

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

Aged Care (Transitional Provisions) Act 1997

Aged Care (Transitional Provisions) Principles 2014

The *Aged Care (Transitional Provisions) Act 1997* (the Transitional Provisions Act), in conjunction with the *Aged Care Act 1997*, provides for the funding of aged care services in operation before 1 July 2014 that are providing care to continuing care recipients.

Persons who are approved under the *Aged Care Act 1997* to provide aged care services (approved providers) can be eligible to receive subsidy payments under the Transitional Provisions Act in respect of the care they provide to continuing care recipients. Continuing care recipients are those who entered an aged care service before 1 July 2014 and since that time have not left the service for a continuous period of more than 28 days (other than because the person is on leave) or before moving to another service, made a written choice to be subject to new rules relating to fees and payments that take effect on 1 July 2014.

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

Under section 96-1 of the Transitional Provisions Act, the Minister may make the *Aged Care (Transitional Provisions) Principles 2014* (the Principles).

The Principles deal with:

- the eligibility requirements for the payment of subsidies and supplements in respect of continuing care recipients in residential care and home care;
- the reductions to subsidy that may be made for continuing care recipients in residential care;
- the responsibilities of approved providers in relation to accommodation bonds and accommodation charges paid by continuing care recipients; and
- matters relating to resident fees and home care fees for continuing care recipients.

These Principles only describe matters relating to residential care subsidy, home care subsidy and payments for entry to residential care for care recipients who are continuing care recipients. The arrangements for care recipients who are not continuing care recipients are described in the *Aged Care Act 1997* and Principles made under that Act.

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 *Aged Care Act 1997*, 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.

In early 2014 consultation was undertaken on those aged care principles that reflected significant policy changes. As these Principles do not include any substantial policy issues an exposure draft of these Principles was not released for public comment.

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 Aged Care (Transitional Provisions) Principles 2014

Chapter 1 - Preliminary

Section 1 - Name of principles

This section states that the name of the Principles is the *Aged Care (Transitional Provisions) 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 (Transitional Provisions) Act 1997* (the Transitional Provisions Act).

Section 4 - Definitions

This section defines certain terms used in the Principles.

ACAP code has the meaning given by section 4 of the *Subsidy Principles 2014*. An ACAP code, in relation to a health condition specified in the table in Schedule 1, means the Aged Care Assessment Program code specified in the table for that health condition.

accepted mental health condition means a mental health condition for which:

- the Repatriation Commission has accepted liability to pay a pension under the Veterans' Entitlements Act; or
- the Military Rehabilitation and Compensation Commission have accepted liability to pay compensation under the *Military Rehabilitation and Compensation Act 2004* or the *Safety, Rehabilitation and Compensation Act 1988*.

accessible location means a location that has an ARIA value of more than 1.84 but no more than 3.51.

ACFI classification means a classification, or a renewal of a classification, of a care recipient under the *Aged Care Act 1997* and:

- the *Classification Principles 1997*, as in force on or after the commencement of Schedule 1 to the *Aged Care Amendment (Residential Care) Act 2007*; or
- the *Classification Principles 2014*.

agreed fee for a care recipient and an approved provider, means a fee, charge or other payment that is:

- agreed between the care recipient and approved provider; and
- not prohibited under the *Aged Care Act 1997* or the Transitional Provisions Act.

ARIA value in relation to a location, means the value given to that location in accordance with the methodology set out in the document titled *Measuring Remoteness: Accessibility/Remoteness Index of Australia (ARIA)*, Revised Edition,

Occasional Papers: New Series Number 14, published by the Health Department in October 2001, as the document existed on 1 August 2013. In 2014, the *Measuring Remoteness: Accessibility/Remoteness Index of Australia (ARIA)* was accessible at <http://www.health.gov.au>.

Australian accounting standards means the accounting standards in force under section 334 of the *Corporations Act 2001*. In 2014, the Australian accounting standards were accessible at <http://www.aasb.gov.au>.

bond means an accommodation bond or an entry contribution.

bond balance means:

- in relation to an accommodation bond - an accommodation bond balance; or
- in relation to an entry contribution - an entry contribution balance.

care day deficit for a residential care service for a quarter, means the number of days worked out for the service for the quarter under section 16.

CPI number means the All Groups Consumer Price Index number (that is, the weighted average of the 8 Australian capital cities) published by the Australian Statistician.

due date in relation to an accommodation bond payable by a care recipient to an approved provider, has the meaning given by subsection 57-18(6) of the Transitional Provisions Act.

earlier CPI number for a financial year, means:

- the CPI number for the last March quarter before the beginning of the financial year; or
- if the CPI number for the March quarter of an earlier financial year is higher than the most recent earlier CPI number - the higher CPI number.

entry day for a person who is being provided with residential care through a residential care service or a flexible care service, means:

- the day when the person starts to be provided with care through the service (other than respite care); or
- if the person is transferred from respite care to permanent accommodation—the day of the transfer.

financial hardship determination in relation to a person, means a determination made by the Secretary that a person is unable to pay (or pay more than a certain amount) of accommodation bond or accommodation charge.

Health Department means the Department responsible for the administration of the *National Health Act 1953*.

highly accessible location means a location that has an ARIA value of no more than 1.84.

homeowner is defined in section 5.

hostel place means a hostel place within the meaning of the *Aged or Disabled Persons Care Act 1954*, as in force on 30 September 1997.

indexable amount means the amount X or Y referred to in subsection 97(3) or if that amount has previously been increased under section 97, the amount as most recently increased.

interest equivalent in relation to an accommodation bond balance, means the amount an approved provider could have been expected to have derived from investment of the accommodation bond balance.

key personnel has the same meaning as in section 8-3A of the *Aged Care Act 1997*.

latest CPI number for a financial year, means the CPI number for the March quarter in the financial year.

low-means care recipient is defined in section 7.

lump sum equivalent for a care recipient who has elected to pay an accommodation bond wholly or partly by periodic payments, means an amount equal to the amount of the lump sum that the care recipient would have paid if the care recipient had not elected to pay the accommodation bond by periodic payments.

maximum permissible interest rate for a day, means the maximum permissible interest rate for that day worked out in accordance with the calculator in section 8.

minimum permissible asset value has the same meaning as in subsection 57-12(3) of the *Transitional Provisions Act*.

moderately accessible location means a location that has an ARIA value of more than 3.51 but no more than 5.8.

multi-purpose service has the meaning given by section 104 of the *Subsidy Principles 2014*.

net value, of a person's property, means the gross value of the property less any debts, charges and encumbrances on the property.

new resident means a care recipient who is being provided with residential care through a residential care service and who is not receiving care on an extra service basis and enters the service:

- if the service was certified on 1 October 1997 - after 30 September 1997; or
- if the service was certified after 1 October 1997 - after the date the service is certified.

non-registered entity means an entity that is not a registered entity and has incurred a liability to pay payroll tax to a registered entity in relation to residential care provided to care recipients through a residential care service. An approved provider will be more likely to be a non-registered entity if it is operated by a charitable, religious or government provider.

NPI-NH test means the test called the Neuropsychiatric Inventory—Nursing Home Version, as the test exists on 1 August 2013.

nursing home bed means a nursing home bed in a nursing home approved under section 40AA of the *National Health Act 1953*, as in force on 30 September 1997.

Quality Agency means the Australian Aged Care Quality Agency established by the *Australian Aged Care Quality Agency Act 2013*.

RCS classification means a classification, or renewal of a classification, of a care recipient under the *Aged Care Act 1997* and the *Classification Principles 1997* as in force immediately before the commencement of Schedule 1 to the *Aged Care Amendment (Residential Care) Act 2007*.

registered entity means an entity that is registered with a revenue office (however described) of a State or Territory for the purposes of paying payroll tax in accordance with the laws of that State or Territory. An approved provider will be more likely to be a registered entity if it is operated on a for profit basis.

remote area has the meaning given by subsection 14(1) of the Social Security Act.

remote location means a location that has an ARIA value of more than 5.8 but no more than 9.08.

single-rate social security pension means a pension under the Social Security Act that is payable in the circumstances:

- referred to in column 2 of item 1 in table B in point 1064-B1 of that Act; or
- referred to in column 2 of item 1 in table B in point 1065-B12 of that Act; or
- to which the rate at point 1066-B1 of that Act is applicable.

Social Security Act means the *Social Security Act 1991*.

transfer of a care recipient from respite care to permanent accommodation in an aged care service, means the entry of the care recipient to the aged care service on a permanent basis after having received respite care.

Transitional Provisions Act means the *Aged Care (Transitional Provisions) Act 1997*.

transition care has the meaning given by section 106 of the *Subsidy Principles 2014*.

unrealisable asset of a care recipient, has the meaning given by subsections 11(12) and (13) of the Social Security Act.

very remote location means a location that has an ARIA score of more than 9.08 but no more than 12.

veteran means a person:

- who is taken to have rendered eligible war service under section 7 of the Veterans' Entitlements Act; or

- in respect of whom a pension is payable under subsection 13(6) of that Act; or
- who is a member of the Forces within the meaning of subsection 68(1) of that Act or a member of a Peacekeeping Force within the meaning of that subsection. In some cases a member of the Forces, or a member of a Peacekeeping Force, includes a person who is no longer serving; or
- who is a member within the meaning of the *Military Rehabilitation and Compensation Act 2004* or a former member within the meaning of that Act; or
- who is an employee within the meaning of the *Safety, Rehabilitation and Compensation Act 1988*. In some cases an employee includes a person who has ceased to be an employee.

