

This Division sets out conditions that the Secretary must determine for allocations of places to an approved provider in respect of community care.

**4.45 Conditions—community care places**

- (1) The Secretary must determine conditions to the following effect:
  - (a) that the approved provider must enter into an agreement with the Secretary, for the Commonwealth, containing provisions for the management of the places;
  - (b) that the approved provider must comply with the agreement;
  - (c) that the approved provider must average the proportion of care (if any) mentioned in the agreement over the first financial year starting after the allocation is made, and over later years.
- (2) If the agreement, or the notification of the allocation, states a class of people to whom the approved provider must provide community care, the Secretary must also determine a condition to the effect that the approved provider will give those people priority of access to the community care.
- (3) However, the Secretary may also determine other relevant conditions.

*Division 4—Conditions of allocation—proportion of care for respite care recipients***4.46 Purpose of Division (Act, s 14-6)**

This Division specifies matters to which the Secretary must have regard in determining conditions, for allocation of places, dealing with the proportion of care to be provided to recipients of respite care.

**4.47 The matters**

- (1) The Secretary must have regard to the following matters before determining the conditions:
  - (a) the demand in the region concerned for respite care;
  - (b) the demand in the region for permanent care;
  - (c) the needs of carers and care recipients;
  - (d) equity in the respite care provided in different regions.
- (2) However, the Secretary may also have regard to any other matter relevant to the effective provision of respite care.

## Part 6—When allocations take effect

### *Division 1—When allocations take effect*

#### **4.48 Purpose of Division (Act, s 15-1)**

This Division sets out matters to which the Secretary must have regard in deciding whether to determine that an approved provider is in a position to provide care, in respect of places allocated to the approved provider, for which subsidy under Chapter 3 may be paid.

#### **4.49 The matters**

- (1) If the allocation is of places in respect of community care, the Secretary must have regard to whether the approved provider has entered into an agreement with the Secretary, for the Commonwealth, containing provisions for the management of the places.

*Note:* The agreement is mentioned in paragraph 4.45 (1) (a).

- (2) If the allocation is of places in respect of residential care, the Secretary must have regard to:
  - (a) whether the approved provider has received all appropriate certificates and advice, from authorities in the State where the provider's aged care service is located, that the service's premises can be occupied; and
  - (b) whether the approved provider has applied for accreditation of the provider's service, and paid all application fees; and
  - (c) whether the approved provider has registered with the scheme manager, or an approved sponsoring organisation, as part of the prudential requirements of the *User Rights Principles 1997*; and
  - (d) whether the approved provider has made arrangements for the efficient management and operation of the service; and
  - (e) the results of any inspection of the provider's premises by officers of the Department.
- (3) However, the Secretary may also have regard to any other relevant matter.

*Division 2—Granting extensions***4.50 Purpose of Division (Act, s 15-7)**

This Division specifies requirements that must be met for an extension of the provisional allocation period.

**4.51 Requirements**

- (1) The Secretary must be satisfied that granting the extension meets the following requirements for residential care places:
  - (a) that, at the end of the extended period, there will still be a need for the provision of residential care by the approved provider in accordance with the allocation;
  - (b) that granting the extension is necessary because no other provider is ready and able to satisfy the need.
- (2) If premises are being built to accommodate the places, the Secretary must also be satisfied that at least 1 of the following results is likely to happen by granting the extension:
  - (a) work on the premises will be substantially finished before the end of the extended period;
  - (b) reasonable progress towards the construction of the premises will be made by the end of the extended period;
  - (c) a substantial amount will be spent by the approved provider, in connection with work on the premises, to meet the conditions to which the allocation was subject;
  - (d) if work on the premises has been delayed by circumstances beyond the approved provider's control—work on the premises will proceed satisfactorily within a reasonable period.

*Division 3—Periods of extension***4.52 Purpose of Division (Act, s 15-7)**

This Division specifies the criteria for increasing or decreasing the period of extension of the provisional allocation period for residential care places.



**4.53 Decreasing extension period**

For decreasing the extension period for residential care places, the Secretary must be satisfied that:

- (a) the applicant has substantially completed construction of the relevant premises; or
- (b) there is another reason that makes decreasing the period appropriate.

