

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

Aged Care Act 1997

Allocation Principles 2014

The *Aged Care Act 1997* (the Act) provides for the regulation and funding of aged care services. Persons who are approved under the Act to provide aged care services (approved providers) can be eligible to receive subsidy payments in respect of the care they provide to approved care recipients.

Section 96-1 of the Act allows the Minister to make Principles providing for various matters required or permitted by a Part or section of the Act.

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

The Principles describe matters relating to:

- planning for the location and distribution of aged care places;
- the functions and membership of the Aged Care Planning Advisory Committees;
- the allocation process and assessment of applications;
- the transfer of places;
- variations of conditions of allocation; and
- the relinquishment of places and the revocation of unused allocations.

From 1 July 2014, these Principles will replace the existing *Allocation Principles 1997*. The new Principles:

- remove provisions which required approved providers to submit information which is already held by the Department (this is consistent with the Government's commitment to reduce unnecessary regulation);
- include transitional arrangements to deal with applications relating to, for example, the allocation or transfer of places made under the old principles (pre 1 July 2014) but decided under these new Principles (post 1 July 2014). While there are no substantive changes to the criteria for allocation of places pre and post 1 July 2014, the transitional arrangements ensure the legal validity of decisions made on applications received, but not decided, before 1 July 2014;
- capture a newly created class of care recipients (low-means care recipients) as a result of the changes made to subsidy and fees provisions in the Act that take effect from 1 July 2014;
- include revised provisions relating to Aged Care Planning Advisory Committees to better align with current drafting practices, and with similar provisions in other aged care legislation; and
- include re-structured provisions to make them more logical and reader-friendly.

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

Consultation

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

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

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

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

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

Regulation Impact Statement

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

Commencement

The Principles commence on 1 July 2014.

Details of the Allocation Principles 2014

Part 1 – Preliminary

Section 1 – Name of Principles

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

Section 2 – Commencement

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

Section 3 – Authority

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

Section 4 – Definitions

This section defines certain terms used in the Principles.

Accreditation Standards means the Accreditation Standards in Schedule 2 of the *Quality of Care Principles 2014*.

Act means the *Aged Care Act 1997*.

assisted resident is defined in clause 1 of Schedule 1 to the *Aged Care (Transitional Provisions) Act 1997* as a person who meets the conditions described in section 44-8 of the *Aged Care (Transitional Provisions) Act 1997*. The criteria for determining assisted resident status are the same as for concessional resident status except that, at the time of entry to a residential care service, an assisted resident had assets of between 2.5 and 4 times the annual single basic age pension amount if they entered before 1 July 2005, or between 2.25 and 3.61 times the annual single basic age pension amount if they entered on or after 1 July 2005.

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

concessional resident is defined in clause 1 of Schedule 1 to the *Aged Care (Transitional Provisions) Act 1997* as a person who meets the conditions described in section 44-7 of the *Aged Care (Transitional Provisions) Act 1997*. These conditions include that the person entered a residential care service before 20 March 2008 and, at the time the person entered the residential care service:

- the person was receiving an income support payment;
- the person was not a home owner (or the person's home was occupied by a protected person such as a partner or a dependent child); and
- the value of the person's assets was less than 2.5 times the annual single basic age pension amount if the person entered residential care prior to 1 July 2005, or less than 2.25 times the basic age pension amount if the person entered residential care on or after 1 July 2005.

concessional resident supplement is the supplement described in section 44-6 of the *Aged Care (Transitional Provisions) Act 1997*. It is a daily amount that is paid to residential care services in respect of concessional and assisted residents. The concessional resident supplement is paid at a high and a low rate depending on the proportion of place days occupied by the combined number of concessional and assisted residents.

government officer means an officer or employee of the Commonwealth, a State or Territory, or a local government authority.

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

planning objectives means the objectives of the aged care planning process referred to in section 12-2 of the Act. 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.

representative, of a care recipient, has the meaning given by section 6 of these Principles.

supported resident is defined in clause 1 of Schedule 1 to the *Aged Care (Transitional Provisions) Act 1997* and is one that meets the conditions described in section 44-5B of the *Aged Care (Transitional Provisions) Act 1997*. A person is a supported resident if they enter a residential care service as a permanent resident for the first time on, or after 20 March 2008, and their assets at the time of entry are valued at, or below, a certain threshold determined by the Secretary by legislative instrument.

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

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

This section states that a care recipient is a low-means care recipient on a day if the care recipient is being provided with residential care and is eligible for an accommodation supplement under section 44-28 of the Act or, upon entry to the service, the care recipient's means tested amount was less than the maximum accommodation supplement amount for the entry day.

Section 6 – Meaning of *representative*

This section describes the meaning of the word *representative*, in relation to care recipients. A representative is a person:

- nominated by the care recipient as a person who can be told about matters affecting the safety, health and well-being of a care recipient; or
- who nominates himself, or herself, as a person to be told about matters affecting a care recipient, provided that the approved provider is satisfied that the person has a connection with the care recipient, and is concerned for the safety, health and well-being of the care recipient.

For the purposes of the definition, a person is considered to have a connection with a care recipient if:

- the person is a partner, close relation, or other relative of the care recipient;

- the person holds an enduring power of attorney given by the care recipient;
- the person has been appointed by a State or Territory guardianship board (however described) to deal with the care recipient's affairs; or
- the person represents the care recipient in dealings with the approved provider.

The definition of representative recognises the role of informal substitute decision makers as representatives of care recipients in their dealings with approved providers; however, it does not confer on a representative the powers of a formally appointed substitute decision-maker such as a guardian or financial manager. A note at the end of the section confirms that nothing in the definition is intended to effect the powers of a substitute decision maker appointed under a law of a State or Territory.

Part 2 – Planning the allocation of places

Division 1 – Distributing available places among regions

Section 7 – Purpose of this Division

This section states that Division 1 of Part 2 specifies requirements with which the Secretary must comply, in distributing places available for allocation among the regions within a State or Territory. Regions are determined under section 12-6 of the Act.