Veterans' Entitlements Act means the *Veterans' Entitlements Act 1986*.

A number of expressions used in these Principles are defined in the Transitional Provisions Act.

Section 5 - Meaning of homeowner

This section outlines circumstances where a person is not a homeowner for the purposes of paragraph 44-7(1)(b) or 44-8(1)(b) of the Transitional Provisions Act.

A person is not a homeowner for the purposes of paragraph 44-7(1)(b) of the Transitional Provisions Act if the value of their interest in their home does not exceed:

- if a determination covered by subsection 44-7(1B) of the Transitional Provisions Act for the person specifies a time after 19 September 2009 - 2.25 times the basic age pension amount at that time; or
- if the applicable time under subsection 44-7(2) of the Transitional Provisions Act for a determination covered by subsection 44-7(1C) of the Transitional Provisions Act for the person is after 19 September 2009 - 2.25 times the basic age pension amount at the applicable time; or
- in any other case - 2.5 times the basic age pension amount at the applicable time under subsection 44-7(2) of the Transitional Provisions Act.

A person is not a homeowner for the purposes of paragraph 44-8(1)(b) of the Transitional Provisions Act if the value of their interest in their home does not exceed:

- if a determination covered by subsection 44-8(1B) of the Transitional Provisions Act for the person specifies a time after 19 September 2009 - 3.61 times the basic age pension at that time; or
- if the applicable time under subsection 44-8(2) of the Transitional Provisions Act for a determination covered by subsection 44-8(1C) of the Transitional Provisions Act for the person is after 19 September 2009 - 3.61 times the basic age pension amount at the applicable time; or
- in any other case - 4 times the basic age pension amount at the applicable time under subsection 44-8(2) of the Transitional Provisions Act.

Section 6 - Meaning of high level of residential care

This section provides that for the definition of ***high level of residential care*** in clause 1 to Schedule 1 to the Transitional Provisions Act, ***high level of residential care*** means residential care provided to a care recipient whose classification level includes one or more of the following domain categories:

- high ADL category;
- high CHC category;
- high behaviour category;
- a medium domain category in at least 2 domains.

domain and *domain category* have the same meanings as in the Classification Principles 2014.

Section 7 - Meaning of low-means care recipient

This section provides that a care recipient is a low-means care recipient if the care recipient is being provided with residential care through a residential care service on that day and either:

- the care recipient is eligible for an accommodation supplement under section 44-28 of the *Aged Care Act 1997* for that day; or
- on the day on which the care recipient entered the residential care service (the entry day) the care recipient's means tested amount was less than the maximum accommodation supplement amount for the entry day.

The note to this section reminds the reader that maximum accommodation supplement amount is defined in subsection 44-21(6) of the *Aged Care Act 1997*.

Section 8 - Meaning of maximum permissible interest rate

This section presents the maximum permissible interest rate calculator which is be used to work out the maximum permissible interest rate for a day.

The maximum permissible interest rate for a day is worked out as follows:

- Step 1 - Work out the general interest charge rate for the relevant day under section 8AAD of the *Taxation Administration Act 1953*.
- Step 2 - Multiply the rate worked out at step 1 by the number of days in the calendar year in which the relevant day falls.
- Step 3 - Subtract 3 percentage points from the amount worked out at step 2.

Chapter 2 - Residential care subsidy

Part 1 - Who is eligible for residential care subsidy?

Division 1 - Purpose of this Part

Section 9 - Purpose of this Part

The purpose of Part 1 is to specify matters in relation to the eligibility of an approved provider for residential care subsidy, including the requirements for when a care recipient is on leave from a residential care service.

Division 2 - Leave from residential care services

Section 10 - Care recipient provided with transition care

Subsection 42-2(3A) of the Transitional Provisions Act provides that a care recipient is on leave from a residential care service on a day if flexible care subsidy is payable in respect of the care recipient on that day, and if any requirements specified in these Principles are met.

In accordance with that subsection, this section specifies that the requirement is that the kind of care provided on the day on which subsidy is payable is transition care (as defined in section 4).

A note in this section states that a care recipient can be taken to be provided with residential care while he or she is on leave from that care (section 42-2 of the Transitional Provisions Act).

Part 2 - How is residential care subsidy paid?

Division 1 - Purpose of this Part

Section 11 - Purpose of this Part

The purpose of Part 2 is to specify matters in relation to the payment of residential care subsidy by the Commonwealth to an approved provider for providing residential care to care recipient, including:

- specifying the kinds of payments made in respect of the service that are capital payments and how to work out the proportion of the amounts equal to the capital payments that are to be deducted; and
- conditions that must be met for non-compliance deductions to not apply and the circumstances in which a non-compliance deduction will not apply even if a condition has not been met.

Division 2 - Capital repayment deductions

Section 12 - Kinds of payment that are capital payments

Capital payment is defined in subsection 43-6(5) of the Transitional Provisions Act as a residential care grant or a payment of a kind specified in the Principles.

In accordance with that subsection, this section specifies the kinds of payments that are considered to be capital payments, including:

- financial assistance by way of a grant under Part II, or Division 3 of Part III, of the *Aged or Disabled Persons Care Act 1954*, as in force before it was repealed;
- a grant of a Commonwealth benefit under Part VAB or VAC of the *National Health Act 1953*;
- a grant under the *Aged or Disabled Persons Hostels Act 1972*, as in force before it was repealed;
- a grant approved on or after 1 July 1989 under the Commonwealth program known as the Residential Aged Care Upgrading Program; and
- capital funding approved on or after 1 July 1989 under the Commonwealth program known as the Small Homes Capital Funding Initiative.

This section notes that a residential care grant is also a capital payment.

Section 13 - Working out proportion of amounts to be deducted if distinct part of residential care service has extra service status

This section provides the formula used to calculate the proportion of the amount equal to the capital payments made in respect of a residential care service for which extra service is granted only in respect of a distinct part of the service.

Division 3 - Non-compliance deductions

Section 14 - Circumstances in which non-compliance deductions do not apply

Subsection 43-8(2) of the Transitional Provisions Act states that the Principles may specify circumstances in which non-compliance deductions do not apply even if the conditions referred to in subsection 43-8(1) have not been met.

In accordance with that subsection, this section specifies those circumstances, including if:

- fewer than 6 care recipients being provided with residential care through the service in the quarter entered the service after 30 September 1997; or
- for a service that has extra service status, fewer than 6 care recipients being provided with residential care through the service in the quarter (each receiving care on a permanent basis and not occupying extra service places) entered the service after 30 September 1997;
- the care day deficit for the service for the quarter is less than 92. The care day deficit is worked out under section 16; or
- at least one of the allocated places is not occupied for the quarter and the care day deficit would have been less than 92 if the allocated place or places had been occupied by an assisted, concessional, supported resident, or a low-means care recipient.

This section also states that if:

- one or more allocated places are transferred from one residential care service to another; and
- some or all of the places are occupied by care recipients from the first service; and
- before the transfer, the second service was not subject to a non-compliance deduction;

then the deductions do not apply to the service receiving the transferred places for the number of quarters that is the lesser of 4 and the number of additional places received, divided by 3 (rounded to the nearest whole number).

Section 15 - Working out amounts of non-compliance deductions

This section sets out the method for working out the amount of non-compliance deduction for a quarter, in respect of a residential care service, being:

$$\frac{A \times (B - C)}{D}$$

where:

A is the care day deficit for the quarter in respect of the residential care service.

B is the total of the basic subsidy amounts for each day that residential care is provided through a service, in the quarter for each care recipient.

C is the total of the reductions, worked out by applying the income test under Subdivision 44-E of the Transitional Provisions Act and sections 44-21 to 44-23 of

the *Aged Care Act 1997*, for each day of residential care provided through the residential care service in the quarter for each care recipient.

D is the total of the number of days of residential care provided through the residential care service in the quarter for each care recipient.

This section also states that the non-compliance deduction is taken to be zero if *C* is greater than *B*.

Section 16 - Working out the care day deficit

This section presents the care day deficit calculator which is used to work out the care day deficit for a residential care service for a quarter. The care day deficit is worked out as follows:

- Step 1 - Count the number of care recipients being provided with residential care through the residential care service that entered the service after 30 September 1997 and during the quarter, are receiving care on a permanent basis and are not occupying a place that is an extra service place.
- Step 2 - Multiply the number of care recipients counted under step 1 by the number of days in the quarter.
- Step 3 - Count the number of care recipients mentioned in step 1 who are assisted residents, concessional residents, low-means care recipients and supported residents.
- Step 4 - Multiply the number of care recipients counted under step 3 by the number of days in the quarter.
- Step 5 - Subtract the number worked out under step 4 from the number worked out under step 2.