**4.54 Increasing extension period**

For increasing the extension period for residential care places, the Secretary must be satisfied that the applicant needs an extension of more than 12 months for 1 or more of the following reasons:

- (a) the need to start or continue construction of the relevant premises at a time that is related to the maturity of invested funds;
- (b) the need to comply with a condition of the provisional allocation that was not imposed as part of the original allocation;
- (c) a substantial change in the factors associated with the provisional allocation, or a likely change in the factors;
- (d) a change to the business relationship between parties involved in the construction of the relevant premises;
- (e) a natural disaster.

## Part 7—Transfer of places

### *Division 1—When applications must be made*

#### **4.55 Purpose of Division (Act, s 16-2)**

This Division sets out the matters that the Secretary must consider in:

- (a) deciding whether to determine another period before a proposed transfer day within which an application to transfer an allocated place from one person to another must be made; and
- (b) determining another period.

#### **4.56 Deciding whether to determine different application period—transferee is approved provider**

- (1) The Secretary must consider the following matters in deciding whether to determine another application period:
  - (a) the reasons why the different period has been requested;
  - (b) for a relocation of residential care places—whether the applicant’s proposal to relocate care recipients, and the proposed timetable for the relocation, are adequate;
  - (c) whether the services that have been provided by the applicant’s aged care service will continue to operate until all care recipients have been transferred;
  - (d) any conditions relevant to the places proposed to be transferred;
  - (e) any concerns about the application expressed by care recipients in the applicant’s aged care service;
  - (f) if there are 2 or more transferees—whether any of the proposed transfer days would have an unacceptable effect on the provision of care to care recipients who are proposed to remain with the aged care service;
  - (g) any concerns about the application expressed by care recipients who receive care through the applicant’s aged care service.
- (2) However, the Secretary may also consider any other relevant matter.

#### **4.57 Determining different application period**

- (1) If the Secretary has decided to determine another application period, the Secretary must consider the following matters in determining the other application period:
  - (a) any conditions relevant to the places that are proposed to be transferred;

- (b) any concerns about the application expressed by care recipients who receive care through the applicant's aged care service;
  - (c) whether the period:
    - (i) is too short or long to allow for an efficient transition; or
    - (ii) would have an unacceptable effect on the provision of care to care recipients who are proposed to remain with the aged care service; or
    - (iii) will be adequate to allow for the normal processing of the transfer;
  - (d) whether the services that have been provided by the aged care service will continue to operate until all care recipients have been transferred.
- (2) However, the Secretary may also consider any other relevant matters.

*Division 2—Information to be included in an application: community care*

**4.58 Purpose of Division (Act, s 16-2)**

This Division specifies additional information to be included in an application for the transfer of places in respect of community care and a document to be given with the application.

**4.59 The information and document**

- (1) The application must include the following additional information, given by the approved provider applying to transfer the places:
  - (a) if the provider claims to have notified the affected care recipients about the proposed transfer:
    - (i) when they were notified; and
    - (ii) whether the notification was in writing;
  - (b) if the provider claims to have met the affected care recipients to discuss the proposed transfer:
    - (i) when the meeting was held; and
    - (ii) whether there is written evidence of the issues discussed at the meeting; and
    - (iii) whether any concerns about the proposed transfer were expressed to the provider by care recipients and, if so, the measures the provider and proposed transferee propose to take to deal with the concerns;
  - (c) whether relatives or legal guardians of the care recipients, legal guardians or other appropriate people connected with the care recipients, have been notified about the proposed transfer;

- (d) the measures that the provider proposes to take, while transferring the places, to maintain services for the care recipients;
  - (e) the guarantees that the provider proposes to give that the care recipients will not be disadvantaged because of the proposed transfer.
- (2) The application must also include the following information, given by the proposed transferee:
- (a) how the transferee proposes to undertake the responsibilities of an approved provider under Parts 4.1 and 4.2 of the Act;
  - (b) details of the financial viability of the transferee's aged care service, including a detailed business plan showing operational revenue and expenditure;
  - (c) details of other aged care services through which the transferee provides residential care services;
  - (d) details of other aged care services through which the transferee provides community care services, including the target area for the community care services;
  - (e) how the transferee proposes to:
    - (i) protect the rights of individual care recipients; and
    - (ii) ensure the quality of care for care recipients; and
    - (iii) maintain the independence of care recipients; and
    - (iv) ensure that each care recipient is given a planned, coordinated package of care services designed to meet the recipient's needs; and
    - (v) provide ongoing assessment and review of care needs; and
    - (vi) support the social functioning of care recipients; and
  - (f) a timetable for implementing the provision of care before, during and after the transfer, including details of any suspension or reduction of care;
  - (g) details of the transferee's case management arrangements;
  - (h) how the transferee will ensure continuing consumer consultation and involvement in the provision of care;
  - (i) if the transfer will extend the transferee's existing service structure—how the transferee will integrate existing and new services;
  - (j) details of relationships between the transferee's aged care service and community organisations in the region concerned.
- (3) The last audited company statements of the proposed transferee's aged care services (if any) must be provided with the application.