Section 8 – Requirement

This section states that if the Secretary has requested advice from an Aged Care Planning Advisory Committee about the distribution of places, the Secretary must have regard to this advice in distributing places.

Division 2 – Determining proportion of care

Section 9 – Purpose of this Division

This section states that Division 2 of Part 2 specifies the kinds of people in respect of whom the Secretary may determine the proportion of care to be provided, and the criteria for determining the proportion of care.

Section 10 – Kinds of people in respect of whom Secretary may determine proportion of care

Section 12-5 of the Act provides that the Secretary may, in respect of each type of subsidy, determine for the places available for allocation, the proportion of care that must be approved to people of certain kinds. This section outlines the following kinds of people:

- people with special needs;
- low-means care recipients;
- supported, concessional and assisted residents;
- recipients of respite care; and
- people needing a particular level of care.

Section 11 – Criteria that must be considered in making determination

This section outlines the criteria the Secretary must give consideration to when determining the proportion of care to be provided to the kinds of people described in section 10 of these Principles, including:

- the need for places in each region for the kinds of people described in section 10 of these Principles;
- the current service provision levels for those kinds of people;
- the existing provision of extra service places in each region; and
- the need to equitably distribute places (as far as practicable) in each region and in each State and Territory.

Part 3 – Aged Care Planning Advisory Committees

Division 1 – Purpose of this Part

Section 12 – Purpose of this Part

This section states that Part 3 specifies the functions, membership and other operational matters relevant to Aged Care Planning Advisory Committees.

The main changes to the provisions relating to the Aged Care Planning Advisory Committees are:

- redrafting of a number of provisions to align them with provisions relating to other like Committees and to ensure they meet contemporary drafting practice (for example provisions relating to termination of the appointment of Committee members);
- removing many of the prescriptive and inflexible provisions relating to the internal procedures of the Committee. These provisions have been replaced with a simple provision enabling the Secretary to give the Committee written directions about the procedures to be followed in meetings (and the way it carries out its functions) provided that these directions are administrative and general in nature only; and
- removing prescriptive criteria relating to the skills and capacity of members and replacing these with provisions requiring the Secretary to ensure that the members of the Committee, between them, have knowledge and experience of a wide range of areas relevant to the work of the Aged Care Planning Advisory Committees.

Division 2 – Functions and powers of Committees

Section 13 – Function of Committees

This section provides that it is the function of a Committee to advise the Secretary on the distribution of places among regions for different types of subsidy and the proportions of care to be provided to certain kinds of people.

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 allow.

Section 14 – Powers of Committees

This section states that a Committee may do anything necessary or convenient to be done for, or in connection with, performing its function.

Section 15 – Advice about distribution of places among regions

This section provides that if the Secretary seeks advice from a Committee in relation to the distribution of places among regions, the Committee must assess the extent and the priority of need among the regions, and report this to the Secretary.

In advising the Secretary on the extent and priority of need among the regions, the Committee must take into account the following matters:

- the planning objectives referred to in section 12-2 of the Act;
- the findings of any working party established by the Committee to investigate the needs of particular regions or groups of people;
- demographic and other statistical data on the balance of care in each region; and
- relevant information obtained from local and regional sources.

Section 16 – Advice about making certain determinations

This section applies if the Secretary requests advice from a Committee in regards to making a determination under section 12-5 of the Act. Section 12-5 enables the Secretary, for each type of subsidy, to determine for the places available for allocation, the proportion of care that must be provided to the kinds of people specified in section 10 of these Principles.

If the Secretary has requested advice from a Committee, the Committee must, before providing advice to the Secretary:

- identify the needs of the community and particular groups nominated by the Committee;
- prioritise the identified needs;
- consider the types of care to be provided in particular regions; and
- consider the most appropriate proportion of places for the different kinds of people.

Government policy and the planning objectives must be taken into account by the Committee before providing advice to the Secretary.

Section 17 – Directions by Secretary

This section gives the Secretary the power to give written directions to a Committee about the way in which the Committee is to carry out its functions, and the procedures to be followed in relation to meetings. However, directions given by the Secretary must relate to administrative matters only and be of a general nature.

This section also provides that:

- a Committee must comply with any directions given by the Secretary; and
- if the Secretary does not give a direction in relation to the procedures to be followed in meetings, a Committee may determine its own procedures.

A direction given by the Secretary is not a legislative instrument. This statement is included in section 17 to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Division 3 – Membership of Committees

Section 18 – Members

Section 18 outlines the membership of a Committee which comprises a Chair, a Deputy Chair, and between 6 and 9 other members.

At least 2 government officers must be members of a Committee and at least 6 members of a Committee must not be government officers. A government officer is

an officer or employee of the Commonwealth, a State or Territory or a local government authority.

Section 19 – Appointment

This section provides that the appointment of a Committee member is made by the Secretary, by written instrument. A Committee member:

- holds office for the period specified in the instrument of appointment but no longer than 2 years;
- is eligible for re-appointment; and
- holds office on a part-time basis.

When appointing members, the Secretary must ensure, as far as practicable, that the members of a Committee, between them, have knowledge of, or experience in:

- the operations of aged care providers;
- aged care services from the perspective of consumers of the services;
- the delivery of aged care services to people with special needs;
- aged care policy;
- aged care funding programs; and
- aged care planning processes.

Section 20 – Leave of absence

This section provides that the Secretary may grant leave of absence to the Chair of a Committee, and the Chair of a Committee may grant leave of absence to any other member.

Section 21 – Resignation

This section provides that a Committee member may resign from a Committee by giving the Secretary a written notice of resignation. A Committee member's resignation takes effect on the day it is received by the Secretary or as otherwise specified in the written resignation notice.

Section 22 – Termination of appointment

This section states that a Committee member's appointment may be terminated by the Secretary for the following reasons:

- misbehaviour;
- if the member cannot perform the required duties because of physical or mental incapacity;
- if the member is absent, without reasonable excuse, from two consecutive meetings of the Committee; or
- if the member fails, without reasonable excuse, to comply with section 23 of these Principles (disclosure of interests).