Part 3 - What is the amount of residential care subsidy?

Division 1 - Purpose of this Part

Section 17 - Purpose of this Part

This section describes the purpose of Part 3 which is to set out matters that relate to the amount of residential care subsidy payable to an approved provider in respect of a care recipient who is being provided with residential care through a service, including:

- other matters by which the Minister may base a determination of different amounts of basic subsidy;
- primary supplements that may apply to the care recipient including the accommodation supplement, concessional resident supplement, charge exempt resident supplement, respite supplement, oxygen supplement, and enteral feeding supplement;
- additional primary supplements that may apply to the care recipient, including the payroll tax supplement, transitional supplement, accommodation charge top-up supplement, transitional accommodation supplement, basic daily fee supplement, and the dementia and severe behaviours supplement;
- how to work out the value of the care recipient's assets;
- matters that relate to the reduction in subsidy that may apply to a care recipient, including the compensation payment reduction or daily income tested reduction;

- matters relating to the income test for the care recipient;
- matters relating to other supplements that may apply to the care recipient, including the viability and hardship supplements; and
- other supplements that may apply to a care recipient, including the veterans' supplement and homeless supplement.

Division 2 - Basic subsidy amount

Section 18 - Determination by Minister of basic subsidy amount for care recipient - other matters

This section provides that the Minister may base a determination of different amounts of basic subsidy on the following:

- whether the service provides a greater proportion of care to recipients of respite care than the proportion required by conditions of the allocated place;
- whether, on a particular day, the number of days on which a care recipient has previously been provided with respite care during the financial year, equals or exceeds 63 days or another amount as determined by the Secretary in accordance with section 25;
- if an appraisal of the care recipient's care needs has not been received within the timeframe specified in paragraph 26-1(a) or (b) of the *Aged Care Act 1997*, the circumstances of the appraisal not being received within that period;
- if a reappraisal of a care recipient's care needs was not received within the timeframe specified in section 27-2 of the *Aged Care Act 1997*, the circumstances of the reappraisal not being received within that period.

Division 3 - Primary supplements

Subdivision A - Accommodation supplement

Section 19 - Determination of accommodation supplement amount—other matters

This section provides that the Minister may base a determination of different amounts of the accommodation supplement on the following:

- whether more than 40 per cent of care recipients being provided with residential care are the kinds of care recipients referred to in paragraph (2)(a) or (b); or
- whether the service meets the building requirements specified in Schedule 1.

The kind of care recipients referred to in paragraph (2)(a) are care recipients who are both post-2008 reform residents and 'new residents' (as defined in section 4) and either low-means care recipients or supported residents.

The kinds of care recipients referred to in paragraph (2)(b) are care recipients who are assisted residents, or concessional residents, or low-means care recipients, or supported residents.

Unless at least 40 per cent of care recipients are the kinds of care recipients referred to in either paragraph (2)(a) or (b), a lower rate of accommodation supplement is payable in respect of the eligible care recipients receiving care provided through the service.

A note in this section reminds readers that *new resident* is defined in section 4 to mean a care recipient who is being provided with residential care, is not receiving care on an extra service basis and entered the service:

- if the service was certified on 1 October 1997 - after 30 September 1997; or
- if the service was certified after 1 October 1997 - after the date the service is certified.

Subdivision B - Concessional resident supplement

Section 20 - Determination of concessional resident supplement amount—other matters

This section provides that the Minister may base a determination of different amounts of the concessional resident supplement on whether more than 40 per cent of care recipients are assisted residents, concessional residents, low-means care recipients or supported residents.

A note in this section reminds readers that new resident is defined in section 4.

Subdivision C - Charge exempt resident supplement

Section 21 - Determination of charge exempt resident supplement amount—other matters

This section provides that the Minister may base a determination of different amounts of the charge exempt resident supplement for pre-2008 reform residents on the following:

- the amount by which the maximum rate of concessional resident supplement is greater than \$12.17 for a day;
- if the care recipient has paid an accommodation charge as an assisted resident, the difference between the charge exempt resident supplement for a day and the concessional resident supplement relevant to the approved provider.

Section 22 - Circumstances in which charge exempt resident supplement is not payable to approved provider

This section provides that, in accordance with subsection 44-8A(5) of the Transitional Provisions Act, the circumstances where the Secretary may determine that a charge exempt resident supplement is not payable to the approved provider are the following:

- the approved provider is unable to find the care recipient, or the care recipient's legal representatives or a person listed in section 23;
- a sanction is imposed on the approved provider under section 66-1 of the *Aged Care Act 1997*;
- the Secretary has refunded, or will refund, the amount in accordance with paragraph 44-8A(6)(b) of the Transitional Provisions Act.

If the Secretary makes a determination under subsection 44-8A(5) of the Transitional Provisions Act, the Secretary must give written notice of the determination to the approved provider.

Section 23 - Persons to whom charge exempt resident supplement may be paid

This section provides a list of persons for the purpose of paragraph 44-8A(6)(a) of the Transitional Provisions Act, including:

- an executor of the care recipient's estate;
- a person appointed by a State or Territory guardianship board (however described) to deal with the care recipient's estate;
- an authorised nominee of the care recipient; and
- a person who holds an enduring power of attorney for the care recipient.

Subdivision D - Respite supplement

Section 24 - Eligibility for respite supplement - requirements

This section outlines the eligibility criteria for a care recipient to receive a respite supplement. A care recipient is eligible for a respite supplement on a particular day if, on that day the care recipient is approved under Part 2.3 of the *Aged Care Act 1997* to receive residential care provided as respite care.

A note in this section refers readers to the *Approval of Care Recipients Principles 2014* for more information about the approval of care recipients.

Section 25 - Maximum number of days of respite care

Paragraph 44-12(2)(c) of the Transitional Provisions Act provides that a care recipient is eligible for a respite supplement if, among other things, the care recipient has only received residential respite care for less than a certain number of days in a financial year.

For the purposes of this paragraph, this section states that the number of days is 63 days or, if the Secretary has increased the number of days in accordance with this section, the number of days as so increased by the Secretary.

The Secretary may increase the number of days by up to 21 if the Secretary considers that it is necessary because of carer stress, severity of the care recipient's condition, absence of the care recipient's carer or any other relevant matter. An increase of this kind may be made more than once in a financial year.

Section 26 - Determination of respite supplement amount - other matters

This section provides that the Minister may base a determination of different amounts of the respite supplement on the following:

- whether the service provides a greater proportion of care to recipients of respite care than the proportion required by conditions of the allocated place;
- the time when the care recipient entered the service.

Subdivision E - Oxygen supplement

Section 27 - Circumstances relating to provision of oxygen

Paragraph 44-13(1)(c) of the Transitional Provisions Act requires that in order for a care recipient to be eligible for the oxygen supplement, the service must be providing the oxygen to the care recipient in the circumstances specified in these Principles.

This section specifies those circumstances as follows:

- the residential care service must hire, temporarily obtain or own the materials and equipment used to provide the oxygen;
- oxygen must not be provided because of a medical emergency or on a short-term or episodic basis;

- the care recipient must have a continued need for the oxygen as certified by a medical practitioner in writing; and
- the oxygen must be provided in the most economical way available, taking into account the medical needs of the care recipient.

Subdivision F - Enteral feeding supplement

Section 28 - Circumstances relating to provision of enteral feeding

Paragraph 44-14(1)(c) of the Transitional Provisions Act requires that in order for a care recipient to be eligible for the enteral feeding supplement, the service must be providing the enteral feeding to the care recipient in the circumstances specified in the Principles. This section specifies those circumstances as follows:

- a medical practitioner must have certified in writing that the care recipient requires enteral feeding;
- the care recipient must be provided with a liquid dietary formula administered by a specific feeding method;
- the formula must be certified by a medical practitioner or dietician as nutritionally complete;
- the enteral feeding must not be intermittent or supplementary to oral feeding; and
- the enteral feeding must be provided in the most economical way available, taking into account the care recipient's medical needs.

Division 4 - Additional primary supplements

Section 29 - Purpose of this Division

Section 44-16 of the Transitional Provisions Act provides for additional primary supplements. In accordance with that section, this Division lists additional primary supplements and specifies the circumstances in which each supplement will be payable.

Subdivision A - Payroll tax supplement

Section 30 - Payroll tax supplement

This section states that the payroll tax supplement for a care recipient is the total of all payroll tax supplements for the days where:

- the care recipient was receiving residential care from the service;
- for a care recipient with an RCS classification (as defined in section 4), the classification is not level 8;
- for a care recipient with an ACFI classification (as defined in section 4), the care recipient's classification was not at the lowest applicable classification level. The lowest applicable classification level is defined in the Dictionary to the *Aged Care Act 1997* and is also discussed in the *Classification Principles 2014*; and
- the service met the eligibility requirements for the payroll tax supplement under section 31.

The payroll tax supplement is only payable prior to 1 January 2015. After this time, the payroll tax supplement is no longer payable. The provisions relating to the payroll tax supplement will be automatically removed from these Principles on 1 April 2015 (by virtue of section 131).