*Division 3—Information to be included in an application: other care***4.60 Purpose of Division (Act, s 16-2)**

This Division specifies additional information to be included in an application for the transfer of places in respect of care, other than community care, and a document to be given with the application.

**4.61 The information and document**

- (1) The application must include the following additional information, given by the approved provider applying to transfer the places:
  - (a) if the provider claims to have notified the affected care recipients about the proposed transfer:
    - (i) when they were notified; and
    - (ii) whether the notification was in writing;
  - (b) if the provider claims to have met the affected care recipients to discuss the proposed transfer:
    - (i) when the meeting was held; and
    - (ii) whether there is written evidence of the issues discussed at the meeting; and
    - (iii) whether any concerns about the proposed transfer were expressed to the provider by care recipients, and, if so, the measures the provider and proposed transferee propose to take to deal with the concerns;
  - (c) whether relatives or legal guardians of the care recipients, or other appropriate people connected with the care recipients, have been notified about the proposed transfer;
  - (d) for care recipients who have indicated that they do not want to move to the aged care service to which the places are proposed to be transferred—the measures that the provider proposes to take to help the care recipients find suitable alternative care and accommodation of their choice;
  - (e) the measures that the provider proposes to take, while transferring the places, to maintain services for the care recipients;
  - (f) for a relocation of places—the way in which the provider proposes to help the care recipients move (with their personal possessions);
  - (g) the guarantees that the provider proposes to give that the care recipients will not be disadvantaged because of the proposed transfer;
  - (h) the measures that the provider proposes to take to settle the accounts of the care recipients, and refund their accommodation bond balances, before the time mentioned in subsection 57-21 (3) of the Act.

- (2) The application must also include the following information, given by the proposed transferee:
- (a) how the transferee proposes to undertake the responsibilities of an approved provider under Parts 4.1 and 4.2 of the Act;
  - (b) what the transferee proposes to do to ensure the service is financially viable;
  - (c) details of other aged care services through which the transferee provides residential care services;
  - (d) details of other aged care services through which the transferee provides community care services, including the target area for the community care services;
  - (e) how the transferee proposes to:
    - (i) protect the rights of individual care recipients; and
    - (ii) ensure the quality of care for care recipients; and
    - (iii) maintain the independence of care recipients; and
    - (iv) provide continuing assessment services and evaluation programs for care recipients; and
    - (v) support the social functioning of care recipients, including maintaining contact with family, friends and the community; and
    - (vi) provide accommodation and care that meet the needs of individual care recipients; and
    - (vii) provide accommodation and care for care recipients with special needs; and
    - (viii) provide a non-institutional environment in which care recipients will be encouraged to keep personal possessions; and
    - (ix) provide varying levels of care relevant to the needs of individual care recipients; and
    - (x) decide criteria for admission to the proposed aged care service (for example, whether the transferee would only admit people from a particular area);
  - (f) if the transferee proposes to construct or develop premises to accommodate the transferred places:
    - (i) a description of the project; and
    - (ii) an estimate of the total cost; and
    - (iii) a detailed description of the site, including size, suitability, topography and any heritage issues; and
    - (iv) the ownership arrangements of the proposed site; and
    - (v) how the land around the site is being used; and
    - (vi) whether there are any proposals before an authority in the State concerned about the use of the site (for example, proposals to rezone the site); and
    - (vii) the characteristics of the neighbourhood of the site, including location of shops, and the availability of public transport and community services; and
    - (viii) a detailed timetable for calling tenders, planning and construction, and an indication of the transferee's ability to meet the timetable.

- (3) The last audited company statements of the proposed transferee's aged care services (if any) must be provided with the application.

*Division 4—Consideration of whether transfer justified*

**4.62 Purpose of Division (Act, s 16-4)**

This Division sets out additional matters that the Secretary must consider in deciding whether the transfer of a place is justified in the circumstances.