The Secretary must terminate the appointment of a member of a Committee if the member:

- 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 the benefit of his or her creditors.

Division 4 – Other Committee matters

Section 23 – Disclosure of interests – members of Committee

This section provides that if a Committee member has a direct or indirect financial interest in an issue being considered by the Committee, and that interest could conflict with the duties of the member, the member must disclose the nature of the interest to a meeting as soon as practicable after the relevant facts come to the member's knowledge.

If an interest is disclosed, it must be recorded in the Committee's minutes, and unless otherwise decided, the person must not take part in the decision or be present when the Committee considers the issue.

A Committee member must also not be present when the Committee is considering whether to allow the member to be present for discussions or decisions relating to the issue that poses the conflict of interest.

Section 24 – Disclosure of interests – invited persons

Section 24 applies if a person has been invited to a Committee meeting to inform or advise the Committee about anything.

If the invited person has a direct or indirect financial interest in an issue being considered, or about to be considered, by the Committee, the person must, as soon as practicable after the relevant facts come to the person's knowledge, disclose the nature of the interest to a meeting. The disclosure must be recorded in the Committee's minutes and, unless the Committee otherwise decides, the person must not be present when the Committee considers the issue.

Part 4 – The allocation process

Division 1 – Invitations to apply for allocation of places

Section 25 – Purpose of this Division

This section states that the purpose of Division 1 of Part 4 is to specify the kinds of people that may be specified in an invitation to apply for an allocation of places.

Section 26 – Proportion of care for specified kinds of people

This section provides that the kinds of people that may be specified in an invitation to apply for an allocation of places are:

- people with special needs;
- low-means care recipients;
- supported, concessional, and assisted residents;
- recipients of respite care; or
- people needing a particular level of care.

Division 2 – Assessment of applications

Section 27 – Purpose of this Division

This section states that Division 2 of Part 4 sets out matters for the Secretary to consider when deciding which allocation of places would best meet the needs of the aged care community in a region.

Section 28 – Competitive assessment of applications for allocations

Section 28 outlines the factors the Secretary must consider when deciding on applications for the allocation of places. The Secretary must consider:

- whether the people who manage, or propose to manage, the aged care service that is providing, or would provide, the care have the necessary expertise and experience;
- if applicable, whether the premises used (or intended to be used) to provide the care to which the places relate, are suitably planned and located for the provision of aged care;
- the ability of the applicant to provide the appropriate level of care. It could be the case that an applicant for home care levels 3 and 4 places does not demonstrate that it has the ability to provide care at those levels, eg it does not employ any registered nurses;
- if the applicant has been a provider of aged care, the applicant's conduct as a provider, compliance with its responsibilities as a provider, and compliance with its obligations arising from the receipt of Commonwealth payments for providing aged care;
- if the applicant has relevant key personnel in common with a person who is, or has been an approved provider, that provider's conduct as a provider of aged care, compliance with its responsibilities as a provider, and compliance with its obligations arising from the receipt of Commonwealth payments for providing aged care. The applicant has relevant key personnel in common with another provider if, at the time the other provider provided aged care, a person was one of the other provider's key personnel, and that same person is one of the applicant's key personnel; and
- the measures that the applicant proposes to implement to protect the rights of care recipients and for the provision of appropriate care for care recipients who are people with special needs.

Section 29 – Diversity of choice for care recipients

This section provides that the Secretary must consider whether approving the allocation will increase diversity of choice for current and future care recipients, and their carers and families, having regard to the different kinds of services offered in the region.

The section also provides examples of the ways diversity of choice may be promoted for different kinds of services.

Section 30 – Continuity of care

This section states that the Secretary must consider the ability of the service to be able to offer continuity of care to current and future care recipients.

In considering continuity of care, the Secretary could consider an applicant's capacity to manage care recipient's changing care needs. For example, in home care the Secretary could consider:

- whether the care recipient will be able to transition seamlessly between each of the home care levels;
- how the provider will utilise a mix of places within or across services to ensure that care recipient's care needs can be met; and
- the provider's networks and linkages with other home care providers, community care service providers, residential aged care services and retirement villages.

In residential care, the Secretary could consider matters such as the provider's capacity to:

- manage the transition of care recipients, including, for example, care recipient's admission and return from hospital stays;
- co-ordinate care with other services that care recipients may need to access;
- ensure continuity of care if care recipients need to move between services (including because of changing care needs); and
- ensure that staff understand, and comply with, the security of tenure requirements for care recipients.

Section 31 – Secretary may also consider other matters

This section states that the Secretary may consider any other relevant matters.

For home care, for example, the Secretary could also consider matters such as how the provider will:

- deliver consumer directed care;
- ensure consumer choice and control;
- provide support for consumer decision-making;
- respond to the care recipient's customs, beliefs and background, including their relationships with carers and family members;
- incorporate wellness and re-ablement approaches; and
- promote the care recipient's independence and facilitate participation in the community (should the care recipient wish).

Division 3 – Conditions of allocation of places

Section 32 – Purpose of this Division

This section states that the purpose of Division 3 of Part 4 is to specify general matters in determining conditions to be placed on allocation of places, or in determining conditions in relation to the proportion of care to be provided to recipients of respite care.

Section 33 – Conditions of allocation – generally

This section provides that for the purpose of subsection 14-6(2) of the Act, the general conditions of an allocation of places that must be determined by the Secretary are:

- that a care recipient cannot be discharged and readmitted to attract the accommodation supplement (under either the Act or the *Aged Care (Transitional Provisions) Act 1997*) or the concessional resident supplement under the *Aged Care (Transitional Provisions) Act 1997*;

- that a care recipient cannot be discharged and readmitted to enable a provider to charge the care recipient an accommodation bond;
- that a service will only be recognised as a new service if the service moves to a facility purposely built for the relocation, or moves to another catchment area. A service will not be recognised as a new service only because a service changes approved provider, there is a change in the number of places allocated to the service, there is a temporary relocation of the service or a co-located service amalgamates; and
- 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. Part III of the Determination deals with formal agreements entered into before 1 October 1997 between residents and operators of approved hostels that became residential care services under the *Aged Care Act 1997* on 1 October 1997 by the operation of the *Aged Care (Consequential Provisions) Act 1997*.