Section 31 - Eligibility for payroll tax supplement

This section outlines requirements that a service must meet to be eligible for a payroll tax supplement, including:

- if the provider is a registered entity (as defined in section 4), the provider must have incurred a payroll tax liability to the relevant State of Territory revenue office; and
- if the provider is non-registered entity (as defined in section 4):
 - the provider must have been given, from a registered entity, an itemised invoice for services, including salary, wages and payroll tax;
 - the provider must have incurred a liability to pay payroll tax to the registered entity; and
 - the provider must have, at the end of each payment period, notified the Secretary in writing of changes to their liability for payroll tax for the prior payment period and the extent to which their liability for payroll tax has been affected by any variation.

The section also provides that a residential care service only meets the requirements for eligibility for a payroll tax supplement on a day before 1 January 2015.

Subdivision B - Transitional supplement

Section 32 - Transitional supplement

This section states that the transitional supplement for a care recipient is the total of all transitional supplements for the days where the care recipient was:

- receiving residential care from the service; and
- eligible for that supplement in accordance with section 33.

Section 33 - Eligibility for transitional supplement

This section outlines requirements that a care recipient must meet to be eligible for a transitional supplement, including:

- the residential care being provided was not respite care;
- the care recipient is not a post-2008 reform resident;
- for a care recipient who entered the service after 30 September 1997, the service was not certified on the day they entered;
- for a care recipient who occupied a hostel place or nursing home bed on 30 September 1997, the care recipient continued to receive residential care from the service after 30 September 1997 and has been classified under Part 2.4 of the *Aged Care Act 1997*. Hostel place and nursing home bed are defined in section 4.

In essence the transitional supplement is payable for care recipients who occupied a hostel or nursing home bed at the commencement of the *Aged Care Act 1997*, before which services were not required to be certified, or entered a service that was not certified. Transitional supplement is payable in respect of care recipients who would have been eligible for concessional resident supplement, had the service been certified when the residents first entered care.

Subdivision C - Accommodation charge top-up supplement

Section 34 - Accommodation charge top-up supplement

This section states that the accommodation charge top-up supplement for a care recipient is the total of all accommodation charge top-up supplements for the days where the care recipient was:

- receiving residential care from the service; and
- eligible for that supplement in accordance with section 35.

Certain residents who receive an income support payment have their accommodation charges capped at a lower rate than that for residents who do not receive an income support payment. These are post-2008 reform residents who are eligible to pay an accommodation charge.

These residents are paying less in accommodation charges than the applicable maximum rate. Depending on the resident's assets, the accommodation supplement goes some way (and in some cases, all the way) towards making this up. However, in some cases the accommodation supplement does not equal the gap between the applicable maximum rate and the maximum daily accommodation charge that can be paid by the care recipient. The accommodation charge top-up supplement reduces any potential disadvantage to approved providers who are providing care to these residents by paying the provider the accommodation charge top-up supplement.

Section 35 - Eligibility for accommodation charge top-up supplement

This section outlines requirements that a care recipient must meet to be eligible for an accommodation charge top-up supplement, including:

- on that day, the care recipient is a post-2008 reform resident and receives an income support payment;
- on that day, the residential care service is certified;
- the care recipient was eligible to pay an accommodation charge on entry to the residential care service;
- and the accommodation charge was less than the accommodation charge the care recipient would have been eligible to pay had they not been receiving an income support payment.

Subdivision D - Transitional accommodation supplement

Section 36 - Transitional accommodation supplement

This section states that the transitional accommodation supplement for a care recipient is the total of all transitional accommodation supplements for the days where the care recipient was:

- receiving residential care from the service; and
- eligible for that supplement in accordance with section 37.

The transitional accommodation supplement is payable for eligible post-2008 reform residents who entered care after 19 March 2008 and before 20 September 2011. The purpose of the transitional accommodation supplement was to smooth the introduction of the accommodation payment arrangements that took effect on 20 March 2008. To this end, the Government pays aged care providers the transitional accommodation supplement in respect of certain post-2008 reform residents who

entered care after 19 March 2008 and before 20 September 2011 and who are eligible to pay an accommodation bond.

Section 37 - Eligibility for transitional accommodation supplement

This section outlines requirements that a care recipient must meet to be eligible for a transitional accommodation supplement, including:

- on that day, the care recipient is a post-2008 reform resident;
- the care recipient entered a residential care service after 19 March 2008 and before 20 September 2011; and
- the care recipient is eligible to pay an accommodation bond.

The section states that a care recipient who first entered care before 20 September 2011 is not taken to have entered a residential care service after this date only because they moved from one service to another within 28 days.

Subdivision E - Basic daily fee supplement

Section 38 - Basic daily fee supplement

This section states that the basic daily fee supplement for a care recipient is the total of all basic daily fee supplements for the days where the care recipient was:

- receiving residential care from the service; and
- eligible for that supplement in accordance with section 39.

Section 39 - Eligibility for basic daily fee supplement

This section outlines requirements that a care recipient must meet to be eligible for a basic daily fee supplement, including:

- on that day, the care recipient was not receiving respite care;
- on 1 July 2012, the care recipient was not receiving an age pension or a seniors supplement under the Social Security Act;
- on 1 July 2012, the care recipient was not receiving a service pension or a senior supplement under the Veterans' Entitlements Act;
- on 1 July 2012, the care recipient did not have a seniors health card;
- the approved provider has received subsidy under Chapter 3 of the *Aged Care Act 1997* on each day during the period 1 July 2012 – 30 June 2014 and under Chapter 3 of the Transitional Provisions Act on each day since 1 July 2014; and
- the approved provider charges the care recipient no more than the maximum daily amount of resident fees less an amount obtained by rounding down to the nearest cent an amount equal to 1% of the basic age pension amount (worked out on a daily basis).

Subdivision F - Dementia and severe behaviours supplement

Section 40 - Dementia and severe behaviours supplement

This section provides that the dementia and severe behaviours supplement for a care in respect of a payment period ending on or before 31 July 2014 is the sum of all the dementia and severe behaviours supplements for the days during the period on which the care recipient was:

- provided with residential care through the residential care service in question; and
- eligible for that supplement in accordance with section 40.

Section 41 - Eligibility for dementia and severe behaviours supplement

This section outlines the criteria for a care recipient's eligibility for the dementia and severe behaviours supplement. A care recipient is eligible for the dementia and severe behaviours supplement on a particular day within a payment period ending on or before 31 July 2014 if:

- on that day, the service provided a care recipient with residential care that was not respite care;
- the care recipient has been diagnosed by a medical practitioner with one or more of the specified health conditions (ACAP code between 0500 and 0599). ACAP code is defined in section 4;
- the assessment requirements in section 41 are satisfied in respect of the care recipient on the day; and
- the approved provider has a written copy of the care recipient's medical diagnosis and assessment results.

This section also states that a care recipient is not eligible for the dementia and severe behaviours supplement:

- unless a claim for residential care subsidy, which includes the dementia and severe behaviours supplement, is made within 56 days after that day; and
- a care recipient who enters after 30 June 2014 is not eligible for the dementia and severe behaviours supplement. Consistent with the assessment requirements in section 42, an assessment must be conducted more than 7 days after the care recipient commenced being provided with care. A care recipient who enters care on 30 June 2014 could be assessed on 7 July 2014 and the supplement would become payable until 31 July 2014. The supplement would not be payable on 7 July 2014 for a care recipient who enters after 30 June 2014 because the assessment could not have been done in accordance with the assessment requirements (and the supplement would not therefore be payable on 7 July 2014 or throughout July 2014).

Section 42 - Assessment requirements

This section outlines the requirements for assessment of a care recipient, which is a condition of eligibility for the dementia and severe behaviours supplement. In summary:

- the care recipient must have been assessed using the NPI-NH test before the relevant day; and
- results must include:
 - a frequency score of 4 and a severity score of 3 for at least two behavioural domains. The behavioural domains are delusions, hallucinations, agitation/aggression, depression/dysphoria, anxiety and disinhibition; and
 - a score of 4 or above for occupational disruptiveness for at least 2 behavioural domains; and
 - a total score of 50 or above for the 12 behavioural domains mentioned in the NPI-NH test. The NPI-NH test is defined in section 4.

The assessment must have been conducted, in respect of the care recipient and the relevant day:

- by a registered nurse, clinical nurse consultant, nurse practitioner or medical practitioner;

- if the dementia and severe behaviours supplement was not payable for the care recipient for the day before the relevant day, within 3 months of the relevant day;
- if the supplement was payable for the care recipient for the day before the relevant day, and the relevant day was within 12 months of the care recipient's eligibility start day, within 3 months before the care recipient's eligibility start day;
- if the supplement was payable for the care recipient for the day before the relevant day, and the relevant day was within 12 months of an anniversary of the care recipient's eligibility start day, within 3 months before that anniversary; and
- more than 7 days after the care recipient commenced being provided with residential care through the residential care service (not including a day on which the care recipient was on pre-entry leave).