**4.63 Additional matters**

- (1) The Secretary must consider:
- (a) the policy that the transfer should not adversely affect the provision of respite care in any region; and
  - (b) whether, after the transfer, the applicant's aged care service will be able to comply with conditions to which the allocation of the place is subject under section 14-5 or 14-6 of the Act; and
  - (c) any concerns about the transfer expressed by care recipients who are provided care through the applicant's aged care service; and
  - (d) any issue raised by the transferor or transferee in the application to transfer the places.
- (2) However, the Secretary may consider any other relevant matter.

*Division 5—Information to be given to transferee*

**4.64 Purpose of Division (Act, s 16-9)**

This Division specifies information that may be given to the transferee and a time for giving the information.

**4.65 Information to be given to transferee**

The Secretary may give the transferee information about the following matters:

- (a) the types of subsidies paid under Chapter 3 of the Act to the transferor for the aged care service in which places being transferred are included;
- (b) the likely future adjustments to the payments;

- (c) for residential care places—the amount of respite care (if any) to be provided by the transferor’s aged care service;
  - (d) if the aged care service in which the places being transferred are included is a residential care service:
    - (i) matters relating to the certification of the aged care service; and
    - (ii) matters relating to whether the aged care service meets its accreditation requirement;
  - (e) matters relating to the residential care grants or community care grants (if any) made in respect of that aged care service;
  - (f) matters relating to any grants under the *Aged or Disabled Persons Care Act 1954*, or Part VAB of the *National Health Act 1953*, that have been made in respect of that aged care service;
  - (g) compliance by the transferor with the transferor’s responsibilities under Chapter 4 of the Act in relation to that aged care service, including any action that has been taken or is proposed to be taken, under Part 4.4, in respect to that aged care service;
  - (h) for care recipients who are receiving residential care from the transferor’s aged care service:
    - (i) their current classification levels of care (if applicable);
    - (ii) their classification histories;
    - (iii) their financial status;
  - (i) the conditions to which the places being transferred are subject;
  - (j) any other matters about the transferor’s aged care service of which the Secretary considers the transferee should be informed.
- (2) However, the Secretary may not give the transferee information that would, or would be likely to, disclose the identity of any care recipient.

#### **4.66 When information is to be given**

- (1) The Secretary should give the information to the transferee at least 28 days before the transfer day.

*Note:* The transfer day is the day when the transfer of an allocated place from one person to another takes effect. The day is set under section 16-7 of the Act.

- (2) However, if the transferor asks the Secretary, in writing, to give the information to the transferee within 28 days after making the request, the Secretary should comply with the request.



## Part 8—Variation of conditions for places

### *Division 1—Information for variation applications*

#### **4.67 Purpose of Division (Act, s 17-2)**

This Division specifies the information to be included in an application for the variation of the conditions of an allocation of places.

#### **4.68 The information**

- (1) The following information must be included in the application:
  - (a) the applicant's name;
  - (b) the aged care service to which the allocation relates, and:
    - (i) for community care places—its business address; and
    - (ii) for other places—its location;
  - (c) the number of places to which the variation relates, and the conditions to which they are subject under Division 14 of the Act;
  - (d) whether any of the places is:
    - (i) an adjusted subsidy place; or
    - (ii) a place included in a residential care service, or a distinct part of a residential care service, that has extra service status; or
    - (iii) a community care place;
  - (e) if the places are residential care places and, after the variation, care provided for the places would be provided at a different location:
    - (i) the address of the new location; and
    - (ii) the proposals for ensuring that care needs are appropriately met for care recipients who are being provided with care in respect of the places;
  - (f) the conditions of the allocation to be varied and the proposed variation;
  - (g) the date of the proposed variation day;
  - (h) if the application is made less than 60 days before the proposed variation day:
    - (i) the date of the determination made under section 15-1 of the Act in relation to the allocation of the places to the applicant; and
    - (ii) the reason why the application has been made less than 60 days before the proposed variation day;
  - (i) the applicant's assessment of the effect of the proposed variation on care recipients.

*Note:* Under subsection 15-1 (1) of the Act, an allocation of places to an approved provider takes effect when the Secretary determines that the approved provider is in a position to provide care, in respect of those places, for which subsidy under Chapter 3 of the Act may be paid.