The Secretary may also determine any other relevant conditions.

Section 34 – Conditions of allocation – proportion of care for respite care recipients

This section describes the factors the Secretary must have regard to when determining conditions, on an allocation of places, relating to the proportion of care to be provided to recipients of respite care. The Secretary must consider:

- the demand for respite care in the region;
- the demand for permanent care in the region;
- the needs of carers and care recipients; and
- the equity in the respite care provided in different regions.

The Secretary may also have regard to any other matter relevant to the effective provision of respite care.

Part 5 – When allocations take effect

Division 1 – When allocations take effect

Section 35 – Purpose of this Division

This section states that Division 1 of Part 5 specifies matters to which the Secretary must have regard in deciding whether to determine that a provider is in a position to provide care, in respect of residential care places it has been allocated.

Section 36 – Matters to which the Secretary must have regard

This section lists the factors the Secretary must consider, when deciding whether a provider is suitably positioned to provide residential care, in respect of places it has been allocated. These factors include:

- whether the provider has received, from authorities in the State or Territory where the residential care service is located, authorisation that the service's premises can be occupied;
- whether the provider has applied for accreditation of the service, and has paid all application fees;

- whether the provider has made arrangements for the efficient management and operation of the service; and
- the results of any inspection of the premises by officers of the Department.

The Secretary may also consider any other relevant matter.

Division 2 – Provisional allocation periods

Section 37 – Purpose of this Division

Section 15-7 of the Act enables the Secretary to extend a provisional allocation period on application by an approved provider.

Division 2 of Part 5 specifies requirements that must be met for the provisional allocation period for the places to be extended and the criteria that must be met for increasing or decreasing the period of extension.

Section 38 – Requirements for extending provisional allocation period

Section 15-7 of the Act provides that the Secretary must extend the provisional allocation period if:

- the provider applies to the Secretary for an extension and has not already been granted an extension; and
- the Secretary is satisfied that the extension is justified in the circumstances and meets any requirements specified in these Principles.

The requirements that must be met for extending the provisional allocation period are:

- 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; and
- that granting the extension is necessary because no other provider is ready and able to satisfy the need.

If new premises are being built to accommodate the places, the Secretary must also be satisfied that granting an extension will likely result in one of the following:

- work on the premises will be substantially finished before the end of the extended period;
- reasonable progress towards the construction of the premises will be made by the end of the extended period;
- a substantial amount will be spent by the approved provider, in connection with work on the premises, to meet the conditions of allocation; and
- 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.

Section 39 – Criteria for decreasing extension of provisional allocation period

Subsection 15-7(6) of the Act provides that the period of the extension is 12 months unless the Secretary is satisfied that the applicant meets the criteria in these Principles for increasing or decreasing the period of the extension.

This section outlines criteria that must be met for *decreasing* the period of extension from 12 months. The criteria that must be met are that the construction of the relevant

premises is substantially completed or that there is another appropriate reason for decreasing the provisional allocation period.

Section 40 – Criteria for increasing extension of provisional allocation period

This section outlines one or more criteria that must be met for *increasing* the period of extension period beyond 12 months. The criteria are:

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

Part 6 – Transfer of places other than provisionally allocated places

Division 1 – Application of this Part

Section 41 – Application of this Part

This section states that Part 6 applies to places other than places that are provisionally allocated.

Division 2 – Applications for transfer of places

Section 42 – Purpose of this Division

This section states that Division 2 of Part 6 specifies further information that needs to be captured in an application for the transfer of a place from one provider to another. Division 2 also sets out matters the Secretary must consider in deciding on, and determining a period in which such an application must be made that is different from those set out in paragraphs 16-2(4)(a) and (b).

Section 43 – Other information to be included in application – places in respect of residential care or flexible care subsidy

This section provides that an application by an approved provider to transfer residential or flexible care places must include the following information (in addition to the information described in section 16-2 of the Act):

- whether the provider has notified the affected care recipients about the proposed transfer and, if so, when they were notified and whether the notification was in writing;
- if the provider has met with the affected care recipients to discuss the proposed transfer, when the meeting was held, whether there is written evidence of the issues discussed and whether any concerns about the proposed transfer were expressed by care recipients. If concerns were expressed, the application must also include information about the measures the provider and proposed transferee propose to take to deal with the concerns;
- whether representatives of the affected care recipients have been notified about the proposed transfer. Representatives has the definition set out in Section 6 of these Principles;

- 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;
- the measures that the provider proposes to take, while transferring the places, to maintain services for the affected care recipients;
- for a relocation of places, the way in which the provider proposes to help the affected care recipients move (with their personal possessions);
- the guarantees that the provider proposes to give that the affected care recipients will not be disadvantaged because of the proposed transfer;
- the measures that the provider proposes to take to settle the accounts of the affected care recipients, and refund their refundable deposit balances as required by section 52P-1 of the Act; and
- whether capital payments have been made in respect of the aged care service in which the places being transferred are included. Capital payments may be those specified in the *Aged Care (Transitional Provisions) Principles 2014* for the purposes of section 43-6 of the *Aged Care (Transitional Provisions) Act 1997* or capital payments of a kind specified in the *Subsidy Principles 2014* for the purposes of section 43-6 of the Act.