A care recipient's eligibility start day is:

- the first day for which residential care subsidy that includes the dementia and severe behaviours supplement becomes payable for the care recipient; or
- if residential care subsidy that includes the dementia and severe behaviours supplement was payable for the care recipient but has ceased to be payable for the care recipient, the first day for which residential care subsidy that includes the dementia and severe behaviours supplement becomes payable again for the care recipient.

The results of the assessment must have been given to the Secretary, but not during the period of 28 days (not including any day on which the care recipient was on pre-entry leave) starting on the day on which an approved provider began providing residential care to the care recipient.

Division 5 - Value of assets

Section 43 - Supported residents - time for assessing assets

For the purposes of determining whether a person is a supported resident under paragraph 44-5B of the Transitional Provisions Act, this section specifies the time at which the value of a person's assets is to be determined. That time is:

- the first time after 19 March 2008 that the person entered residential care service without having had a break in care of more than 28 days. Break in residential care has the same meaning as in subsection 44-5D(2) of the Transitional Provisions Act; or
- if the person entered another residential care service and a determination of their assets, made under section 44-8AB of the Transitional Provisions Act because of that entry, is less than the valuation of the persons assets at the time referred to in the dot point above, the time referred to in the determination.

Section 44 - Working out the value of assets

Subsection 44-10(1) of the Transitional Provisions Act states that the value of a person's assets is to be worked out in accordance with the Principles.

In accordance with that subsection, this section states that the value of a person's assets is the net value of the person's property reduced by any compensation payments received by the person under:

- the *Compensation (Japanese Internment) Act 2001*;

- the *Veterans' Entitlements (Compensation – Japanese Internment) Regulations 2001*;
- Part 2 of the *Veterans' Entitlements (Clarke Review) Act 2004*; or
- Schedule 5 to the *Social Security and Veterans' Affairs Legislation Amendment (One-Off Payments and Other 2007 Budget Measures) Act 2007*.

Property includes accounts, interest-bearing deposits, fixed deposits, bonds, debentures, shares, investments in certain trusts and friendly societies, superannuation assets from which lump sum amounts can be drawn, real estate, businesses, farms, loans, motor vehicles, boats and caravans, the surrender value of life insurance policies, investment collections and household contents and personal effects (of which the value is taken to be \$5,000 if there is no evidence of actual value).

Division 6 - Reductions in subsidy

Section 45 - Compensation payment reduction - judgement or settlement does not, or does not adequately, take into account future costs of residential care

This section outlines matters that the Secretary must take into account when making a determination in respect of a judgment or settlement entitling a care recipient to compensation under subsections 44-20(5) and (6) of the Transitional Provisions Act, including:

- the amount of the judgement or settlement;
- for a judgement – the components (for example, loss of income or costs of future care) and the amount for each component;
- the proportion of liability apportioned to the care recipient; and
- the amounts spent on residential care at the time of the judgement or settlement.

The section also provides that the Secretary may also take into account any other relevant matters, including:

- amounts likely to be paid to or withheld by government agencies;
- amounts spent on care (other than residential care);
- the likely cost of residential care;
- other costs of care for which the care recipient is likely to be liable;
- the amount of the accommodation bond paid or payable by the care recipient; and
- other reasonable amounts unrelated to care that the care recipient had spent at the time of the judgment or settlement or is likely to be liable for.

Division 7 - The income test

Subdivision A - Daily income tested reduction - general

Section 46 - Classes of people for whom daily income tested reduction is taken to be zero

Paragraph 44-22(1)(c) of the Transitional Provisions Act provides for the daily income tested reduction to be zero in circumstances where the care recipient is included in a class of people specified in the Principles.

In accordance with that paragraph, this section states that the classes of people are care recipients:

- who leave a residential care service, or who die, before the approved provider of the service has been informed of the care recipient's daily income tested reduction;
- who are not, within 6 months of entry to a residential care service, informed of the daily income tested reduction. The daily income tested reduction will only be zero until the day the care recipient is informed of the care recipients' daily income tested reduction;
- who have one or more dependent children;
- who are described in paragraph 85(4)(b) of the *Veterans' Entitlements Act 1986* (which describes former prisoners of war);
- who are provided with residential care at any time after 30 September 1997 and before 1 March 1998 or are, before 1 March 1998, on leave; and
- for whom the daily income tested reduction is worked out as less than \$1.

This section does not apply to care recipients who are being provided with respite care.

Section 47 - Matters to which Secretary must have regard in deciding whether to determine if daily income tested reduction is to be taken to be zero

This section outlines the matters the Secretary must consider in deciding whether to set a care recipient's care income tested reduction to zero under subsection 44-22(4) of the Transitional Provisions Act. The Secretary must have regard to:

- the care recipient's income;
- the care recipient's financial arrangements;
- the care recipient's entitlement to income support;
- whether the care recipient has taken steps to obtain information about his or her entitlement to pension, benefit or other income support payments. When having regard to this matter, the Secretary may require the care recipient to seek information from the relevant Department and provide copies of written replies or advise the care recipient to seek advice from Centrelink's Financial Information Service;
- whether the care recipient has access to financial assistance;
- whether any income of the care recipient is income that the care recipient does not reasonably have access to;
- whether there is a charge on the care recipient's income over which the payment of resident fees cannot practically take precedence;
- whether the care recipient has significant assets;
- if the care recipient has significant assets, whether any assets of the care recipient are unrealisable assets (defined in section 4); and
- whether the care recipient is in Australia on a temporary basis.

The Secretary may also have regard to any other matters that the Secretary considers relevant.

Subdivision B - Daily income test reduction - amounts excluded from total assessable income

Section 48 - Amounts excluded from care recipient's total assessable income

This section provides that sections 49 to 54 of these Principles deals with amounts to be excluded from certain care recipient's total assessable income. The amounts are:

- disability allowances and permanent impairment compensation payments mentioned in section 49;
- gifts mentioned in section 50;
- receipts for rent where the care recipient is paying an accommodation charge (as mentioned in section 51);
- GST compensation mentioned in section 52;
- amounts referred to in section 53; and
- clean energy payments mentioned in section 54.

Section 49 - Excluded amounts – disability pensions and permanent impairment compensation payments

This section provides that the amount of disability pension paid to a person who has qualifying service under section 7A of the Veterans' Entitlements Act (or is the partner of such a person) should be an excluded amount when determining the care recipient's total assessable income. The amount will only be an excluded amount if it is also exempt under section 5H of the Veterans Entitlements Act.

For a person who is, or has been, a member as defined under the *Military, Rehabilitation and Compensation Act 2004* (or their partner) excluded amounts are:

- any compensation for permanent impairment paid to the person under Part 2 of Chapter 4 of the *Military, Rehabilitation and Compensation Act 2004*; and
- any amount of Special Rate Disability Pension paid to the person under Part 6 of Chapter 4 of the *Military, Rehabilitation and Compensation Act 2004*.

Section 50 - Excluded amounts - gifts

This section states that:

- for a person who disposed of ordinary income on or prior to 20 August 1996, the amount of ordinary income disposed of is an excluded amount for the purposes of calculating the care recipient's total assessable income. The section also notes those sections of the Social Security Act and the Veterans' Entitlement Act that deals with disposal of ordinary income; and
- for a person who disposed of assets on or prior to 20 August 1996, the amount of ordinary income the person is taken to have received is an excluded amount from the care recipient's total assessable income. This subsection notes the sections of the Social Security Act and the Veterans' Entitlement Act that deals with deemed income on financial assets.

Section 51 - Excluded amounts - rent receipts

This section provides that where a care recipient is paying an accommodation charge, the rental income from the care recipient's former principal home will be an excluded amount when determining his or her total assessable income.

The first note to this section explains that paragraph 8(8)(znaa) of the Social Security Act and paragraph 5H(8)(nf) of the Veterans Entitlement Act describe how income is defined for those Acts where a person is liable to pay an accommodation charge.

The second note to this section explains that subsection 5L(6A) of the Veterans' Entitlements Act explains how assets are defined for the purposes of that Act where a person is liable to pay an accommodation charge.

The third note to this section explains that section 16 of the Social Security Act and section 17A of the Veterans' Entitlements Act describe how, for the purposes of each Act, *income* is defined in relation to a person who first became a charge exempt resident before the commencement of Schedules 1, 2 and 3 to the *Aged Care Amendment (Omnibus) Act 1999*.

Section 52 - Excluded amounts - GST compensation

This section applies to:

- a person who receives a pension under Part II or IV of the Veterans' Entitlement Act at a rate determined through that Act by reference to the following provisions of that Act:
 - section 22, for a person on a disability pension at the general rate;
 - sections 22 and 27, for a person on a disability pension at the general rate plus an increased rate for war-related injury;
 - sections 23 and 27, for a person on a disability pension at the intermediate rate or such a person who also has an increased rate for war-related injury;
 - section 24, for a person on a disability pension at the special rate;
 - subsection 30(1), for a person receiving a war widow or widower pension;
- a person who receives a payment under Part 6 of Chapter 4 or Part 2 of Chapter 5 of the *Military Rehabilitation and Compensation Act 2004* at a rate determined under the following provisions of that Act:
 - sections 198 and 204, for a person on a Special Rate Disability Pension;
 - subsection 234(5) for a person receiving weekly compensation for the death of a partner.