- (2) If the application is an application to change the location of the allocation, and the applicant proposes to construct or develop premises to accommodate the relocated care places at the new location, the following information must also be included in the application:
- (a) a description of the project; and
  - (b) an estimate of the total cost; and
  - (c) a detailed description of the site, including size, suitability, topography and any heritage issues; and
  - (d) the ownership arrangements of the proposed site; and
  - (e) how the land around the site is being used; and
  - (f) whether there are any proposals before an authority in the State concerned about the use of the site (for example, proposals to rezone the site); and
  - (g) the characteristics of the neighbourhood of the site, including location of shops, and the availability of public transport and community services; and
  - (h) a detailed timetable for calling tenders, planning and construction, and an indication of the applicant's ability to meet the timetable.

### *Division 2—Consideration of applications*

#### **4.69 Purpose of Division (Act, 17-4)**

This Division sets out additional matters that the Secretary must consider in deciding whether the variation of the conditions of an allocation is justified in the circumstances.

#### **4.70 Additional matters to be considered**

- (1) The Secretary must consider:
- (a) if any place affected by the condition was allocated to provide a particular type of care, and the type of care would not be provided if the variation were to be approved—the effect of not providing it, taking into account the planning objectives;
  - (b) if the places are residential care places and, after the variation, care provided in respect of the places would be provided at a different location:
    - (i) the economic viability of the aged care service at the new location; and

- (ii) whether the use of the new location would result in a less equitable regional distribution of places; and
    - (iii) the suitability of the premises at the new location;
  - (c) the policy that a variation should not adversely affect the provision of care to specific groups of people in any region; and
  - (d) if the variation would result in places being transferred to another region—the effect of the transfer on the provision of care in each region;
  - (e) whether the variation would substantially change the provision of care in any region;
  - (f) whether the variation would adversely affect the operation of other conditions;
  - (g) if the variation relates to the proportion of care to be provided to recipients of respite care:
    - (i) the demand for respite and other care in the region concerned; and
    - (ii) the needs of care recipients and carers; and
    - (iii) the need to maintain equity in the respite care provided in different regions; and
    - (iv) any other matter about the effective provision of respite care.
- (2) However, the Secretary may also consider any other relevant matters.

## Part 9—Allocations ceasing to have effect

### Division 1—Relinquishing places

#### 4.71 Purpose of Division (Act, s 18-2)

This Division specifies the matters that must be dealt with in the proposals of an approved provider for ensuring that care needs are appropriately met for those care recipients (if any) who are being provided with care in respect of residential or community care places to be relinquished by the provider.

*Note:* The proposals are required to be included in the notice of relinquishment given to the Secretary.

#### 4.72 The matters—residential care places

The proposals must deal with the following matters for residential care places:

- (a) if the provider claims to have notified the affected care recipients about the relinquishing of the places:
  - (i) when they were notified; and
  - (ii) whether the notification was in writing;
- (b) if the provider claims to have met the affected care recipients to discuss the relinquishing of the places:
  - (i) when the meeting was held; and
  - (ii) whether there is written evidence of the issues discussed at the meeting; and
  - (iii) whether any concerns about the relinquishing of the places were expressed to the provider by care recipients and, if so, the measures the provider proposes to take to deal with the concerns;
- (c) whether relatives or legal guardians of the care recipients, or other appropriate people connected with the care recipients, have been notified about the relinquishing of the places;
- (d) whether the provider has helped the care recipients find suitable alternative care and accommodation of their choice;
- (e) for care recipients who are not able to choose premises:
  - (i) the measures (if any) that the provider has taken to find suitable care for them at other premises; and

- (ii) if the provider has taken measures—whether the provider considered all aspects of the accommodation and services that the recipients currently have, and the location of the provider’s premises, before taking the measures;
- (f) the measures that the provider proposes to take, while relinquishing the places:
  - (i) to maintain services for the care recipients; and
  - (ii) to provide care services to the care recipients who will stay at the provider’s premises;
- (g) the way (if any) in which the provider proposes to help care recipients move (with their personal possessions);
- (h) the guarantees that the provider gives that the care recipients will not be disadvantaged, or discriminated against, before they move to new premises;
- (i) for care recipients who will be disadvantaged before they move—whether the approved provider is prepared to offer help to the care recipients that is additional to the current standard of care and other services (for example, giving the care recipient an audited statement of accounts);
- (j) the measures that the provider proposes to take to settle the accounts of the care recipients, and refund their accommodation bond balances, before the time mentioned in subsection 57-21 (3) of the Act.