A proposed transferee must also include the following information in an application:

- how the transferee proposes to undertake the responsibilities of an approved provider under the Act and the *Aged Care (Transitional Provisions) Act 1997*;
- proposals for the financial viability of the service;
- how the transferee proposes to protect the rights of care recipients, ensure quality of care, maintain the independence of care recipients, provide for assessment services and evaluation programs for care recipients, support the social functioning of care recipients, provide accommodation and care that meets the needs of individual care recipients (including those with special needs), provide a non-institutional environment, provide for varying levels of care, and decide admission criteria; and
- if premises need to be built or developed to accommodate the transferred places, a description of the project, estimated cost, how the cost will be met, site description, ownership arrangements, how surrounding land is being used, any proposals about the use of the site that are before authorities, characteristics of the neighbourhood, project plan including risk management strategy, and how the transferee intends to comply with existing or varied conditions of allocation.

The application must also include the last audited company statements of the proposed transferee's aged care services (if any).

Section 44 – Other information to be included in application – places in respect of home care subsidy

This section outlines the other information that must be included in an application by an approved provider to transfer places in respect of home care. In addition to the information described in section 16-2 of the Act, the application must include:

- whether the provider has notified the affected care recipients about the proposed transfer and, if so, when they were notified and whether the notification was in writing;

- if the provider has met with the affected care recipients to discuss the proposed transfer, when the meeting was held, whether there is written evidence of the issues discussed and whether any concerns about the proposed transfer were expressed by care recipients. If concerns were expressed, the application must also include the measures the provider and proposed transferee propose to take to deal with the concerns;
- whether representatives of the affected care recipients have been notified about the proposed transfer; and
- the measures that the provider proposes to take while transferring the places, to maintain services for the affected care recipients; and
- the guarantees that the provider proposes to give that the affected care recipients will not be disadvantaged because of the proposed transfer.

The application must also include the following information given by the proposed transferee:

- how the transferee proposes to undertake the responsibilities of an approved provider under the Act and the *Aged Care (Transitional Provisions) Act 1997*;
- details of the financial viability of the service including a detailed business plan;
- details on how the transferee intends to protect the rights of care recipients, ensure quality of care, maintain the independence of care recipients, ensure a coordinated package of care services is provided to care recipients, ensure the provision of ongoing assessment and review services and support the social functioning of care recipients;
- a detailed timeline for implementing the provision of care that outlines all aspects of the transfer;
- the transferee's case management arrangements;
- details of how consumer consultation and involvement in the provision of care will continue;
- details of how the transferee will integrate existing and new services (if applicable); and
- details of the relationships between the service and community organisations in the region.

The application must also include the last audited company statements of the proposed transferee's aged care services (if any).

Section 45 – Matters to be considered in deciding whether to determine different application period

This section outlines the matters the Secretary must consider in deciding whether to determine an alternative application period. The matters are:

- the reasons for the request;
- 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;
- 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;
- any conditions relevant to the places proposed to be transferred;
- any concerns about the application expressed by care recipients in the applicant's aged care service;

- if there are two or more proposed transferees, whether any of the proposed transfer days would have an unacceptable effect on the provision of care to care recipients who it is proposed will remain with the aged care service; and
- any concerns about the application expressed by care recipients receiving care through the applicant's aged care service.

The Secretary may also consider any other relevant matter.

Section 46 – Matters to be considered in determining different application period

In circumstances where the Secretary has decided to determine another application period, this section describes the matters the Secretary must consider in determining the other application period. The matters are:

- any conditions relevant to the places that are proposed to be transferred;
- any concerns about the application expressed by care recipients;
- whether the period is too short or long to allow for an efficient transition;
- whether the period would have an unacceptable effect on the provision of care to care recipients who are proposed to remain with the aged care service;
- whether the period will be adequate to allow for the normal processing of the transfer; and
- whether the services that have been provided by the aged care service will continue to operate until all care recipients have been transferred.

The Secretary may also consider any other relevant matter.

Division 3 – Consideration of applications

Section 47 – Purpose of this Division

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

Section 48 – Other matters that must be considered

This section provides that the Secretary must give consideration to the effect of the proposed transfer, if approved, on the current and future care recipients in the region from which the places will be transferred and the region to which the places will be transferred.

The factors the Secretary must take into account when considering the effect of the proposed transfer on current and future care recipients include:

- the extent to which the provision of aged care in the region, will benefit or be adversely affected as a result of the transfer. For example, the Secretary may consider whether the transfer would affect the provision of aged care services that meet particular needs, including the provision of respite care services, services for those affected by dementia and services for couples with differing care needs. The Secretary may also consider the effect of the transfer on the quality of services provided in the regions and, in the case of home care places, whether there will be an effect on the hours of care available, and the days on which it will be provided;
- whether there would be an increase or decrease in the diversity of choice available to care recipients, in regards to services available in the region, as a result of the transfer. In considering choice, kinds of services available in the region may

- include services that have extra service status service for care recipients affected by dementia, and services for people with special needs;
- whether the likelihood of care recipients receiving continuity of care will increase as a result of the transfer;
 - any concerns about the application raised by care recipients being provided with care through the applicant's aged care service;
 - any issues raised by the transferor or transferee in the application;
 - if, after the transfer, the places would relate to the same aged care service, the suitability of the premises including whether the premises would meet the Accreditation Standards; and
 - if, after the transfer, the places would relate to the same aged care service on the same premises and the premises do not meet the Accreditation Standards or the criteria for certification, the failure of the transferee to have improved the premises.

The Secretary may also consider any other relevant matter.

Division 4 – Other matters

Section 49 – Purpose of this Division

Division 4 specifies other matters relating to the transfer of places from one person (the transferor) to another person (the transferee).

Section 50 – Matters that must be specified in notice of decision on transfer

This section provides that the proportion of care, in respect of places to be transferred, for people with special needs, low-means care recipients, supported, concessional and assisted residents, recipients of respite care, and people requiring a particular level of care, must be specified in a notice approving a transfer of places.