This section provides that an amount equal to four per cent of the amount paid to a person under the provisions of the Veterans' Entitlement Act listed above or the *Military Rehabilitation and Compensation Act 2004* listed above is an excluded amount when determining the care recipient's total assessable income.

Notes to this section explain that:

- pensions (other than service pensions) payable to veterans' and their dependants are dealt with in Part IV of the Veterans' Entitlement Act;
- pensions that are payable to members of the Defence Force or a Peacekeeping Force and their dependants is dealt with in Part IV of the Veterans' Entitlement Act;
- a choice to receive a Special Rate Disability Pension instead of compensation is afforded to former members who are entitled to compensation for their incapacity to work in accordance with Part 6 of Chapter 5 of the *Military Rehabilitation and Compensation Act 2004*; and

- wholly dependent partners of deceased members are entitled to compensation which can be taken as a lump sum or as a weekly amount, under Part 2 of Chapter 5 of the *Military Rehabilitation and Compensation Act 2004*.

Section 53 - Excluded amounts - pre-2008 reform residents

This section applies to pre-2008 reform residents. If the person is entitled to a pension worked out under Module A of the Pension Rate calculator B at the end of section 1065 of the Social Security Act, or Module A of the Rate Calculator in Part 2 of Schedule 6 to the Veterans' Entitlements Act, and

$$\left(I > \left(P + T \right) \right) \text{ and } \left(\left(I \leq 5.4 \times BP \right) + P + T \right)$$

the amount worked out in accordance with the following formula is an excluded amount:

$$0.4 \times (I - P - T)$$

In addition, if the person is entitled to Module A of the Pension Rate Calculator B at the end of section 1065 of the Social Security Act, or Module A of the Rate Calculator in Part 2 of Schedule 6 to the Veterans' Entitlements Act, and

$$I > (5.4 \times BP) + P + T$$

the amount worked out in accordance with the following formula is an excluded amount:

$$I - (3.24 \times BP) - P - T$$

If neither of the above apply, and

$$\left(I > \left(\left(2 \times P \right) + T \right) \right) \text{ and } \left(\left(I \leq 5.4 \times BP \right) + T \right)$$

the amount worked out in accordance with the following formula is an excluded amount:

$$(0.4 \times I) - P - (0.4 \times T)$$

If neither of the first two calculations applies to the person and:

$$I > (5.4 \times BP) + T$$

the amount worked out in accordance with the following formula is an excluded amount:

$$I - \left(3.24 \times BP \right) - P - T$$

For the purposes of this section:

BP (the ***maximum basic pension***) means the amount worked out by applying point 1064-B1 of Pension Rate Calculator A at the end of section 1064 of the Social Security Act.

I means total assessable income.

P (the ***maximum pension***) means the sum of:

- the amount worked out by applying point 1064-B1 of Pension Rate Calculator A at the end of section 1064 of the Social Security Act; and
- the amount worked out by applying point 1064-BA4 of Pension Rate Calculator A at the end of section 1064 of the Social Security Act.

T (the ***social security income test free threshold***) means the amount worked out by applying point 1064-E4 of Pension Rate Calculator A at the end of section 1064 of the Social Security Act.

Section 54 - Excluded amounts - clean energy payments

This section specifies that each of the following amounts (paid to a care recipient in accordance with the Social Security Act or the Veterans' Entitlements Act) are excluded amounts:

- the clean energy advance;
- the clean energy supplement; and
- the quarterly clean energy supplement.

Division 8 - Other supplements

Subdivision A - Viability supplement

Section 55 - Determination of viability supplement for care recipient - other matters

For the purpose of paragraph 44-29(2)(c) of the Transitional Provisions Act, this section provides that the Secretary may base a determination (relating to eligibility for the viability supplement) on whether the residential care service was, on the relevant day, a 1997 scheme service, a 2001 scheme service or a 2005 scheme service (within the meaning of the *Subsidy Principles 2014*).

Subdivision B - Hardship supplement

Section 56 - Eligibility for hardship supplement - classes of care recipients

This section describes those classes of care recipients that are eligible for the hardship supplement for resident fees.

The classes of care recipients for whom paying the maximum daily amount of resident fees (worked out under section 58-2 of the Transitional Provisions Act) would cause financial hardship are:

- pre-2008 reform residents who entered an aged care service after 30 September 1997, do not receive an income support payment and have an ordinary fortnightly income on a day that is more than the ordinary fortnightly income that, if received by the care recipient, has the effect that he or she is not entitled to an income support payment, and is less than \$1, 774.42. A care recipient's ordinary fortnightly income on a day is the amount that would be his or her ordinary income on that day according to the ordinary income test in Pension Rate Calculator A in section 1064 of the Social Security Act;
- care recipients who on 30 September 1997, occupied an approved place in an aged care service and received an income support payment and, on 1 October 1997, did not receive an income support payment;
- care recipients who on 30 September 1997, occupied a place in a hostel approved under the *Aged or Disabled Persons Care Act 1954* and have not entered an aged care service that was approved, before 1 October 1997, as a nursing home under the *National Health Act 1953*.

Section 57 - Eligibility for hardship supplement - determination by Secretary
Subsection 44-31(2) of the Transitional Provisions Act provides that the Secretary must have regard to matters set out in these Principles when deciding whether to determine that a care recipient is eligible for a hardship supplement.

There are three circumstances in which the Secretary must not make a financial hardship determination in relation to a care recipient:

- If the care recipient has not had their means assessed the Secretary must not make a financial hardship determination.
- The value of the care recipient's assets, as assessed under the *Aged Care Act 1997* and the *Subsidy Principles 2014* must be less than or equal to 1.5 times the basic age pension amount (as defined in Schedule 1 to the *Aged Care Act 1997*), the pension supplement amount and the clean energy supplement. If the assets exceed this amount, the Secretary must not make a financial hardship determination. When considering the value of the care recipient's assets, unrealisable assets will not be considered. An unrealisable asset is defined in the Social Security Act. It includes an asset the person cannot sell or realise, or cannot be reasonably expected to sell or realise. It also includes an asset the person cannot use as a security for borrowing or be reasonably expected to use as a security for borrowing.
- The Secretary must not make a determination if the care recipient has gifted more than \$10,000 in the previous 12 months or more than \$30,000 in the previous five years.

In deciding whether to make a financial hardship determination, the Secretary may have regard to:

- the care recipient's total assessable income worked out under the *Aged Care Act 1997* and the *Subsidy Principles 2014* and the amount of income available to the care recipient after expenditure on essential expenses. In particular the Secretary will consider whether the care recipient has less than 15 per cent of the basic age pension amount remaining after paying essential expenses. The list of essential expenses is included at section 61 of the *Subsidy Principles 2014*;

- the care recipient's financial arrangements;
- the care recipient's entitlement to income support;
- whether the care recipient has sought to determine his or her entitlement to a pension, benefit or other income support payment;
- whether the care recipient has access to financial assistance under section 1129 or Division 4 of Part 3.12 of the Social Security Act or from any other source;
- whether the care recipient is unable to access any of their income;
- whether there is a charge over the care recipient's income over which the payment of fees cannot practically take precedence;
- whether the care recipient is in Australia on a permanent basis; and
- any other matters the Secretary considers relevant.

Section 58 - Circumstances in which Secretary may revoke financial hardship determination

This section provides that a hardship determination may be revoked by the Secretary if:

- the care recipient's circumstances have changed. An example of how a person's circumstances may change is if the person's unrealisable assets become realisable; and
- the Secretary is satisfied that the care recipient would not be subject to financial hardship if the care recipient was to pay the maximum daily amount of resident fees worked out under section 58-2 of the Transitional Provisions Act.

Subdivision C - Veterans' supplement

Section 59 - Veterans' supplement

This section states that in respect of a payment period, the veterans' supplement is the sum of all veterans' supplements for the days during the period on which residential care was provided to an eligible care recipient through the service in question.

Section 60 - Eligibility for veterans' supplement

This section outlines the eligibility requirements for a care recipient to receive the veterans' supplement for a particular day, including if:

- the care recipient is a veteran with an accepted mental health condition on that day. An accepted mental health condition is a mental health condition for which liability has been accepted by the Repatriation Commission or the Military Rehabilitation and Compensation Commission to pay either a pension or compensation in accordance with the relevant Act; and
- before or on that day, the care recipient has authorised either, or both, the Secretary of the Department of Veterans' Affairs or the Secretary of the Department of Social Services to disclose to the approved provider that the care recipient is a veteran with an accepted mental health condition.

Section 61 - Amount of veterans' supplement

This section provides that the Minister may determine, by legislative instrument, the amount of the veteran's supplement, or the way in which the amount of the veterans' supplement is to be worked out.

Subdivision D - Homeless supplement

Section 62 - Homeless supplement

This section states that for a payment period, the homeless supplement for a care recipient is the sum of all homeless supplements paid for the days during the period on which residential care was provided to the care recipient and the service met the eligibility requirements under section 63 of these Principles.