#### **4.73 The matters—community care places**

The proposals must deal with the following matters for community care places:

- (a) if the provider claims to have notified the affected care recipients about the relinquishing of the places:
  - (i) when they were notified; and
  - (ii) whether the notification was in writing;
- (b) if the provider claims to have met the affected care recipients to discuss the relinquishing of the places:
  - (i) when the meeting was held; and
  - (ii) whether there is written evidence of the issues discussed at the meeting; and
  - (iii) whether any concerns about the relinquishing of the places were expressed to the provider by care recipients and, if so, the measures the provider proposes to take to deal with the concerns;
- (c) whether relatives or legal guardians of the care recipients, or other appropriate people connected with the care recipients, have been notified about the relinquishing of the places;
- (d) whether the provider has helped the care recipients find suitable alternative care;
- (e) the measures that the provider proposes to take, while relinquishing the places, to maintain services for the care recipients;
- (f) the way (if any) in which the provider proposes to help care recipients make alternative care arrangements.

*Division 2—Relinquishing places: whether care needs appropriately met***4.74 Purpose of Division (Act, s 18-3)**

This Division specifies the matters that the Secretary must take into account in deciding whether any proposals, for ensuring that care needs are appropriately met for care recipients who are being provided with residential or community care in respect of places being relinquished, are satisfactory.

**4.75 The matters—residential care places**

- (1) The Secretary must take the following matters into account for residential care places:
  - (a) whether the care recipients have been given sufficient notice, by letters, meetings or otherwise, about the relinquishing of the places and relocating;
  - (b) whether:
    - (i) relatives or legal guardians of the care recipients, or other appropriate people connected with the care recipients, have been notified about the relinquishing of the places and relocating; and
    - (ii) notification may reasonably be expected;
  - (c) whether the approved provider is helping the care recipients find other accommodation and care;
  - (d) whether the approved provider is maintaining the same standard of care and other services for the care recipients before the relocation date;
  - (e) whether the approved provider is offering help to the care recipients that is additional to the current standard of care and other services;
  - (f) whether the approved provider has indicated that financial arrangements for the care recipients may be finalised before the time mentioned in subsection 57-21 (3) of the Act;
  - (g) whether the approved provider has made more extensive proposals than may be warranted that could help the care recipients to relocate;
  - (h) whether the interests of care recipients in their accommodation and care will be protected;
  - (i) whether the care recipients will be unduly disadvantaged financially after relocation;
  - (j) whether the needs and expectations of the care recipients will be satisfied or improved after relocation.
- (2) However, the Secretary may also take other relevant matters into account.

**4.76 The matters—community care places**

- (1) The Secretary must take the following matters into account for community care places:
  - (a) whether the care recipients have been given sufficient notice, by letters, meetings or otherwise, about the relinquishing of the places;
  - (b) whether:
    - (i) the relatives or legal guardians of the care recipients, or other appropriate people connected with the care recipients, have been notified about the relinquishing of places; and
    - (ii) notification may reasonably be expected;
  - (c) whether the approved provider is helping the care recipients find another provider;
  - (d) whether the approved provider is maintaining the same standard of care and other services for the care recipients before the proposed relinquishment date;
  - (e) whether the approved provider is offering help to the care recipients that is additional to the current standard of care and other services.
- (2) However, the Secretary may also take any other relevant matter into account.

*Division 3—Revocation of unused allocations of places***4.77 Purpose of Division (Act, s 18-5)**

This Division specifies the matters that the Secretary must consider in deciding whether to revoke the allocation of a place.

**4.78 The matters**

- (1) The Secretary must consider the following matters:
  - (a) whether the decision not to use the place is temporary, and whether the provider intends to use the place in the near future;
  - (b) why the place has not been used;
  - (c) whether the place can only be operated by the approved provider because of the specialised nature of the provider's service and the place's subsidy type;
  - (d) whether revoking the allocation would have detrimental effects on the community that the place is intended to service;
  - (e) whether revoking the place would unduly affect the provider's economic viability;
  - (f) whether allocating the place to another provider would better serve the interests of the community;
  - (g) whether revoking the place and reallocating it is warranted;

- (h) whether any conditions of allocation under Division 14 of the Act could be varied to better serve the interests of the community;
  - (i) demographic factors, including temporary movements in population, that may affect the place's viability.
- (2) However, the Secretary may also take any other relevant matter into account.
-