Section 51 – Information that may be given to transferee and time for giving information

This section provides that the Secretary may give the transferee information about:

- the types of subsidies paid to the transferor in relation to the transferred places and the likely future adjustments to subsidy payments;
- for residential care, the amount of respite care to be provided (if any);
- in relation to a residential care service, matters relating to the service's certification, accreditation and any residential care grants made;
- matters relating to any type of capital payments specified under either the Act or under the *Aged Care (Transitional Provisions) Act 1997*;
- compliance by the transferor with its responsibilities under the Act (in relation to the service) including any action taken or proposed to be taken under Part 4.4 of the Act in relation to the aged care service. Part 4.4 of the Act outlines the consequences of non-compliance;
- current classification levels, histories, and financial status of residential care recipients receiving care from the transferor's service;
- the conditions to which the transferred places are subject; and
- any other matters about the transferor's aged care service about which the Secretary considers the transferee should be informed.

The identity of any care recipient must not be disclosed to a transferee in any information provided by the Secretary.

If the Secretary decides to provide the information described above to the transferee, the information must be provided to the transferee at least 28 days prior to the transfer day. The transfer day is the day the transfer takes effect (as set out in section 16-7 of the Act).

If the transferor requests, in writing, for the Secretary to provide information to the transferee, the Secretary must comply with the request within 28 days of receiving it.

Section 52 – Records to be given by transferor to transferee

This section states that the name and contact details of each care recipient's representatives, in respect of a transferred place, must be provided to the transferee by the transferor.

Part 7 – Transfer of provisionally allocated places

Division 1 – Application of this Part

Section 53 – Application of this Part

This section states that Part 7 applies to provisionally allocated places.

Division 2 – Applications for transfer of provisionally allocated places

Section 54 – Purpose of this Division

Division 2 of Part 7 sets out:

- the information to be captured in an application for the transfer of a provisionally allocated place from one provider to another; and
- matters that the Secretary must consider in deciding whether to determine another application period for the transfer of a provisionally allocated place, and in determining another period.

Section 55 – Other information to be included in application

This section describes the additional information that must be included in an application to transfer provisionally allocated places (noting that information requirements are also set out in section 16-15 of the Act). This includes:

- the reasons why the transferor has not been able to have the provisionally allocated places take effect;
- the reasons for the transfer; and
- justification of how the transfer meets the needs of the aged care community in the region for the provisionally allocated places.

The application must also include the following information, to be provided by the proposed transferee:

- how the transferee proposes to undertake the responsibilities of an approved provider under the Act and the *Aged Care (Transitional Provisions) Act 1997*;
- details of the financial viability of the service;

- details on how the transferee intends to protect the rights of care recipients, ensure quality of care, maintain the independence of care recipients, ensure the provision of ongoing assessment and review services, support the social functioning of care recipients, provide accommodation and care that meets the needs of individual care recipients (including those with special needs), provide a non-institutional environment, provide for varying levels of care, and decide admission criteria; and
- if premises need to be built or developed to accommodate the transferred places, a description of the project, estimated cost and how it will be met, ownership arrangements for the site, how surrounding land is being used, whether any proposals about the use of the site that are before authorities, how the transferee intends to ensure the places become operational in a timely manner and how the transferee intends to comply with existing or varied conditions of allocation.

The application must also include the last audited company statements of the proposed transferee's aged care services (if any).

Section 56 – Matters to be considered in deciding whether to determine different application period

This section provides that when deciding whether to determine another application period, the Secretary must consider the reasons for the request and any conditions relevant to the places that are proposed to be transferred.

The Secretary may also consider any other relevant matter.

Section 57 – Matters to be considered in determining different application period

This section outlines the matters that must be considered by the Secretary in determining a different application period, namely any conditions relevant to the places proposed to be transferred and whether the period is adequate to allow for an efficient transfer and for the normal processing of the transfer.

The Secretary may also consider any other relevant matter.

Division 3 – Consideration of applications

Section 58 – Purpose of this Division

Division 3 of Part 7 sets out matters for the Secretary's consideration in deciding whether the needs of the aged care community in the region are best met by the transfer of provisionally allocated places.

Section 59 – Other matters that must be considered

Section 16-16 of the Act details matters that must be considered by the Secretary in deciding whether the needs of the aged care community in the region are best met by the transfer of places. This section of the Principles describes additional matters.

These additional matters are:

- whether there has been a change in the residential care needs of the region since the provisional allocation of places;
- how far the development of the service to which the provisional allocation of places was made has progressed; and

- the extent to which the care needs of the region would be better met by transferring the provisionally allocated places to the transferee than by not transferring the places.

The factors the Secretary must take into account when considering the effect on future care recipients of the proposed transfer, include:

- whether the transfer would increase or lessen the diversity of choice available to care recipients in the region, taking into account the different kinds of services available in the region. In considering choice, the kinds of services available in the region may include services that have extra service status, services for those affected by dementia, and services for people with special needs;
- whether the transfer will increase the likelihood of care recipients receiving continuity of care in a region. For example, the Secretary may take into account whether the service has demonstrated its long-term financial and organisational viability;
- any issue raised by the transferor or transferee in the application to transfer places;
- if, after the transfer, the places would relate to the same aged care service at the same premises, the suitability of those premises, particularly whether the premises would meet the Accreditation Standards or the criteria for certification under the Act; and
- if, after the transfer, the places would relate to the same aged care service at the same premises which are owned by the transferee, and the premises would not meet the Accreditation Standards or the criteria for certification, the failure of the transferee to have improved the premises.

A note in the section reminds readers that the Secretary must not approve the transfer if the location for which the place is provisionally allocated will change as a result of the transfer (see paragraph 16-13(2)(e) of the Act).

The Secretary may also consider any other relevant matter.

Division 4 – Other matters

Section 60 – Purpose of this Division

Division 4 of Part 7 specifies other matters relating to the transfer of provisionally allocated places between a transferor and a transferee.

Section 61 – Matters that must be specified in notice of decision on transfer

This section provides that the proportion of care, in respect of provisionally allocated places to be transferred, for people with special needs, low-means care recipients, supported, concessional and assisted residents, recipients of respite care, and people requiring a particular level of care, must be specified in the notice approving the transfer.