Section 63 - Eligibility for homeless supplement

This section outlines the eligibility requirements for a residential care service to receive a homeless supplement for a particular day. A service meets the requirements for eligibility on a particular day if:

- at least 50% of care recipients provided with residential care (other than respite care) through the service have been appraised using appraisal tool A in subclause 2(1) of Schedule 2 of the *Subsidy Principles 2014* as demonstrating complex behavioural needs and social disadvantage associated with their background as a homeless person; and
- either the allocation of places was made subject to conditions relating to caring for people with a history of being homeless or the approved provider or its key personnel have experience or the capacity to provide specialist services, for such people.

Section 64 - Amount of homeless supplement

This section provides that the Minister may determine, by legislative instrument, the amount of the homeless supplement, or the way in which the amount of the homeless supplement is to be worked out.

Chapter 3 - Home care subsidy

Part 1 - Who is eligible for home care subsidy?

Section 65 - Purpose of this Part

This Part specifies requirements relating to the suspension, on a temporary basis, of the provision of home care to a care recipient in accordance with a home care agreement.

Section 66 - Suspension of home care

This section specifies the requirements that relate to the temporary suspension of the provision of home care to a care recipient in accordance with a home care agreement.

The section recognises that a care recipient may request that the provision of home care be suspended. In such circumstances:

- the home care agreement remains in force throughout the suspension period;
- home care is taken to have been provided on each day of the suspension period; and
- the suspension period includes the commencement day but does not include the day the provision of home care recommences.

Part 2 - Basis on which home care subsidy is paid?

Section 67 - Purpose of this Part

This Part sets out how to calculate the amounts of advances of home care subsidy that may be paid to an approved provider for a payment period.

Section 68 - Working out amounts of advances of home care subsidy

This section states that in calculating the amounts of advances of home care subsidy to be paid to an approved provider, only the care recipients receiving care in accordance with a home care agreement must be taken into account.

Chapter 3A - Flexible care subsidy

Section 68A - Purpose of this Chapter

There are three types of flexible care that the aged care legislation provides for - multi-purpose services, transition care and innovative care.

For multi-purpose services, the Commonwealth government pays subsidy based on the places held by the approved provider rather than in relation to individual care recipients. This is a cashed out model and the amount of subsidy payable depends on the conditions of allocation of places. For innovative care and transition care, subsidy is paid in accordance with conditions of allocation of places. In addition, for transition care, it is a legislative requirement that an agreement be entered into between the Secretary and the approved provider.

For this reason the payment of subsidy to providers of these kinds of flexible care does not differ based on whether or not the people receiving care are, or are not, continuing care recipients. However, for consistency with other care types, the *Aged Care Act 1997* enables matters relating to flexible care subsidy to be dealt with in the *Subsidy Principles 2014*, while the *Aged Care (Transitional Provisions) Act 1997* enables matters relating to subsidy for continuing care recipients to be dealt with in the *Transitional Provisions Principles*.

For completeness, this Chapter provides that for the purposes of the transitional provisions legislation, the kinds of care for which flexible care subsidy is payable and the basis on which flexible care subsidy is payable are the same as in the *Subsidy Principles 2014*.

Section 68B - Application of Chapter 4 of the *Subsidy Principles 2014*

The effect of this section is to apply Chapter 4 of the *Subsidy Principles 2014* (and any other provisions in the *Subsidy Principles 2014* that relate to Chapter 4, such as some of the definitions that are in Chapter 1) for the purposes of these Principles.

This ensures that flexible care providers continue to receive subsidy in the same way regardless of whether the care recipients they provide care to are continuing care recipients or care recipients who entered flexible care on or after 1 July 2014.

Chapter 4 - Responsibilities of approved providers

Part 1 - Accommodation bonds

Division 1 - Basic rules about accommodation bonds

Subdivision A - Information about accommodation bonds etc.

Section 69 - Purpose of this Subdivision

The purpose of this Subdivision is to specify information about the accommodation bond that an approved provider must give a care recipient before the person enters a residential care service or certain flexible care services and matters the Secretary must have regard to in considering whether to extend the period within which an accommodation bond agreement must be entered into.

Section 70 - Information about accommodation bonds

This section states that if a care recipient is eligible to pay an accommodation bond, the approved provider must tell the care recipient if they will be charged an accommodation bond.

If the service charges, or intends to charge an accommodation bond (and the person is eligible to pay an accommodation bond) the following information must be provided:

- the requirement, if the care recipient has given the provider enough information to decide the value of the care recipient's assets, for the care recipient to be left, after paying the bond, with assets having a value of at least the care recipient's minimum permissible asset value;
- details of the interest rate to be charged on amounts owed under the accommodation bond agreement, resident agreement or extra service agreement, and the capacity for amounts and accrued interest on them to be deducted from the balance of the bond before it is refunded;
- the amounts of bonds charged;
- the retention amount of the bond. Retention amounts are dealt with in section 57-20 of the Transitional Provisions Act;
- the interest rate on the bond if there is a delay in payment of the lump sum or the bond is paid in whole or in part by periodic payments;
- the periods when the retention amount and interest are charged;
- payment options;
- refund arrangements;
- the prudential arrangements applying to the bond balance; and
- when a bond is not required or, if paid, is refundable.

Section 71 - Extension of time for entering into accommodation bond agreement

This section states that, for the purposes of subsection 57-2(2) of the Transitional Provisions Act, the Secretary may take into account any matter he or she considers relevant when deciding whether to extend the period within which an accommodation bond agreement must be entered into.

Subdivision B - Other rules about accommodation bonds

Section 72 - Purpose of this Subdivision

The purpose of this Subdivision is to specify additional basic rules relating to charging an accommodation bond for the entry of a person into a residential care or flexible care service.

A note in this section refers readers to section 57-2 of the Transitional Provisions Act, which sets out the basic rules about accommodation bonds.

Section 73 - Accommodation bond agreement required even if financial hardship determination is sought

This section applies if the care recipient is not a concessional or charge exempt resident and the approved provider or care recipient has applied for a financial hardship determination. In these circumstances, an accommodation bond agreement must still be made even if the hardship application has not been decided and the approved provider intends to charge an accommodation bond if the application is refused.

The agreement must state that the accommodation bond is payable if the Secretary refuses to make the determination or if it is made but later ceases to apply.

Section 74 - Payment if agreed accommodation bond not paid

This section applies if the care recipient has been provided with residential or flexible care for more than 2 months and has agreed to pay an accommodation bond, but does not pay the accommodation bond before leaving the service.

In these circumstances, the care recipient may be required to pay interest on the accommodation bond balance, if the care recipient does not pay the accommodation bond balance owed to the approved provider before leaving the service. The interest equivalent amount is worked out in accordance with the formula:

$$\frac{I \times LS \times D}{365}$$

where:

D is the number of days in the period beginning on the first day of the month in which the lump sum was to be paid and ending on the last day of the month in which the care recipient leaves the service.

I is the lower of: the interest rate stated in the care recipient's accommodation bond agreement; and the maximum permissible interest rate for the care recipient's entry day.

LS is the amount of the accommodation bond agreed to be paid as a lump sum.

Section 75 - Payment of accommodation bond before refund of pre-allocation lump sum

Section 14-5 of the *Aged Care Act 1997* allows the Secretary to impose conditions upon a new allocation of places requiring new approved providers seeking Commonwealth funding to refund any 'pre-allocation lump sums' taken prior to becoming an approved provider.

In summary, if the Secretary has imposed a condition of allocation requiring the refund of a pre-allocation lump sum, then an accommodation bond must not be charged until that pre-allocation lump sum has been refunded and the approved provider becomes eligible to charge bonds.

If the approved provider does not comply with the rules in section 57-2 of the Transitional Provisions Act, an accommodation bond is not payable.

If the approved provider does not comply with the rules in section 57-2 until after the period for refund of the pre-allocation lump sum, then the accommodation bond cannot be charged until a minimum of 21 days after the approved provider complies with the rules in section 57-2. This is designed to deal with the situation where an approved provider might have refunded a pre-allocation lump sum but the residential care service is not certified.

Division 2 - Contents of accommodation bond agreements

Section 76 - Purpose of this Division

This Division sets out matters that must be specified in an accommodation bond agreement between an approved provider and a care recipient.

Section 77 - Amount of accommodation bond - no financial hardship

This section applies if a financial hardship determination is in the process of being sought from the Secretary and the accommodation bond is not paid, or a lower amount is proposed to be paid. In these circumstances, the accommodation bond agreement must state the amount of accommodation bond payable by the care recipient if a financial hardship determination is refused, or ceases.

Section 78 - Retention amounts and interest, or interest equivalent, charges

This section requires that the accommodation bond agreement must state:

- the amount of each retention amount that will be deducted from the accommodation bond balance;
- the rate of interest or interest equivalent payable if the accommodation bond is paid in whole or in part as a lump sum after the due date, or is paid by periodic payments, or is not paid when it is due to be paid;
- the way interest, or interest equivalent, charges are calculated;
- the total amount of interest, or interest equivalent, charges payable under the agreement if they can be calculated when the agreement is made and assuming that the care recipient will make all payments when they are due; and
- the retention amounts payable if the care recipient is provided with care for 2 months or less; and
- the frequency at which interest, or interest equivalent, charges will be debited.