Section 62 – Information that may be given to transferee and time for giving information

This section provides that the Secretary may give the transferee information about the following matters:

- the amount of respite care (if any) to be provided by the transferor's aged care service;
- matters relating to the service's certification and accreditation;
- matters relating to any residential care grants that have been made or any grants made under the *Aged or Disabled Persons Care Act 1954*, or Part VAB of the *National Health Act 1953*;
- the transferor's compliance history including any action taken or proposed to be taken under Part 4.4 of the Act in relation to the service. Part 4.4 of the Act outlines the consequences of non-compliance;
- the conditions to which the places being transferred are subject; and
- any other relevant matters.

If the Secretary decides to provide the information described above to the transferee, the information must be provided to the transferee at least 28 days prior to the transfer day. The transfer day is the day the transfer takes effect (as set out in section 16-19 of the Act).

If the transferor requests, in writing, for the Secretary to provide information to the transferee, the Secretary must comply with the request within 28 days of receiving it.

Part 8 – Variation of conditions for allocations of places

Division 1 – Applications for variation of conditions

Section 63 – Purpose of this Division

Division 1 of Part 8 specifies the information that must be included in an application to vary the conditions of an allocation of places.

Section 64 – Information that must be included in application

This section provides that the following information must be included in an application to vary conditions of allocation:

- the name of the applicant;
- the location of the service to which the allocation relates, or for home care places, the business address;
- the number of places to which the variation relates and the relevant conditions of allocation;
- whether any of the places are adjusted subsidy places, have extra service status or are home care places;
- if, once the variation occurred, the residential care would be provided at another location, the address of the new location and proposals for meeting the care needs of care recipients;
- the conditions of the allocation to be varied and the proposed variation;
- when the variation is proposed to take effect;
- if the application is made less than 60 days before the proposed date of effect, the reason for this; and
- the applicant's assessment of the effect of the proposed variation on the care recipients.

If the application is to change the location of the allocation and the applicant intends to construct or develop new premises, the application must also include:

- a project description;
- a cost estimate;
- a description of the size, suitability, and topography of the site and any heritage issues;
- ownership arrangements of the proposed site;
- how surrounding sites are being used;
- a description of any proposals before an authority in the State or Territory concerned about the use of the site;
- characteristics of the neighbourhood including location of shops, availability of public transport and community services; and
- 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

Section 65 – Purpose of this Division

Division 2 sets out the matters that must be considered by the Secretary in deciding whether to approve a variation of the conditions of an allocation.

Section 66 – Other matters to be considered

This section provides that:

- if an application for a variation proposes to change the location of an allocation of places, the Secretary must consider the effect on current and future care recipients in the region from which the places will be transferred and the region to which the places will be transferred;
- the factors the Secretary must take into account when considering the effect on care recipients, include:
 - the effect on access to respite care in the region following the variation and the extent to which care recipients in the region in which the service operates will benefit. For example, the Secretary may consider whether the variation would affect the provision of aged care services that meet particular needs, including the provision of respite care services, services for those affected by dementia, and services for couples with differing care needs. The Secretary may also consider the effect of the variation on the quality of services provided in the region and, in the case of home care places, whether there will be an effect on the hours of care available, and the days on which it will be provided;
 - whether the variation will increase or lessen the diversity of choice available to current and future care recipients in the region, having regard to the different kinds of services available in the region. Kinds of services may include services that have extra service status, service for care recipients affected by dementia, and services for people with special needs; and
 - whether the variation will increase the likelihood of current and future care recipients receiving continuity of care in the local area within the region. For example, the Secretary may take into account whether the service has demonstrated its long-term financial and organisational viability.

The Secretary may also consider any other relevant matter.

Part 9 – Allocations ceasing to have effect

Division 1 – Relinquishing places in respect of residential care subsidy

Section 67 – Purpose of this Division

This section states that the purpose of Division 1 of Part 9 is to specify:

- matters an approved provider needs to address when proposing how it will ensure the care needs of care recipients in residential care places that are to be relinquished will be met; and
- matters the Secretary must take into account when determining whether the provider's proposals are satisfactory.

This section also notes that the proposals are to be included in the notice of relinquishment given to the Secretary in accordance with subsection 18-2(1) of the Act.

Section 68 – Matters that must be dealt with by proposals

This section provides that the approved provider's proposals must deal with the following matters in relation to residential care places that are to be relinquished:

- whether the provider has notified the affected care recipients about the relinquishing of the places and, if so when they were notified and whether the notification was in writing;
- if the provider has met with the affected care recipients to discuss the relinquishing of the places, when the meeting was held, and whether there is written evidence of the issues discussed at the meeting. The proposal should also identify whether any concerns were expressed by care recipients and, if so, the measures the provider proposes to take to deal with the concerns;
- whether representatives of the affected care recipients have been notified about the relinquishment;
- whether the provider has helped the affected care recipients find suitable alternative care and accommodation of their choice;
- for affected care recipients who are not able to choose premises, the measures (if any) that the provider has taken to find suitable care for them at other premises. If the provider has taken such measures, the proposal must also include information about whether the provider considered all aspects of the accommodation and services that the care recipients currently have, and the location of the provider's premises, before taking the measures;
- the measures that the provider proposes to take to maintain services for the affected care recipients and to provide care to the affected care recipients who will stay at the provider's premises;
- the way (if any) in which the provider proposes to help the affected care recipients move (with their personal possessions);
- the guarantees that the provider gives that the affected care recipients will not be disadvantaged, or discriminated against, before they move;
- whether the provider is prepared to offer help to the affected 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); and
- the measures that the provider proposes to take to settle the accounts of the affected care recipients and refund their refundable deposit balances as required by section 52P-1 of the Act.

Section 69 – Matters that Secretary must take into account in deciding if proposals are satisfactory

This section outlines the factors the Secretary must take into account in deciding if the provider's proposals in relation to ensuring care recipients' care needs are met, are satisfactory. Specifically the Secretary must consider:

- whether sufficient notice has been provided to affected care recipients about the relinquishing of places and relocating;
- whether representatives of affected care recipients have been notified about the relinquishing of places and relocating;
- whether the provider is helping affected care recipients find suitable accommodation and care that meets the assessed long-term needs of the care recipients and is affordable by them;
- whether the approved provider is maintaining the same standard of care and other services for the care recipients before the relocation day;
- whether any additional help is being offered by the provider to affected care recipients;
- whether the provider has indicated that finalising the financial arrangements for the care recipient can be done before the time required by section 52P-1 of the Act;
- whether the interests of care recipients in their accommodation and care will be protected;
- whether care recipients will be financially disadvantaged after relocation; and
- whether the care recipients' needs and expectations will be satisfied or improved after relocation.

The Secretary may also consider any other relevant matter.

Division 2 – Relinquishing places in respect of home care subsidy

Section 70 – Purpose of this Division

The purpose of Division 2 of Part 9 is to specify:

- matters to be dealt with in an approved provider's proposal to relinquish home care places specifically proposals for ensuring the care of affected home care recipients are met; and
- matters the Secretary must take into account when determining whether the proposals are satisfactory.

This section also notes that the proposals are to be included in the notice of relinquishment given to the Secretary in accordance with subsection 18-2(1) of the Act.

Section 71 – Matters that must be dealt with by proposals

This section provides that the approved provider's proposals must deal with the following matters in relation to home care places that are to be relinquished:

- whether the provider has notified the affected care recipients about the relinquishing of the places and, if so when they were notified and whether the notification was in writing;
- if the provider has met with the affected care recipients to discuss the relinquishing of the places, when the meeting was held and whether there is written evidence of

the issues discussed at the meeting. The proposal should also identify whether any concerns were expressed by care recipients and, if so, the measures the provider proposes to take to deal with the concerns;

- whether representatives of the affected care recipients have been notified about the relinquishment;
- whether the provider has helped the affected care recipients find suitable alternative care;
- the measures that the provider proposes to take to maintain services for the affected care recipients; and
- the way (if any) in which the provider proposes to help the affected care recipients make alternative care arrangements.

Section 72 - Matters that Secretary must take into account in deciding if proposals are satisfactory

This section outlines the factors the Secretary must take into account in deciding if the provider's proposals in relation to ensuring care recipients' needs are met, are satisfactory. Specifically the Secretary must consider:

- whether sufficient notice has been provided to affected care recipients about the relinquishing of the places;
- whether representatives of affected care recipients have been notified about the relinquishing of places;
- whether the provider is helping affected care recipients find another provider;
- whether the provider is maintaining the same standard of care and other services for the care recipients before the proposed relinquishment date; and
- whether the provider is offering help to the care recipients that is additional to the current standard of care and other services being provided to the care recipients.

The Secretary may also consider any other relevant matter.

Division 3 – Revocation of unused allocations of places

Section 73 – Purpose of this Division

Division 3 of Part 9 specifies things the Secretary must consider in deciding whether to revoke the allocation of an unused place to an approved provider.

Section 74 – Matters that must be considered

This section provides that, when deciding whether to revoke an allocation of an unused place, the Secretary must take into account:

- whether the decision not to use the place is temporary, and whether the provider intends to use the place in the near future;
- why the place has not been used;
- whether the place can only be operated by the provider because of the specialised nature of the provider's service and the place's subsidy type;
- whether revoking the allocation would have detrimental effects on the community that the place is intended to service;
- whether revoking the place would unduly affect the provider's economic viability;
- whether allocating the place to another provider would better serve the interests of the community;
- whether revoking the place and reallocating it is warranted;

- whether any conditions of allocation could be varied to better serve the interests of the community; and
- demographic factors, including temporary movements in population, that may affect the place's viability.

The Secretary may also consider any other relevant matter.

Part 10 – Transitional provisions

Section 75 – Application of these principles to certain applications etc. that were made, but not decided, before 1 July 2014

This section acknowledges that at the time these Principles take effect (1 July 2014) there may be applications or proposals that have been submitted to the Secretary in accordance with the *Allocation Principles 1997* but not yet decided by the Secretary.

The effect of this section is that any such applications will be decided in accordance with these Principles. This includes:

- applications for allocation of places;
- applications for approval to transfer places;
- applications to vary conditions of allocation; and
- proposals to relinquish places.

Section 76 – Expiry of this Part

This section states that this Part expires on 30 June 2015. This will be sufficient time to ensure that all applications made before 1 July 2014 (but not decided before that time) have been dealt with.

Statement of Compatibility with Human Rights

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

Allocation Principles 2014

The *Allocation Principles 2014* (the Principles) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Part 2.2 of the Act 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.

The Principles describe matters relating to:

- planning for the location and distribution of aged care places;
- the functions and membership of Aged Care Planning Advisory Committees;
- the allocation process and assessment of applications;
- the transfer of places;
- variations of conditions of allocation; and
- the relinquishment of places and the revocation of unused allocations.

Human Rights Implications

The Principles are compatible with the right to an adequate standard of living and the right to the enjoyment of the highest attainable standard of physical and mental health as contained in article 11(1) and article 12(1) of the International Covenant on Economic, Social and Cultural Rights, and article 25 and article 28 of the Convention on the Rights of Persons with Disabilities.

The Principles require the Secretary, in planning the distribution of allocated places among regions, to take into account the need to distribute places equitably. The Principles also require the Secretary to take into account the need for places dedicated to meeting the needs of specified groups of people, including people with special needs and low-means care recipients. In addition, the Principles require the Secretary to take into account, when deciding whether to approve the transfer of allocated places from one approved provider to another, matters including the measures that will be taken by the transferor to ensure continuity of care for affected care recipients and how the transferee proposes to protect the rights of individual care recipients, ensure quality of care for care recipients and maintain the independence and social functioning of care recipients in a non-institutional environment.

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