Section 79 - Periodic payments

This section applies if the care recipient decides not to pay the entire accommodation bond amount upfront, and instead chooses to use periodic payments to pay the whole or part of the accommodation bond.

The section provides that the accommodation bond agreement must state the amount of the lump sum equivalent, the amount and frequency of periodic payments, the retention and interest components of each periodic payment and that the care recipient may, at any time, pay as a lump sum the whole or part of the lump sum equivalent.

Section 80 - Providing information to third parties

This section provides that an accommodation bond agreement must state that if a care recipient wishes to move from their current residential care service to a new residential care service, the first approved provider may provide information to the second approved provider, including:

- whether the care recipient has agreed to pay an accommodation bond;
- if so, the amount agreed and, if the care recipient has agreed to pay the amount in whole or in part by periodic payments, the lump sum equivalent;
- the period remaining during which, under section 57-20 of the Transitional Provisions Act, retention amounts may be deducted from the care recipient's accommodation bond balance; and
- amounts that may be deducted from the accommodation bond balance.

Division 3 - Financial hardship determinations

Section 81 - Purpose of this Division

This Division outlines the matters to which the Secretary must have regard when making a financial hardship determination and the circumstances in which the Secretary may revoke the determination.

Section 82 - Matters to which Secretary must have regard in deciding whether to make financial hardship determination

For section 57-14 of the Transitional Provisions Act, this section sets out matters that the Secretary must take into account in making a hardship determination.

There are three circumstances in which the Secretary must not make a financial hardship determination in relation to a care recipient:

- If the care recipient has not had their means assessed, the Secretary must not make a financial hardship determination.
- The value of the care recipient's assets, as assessed under the *Aged Care Act 1997* and the *Subsidy Principles 2014* must be less than or equal to 1.5 times the basic age pension amount (as defined in Schedule 1 to the *Aged Care Act 1997*), the pension supplement amount and the clean energy supplement. If the assets exceed this amount, the Secretary must not make a financial hardship determination. When considering the value of the care recipient's assets, unrealisable assets will not be considered. An unrealisable asset is defined in the Social Security Act. It includes an asset the person cannot sell or realise, or cannot be reasonably expected to sell or realise. It also includes an asset the person cannot use as a security for borrowing or be reasonably expected to use as a security for borrowing.

- The Secretary must not make a determination if the care recipient has gifted more than \$10,000 in the previous 12 months or more than \$30,000 in the previous five years.

In deciding whether to make a financial hardship determination, the Secretary may have regard to:

- the care recipient's total assessable income worked out under the *Aged Care Act 1997* and the *Subsidy Principles 2014* and the amount of income available to the care recipient after expenditure on essential expenses. In particular the Secretary will consider whether the care recipient has less than 15 per cent of the basic age pension amount remaining after paying essential expenses. The list of essential expenses is included in section 39 of the *Fees and Payments Principles 2014*;
- the care recipient's financial arrangements;
- the care recipient's entitlement to income support;
- whether the care recipient has sought to determine his or her entitlement to a pension, benefit or other income support payment;
- whether the care recipient has access to financial assistance under section 1129 or Division 4 of Part 3.12 of the Social Security Act or from any other source;
- whether the care recipient is unable to access any of their income;
- whether there is a charge over the care recipient's income over which the payment of an accommodation bond cannot practically take precedence;
- whether the care recipient is in Australia on a permanent basis; and
- any other matters the Secretary considers relevant.

Section 83 - Circumstances in which Secretary may revoke financial hardship determination

For subsection 57-15(1) of the Transitional Provisions Act, this section provides that a hardship determination may be revoked by the Secretary if:

- the care recipient's circumstances have changed. An example of how a person's circumstances may change is if the person's unrealisable assets become realisable; and
- the Secretary is satisfied that paying an accommodation bond would not cause the person financial hardship or paying an accommodation bond of more than the maximum amount specified in the determination would not cause the person financial hardship.

Division 4 - Paying accommodation bond by periodic payments

Section 84 - Purpose of this Division

This Division specifies matters related to how periodic payments of an accommodation bond are to be paid by the care recipient.

Section 85 - Frequency of periodic payments

This section states that if a care recipient is required to make periodic payments of an accommodation bond, the approved provider must agree with the care recipient on the frequency of these payments.

Section 86 - Agreement on periodic payments

This section requires that the amount of a periodic payment must be agreed to between the care recipient and the approved provider.

Section 87 - Method for working out amounts of periodic payments

This section provides the following formula for working out the periodic payment amount:

$$\frac{(LSE \times IR) + RC}{NPP}$$

where:

IR is the lower of the interest rate stated in the care recipient's accommodation bond agreement and the maximum permissible interest rate for the care recipient's entry day.

LSE is the amount of the care recipient's lump sum equivalent.

NPP is the number of periodic payments payable by the care recipient in the relevant year.

RC is the amount of the retention component worked out:

- if no part of the accommodation bond is paid as a lump sum - in accordance with subsection 87(2); or
- if part of the accommodation bond is paid as a lump sum - in accordance with subsections 87(3) and (4) and, if applicable, (5).

Subsection 87(2) states that the amount of the retention component must not exceed the maximum retention amount that may be deducted under section 97 from the amount that would have been the accommodation bond balance if the care recipient had paid it as a lump sum.

Subsections 87(3) to (5) provide that:

- if part of the accommodation bond is paid as a lump sum, the amount of the retention component of the periodic payments is reduced in accordance with the ratio of the lump sum equivalent to the amount of the accommodation bond; and
- if the lump sum covers the total retention amounts for the 5 year period (beginning on the entry day) and the care recipient elects in writing to the approved provider, the amount of the retention component is nil and the total retention amounts may be deducted from the amount paid as a lump sum.

Section 88 - Respite care periods to be disregarded

This section states that periodic payments are not payable for any period when the care recipient is in respite care.

Section 89 - Minimum amount of periodic payments

This section requires that the minimum amount of periodic payment to be paid by the care recipient is the amount that would have been payable for 3 calendar months.

If the care recipient leaves the service, the approved provider can charge the care recipient the full amount of a periodic payment payable for the month they leave.

Division 5 - Rights of approved providers

Subdivision A - Retention of income derived from investment of accommodation bond balance

Section 90 - Purpose of this Subdivision

This purpose of this Subdivision is to specify the method for working out the interest equivalent in relation to a care recipient's accommodation bond balance and provides that, in certain circumstances, an approved provider must not retain income from the investment of an accommodation bond balance.

Section 91 - Working out amounts

Subsection 91(1) states that if a care recipient pays the accommodation bond in whole or in part as a lump sum, after the due date, the interest equivalent is worked out using the following formula:

$$\frac{IR \times LS \times ND}{365}$$

where

IR is the lower of the interest rate stated in the care recipient's accommodation bond agreement and the maximum permissible interest rate for the care recipient's entry day.

LS is the amount of the lump sum.

ND is the number of days in the period beginning on the due date and ending on the day when the accommodation bond was paid in whole or in part as a lump sum.

Subsection 91(2) states that if the care recipient is provided with less than 2 months care and they pay an accommodation bond in whole or in part as a lump sum and the amount paid as a lump sum is refunded within 3 months, the interest equivalent is worked out using the following formula:

$$\frac{IR \times LS \times ND}{365}$$

where:

IR is the lower of the interest rate stated in the care recipient's accommodation bond agreement and the maximum permissible interest rate for the care recipient's entry day.

LS is the amount of the lump sum.

ND is the number of days in the period beginning on the day when the lump sum was refunded and ending 3 months after the entry day.

Subsection 91(3) states that if the care recipient leaves the service within 2 months and has agreed to pay the accommodation bond in whole or in part as a lump sum and does not pay the lump sum before leaving the service, the interest equivalent is worked out using the following formula:

$$\frac{IR \times LS \times ND}{365}$$

where:

IR is the lower of the interest rate stated in the care recipient's accommodation bond agreement and the maximum permissible interest rate for the care recipient's entry day.

LS is the amount of the lump sum.

ND is the number of days in 3 calendar months from the day the care recipient entered the residential care service.

Where subsections 91(1) and (2) both apply, the interest equivalent is the total of the amounts worked out in accordance with those subsections.

The section also provides that the approved provider can require payment of an amount less than the interest equivalent.

Section 92 - Respite care periods to be disregarded

This section states that a provider must not keep income made from a care recipient's accommodation bond balance when the care recipient is in respite care.

Section 93 - Financial hardship - period to be disregarded

This section provides that where a determination of financial hardship is in place for a care recipient, a provider must not keep income made from the care recipient's accommodation bond balance for that period.

Subdivision B - Deduction from accommodation bond balance of interest on amounts owed

Section 94 - Purpose of this Subdivision

The purpose of this Subdivision provides for the working out of amounts, representing interest on amounts owed to the provider by a care recipient under an accommodation bond agreement, resident agreement or extra service agreement, that the approved provider may deduct from the care recipient's accommodation bond balance.

Section 95 - Interest on amounts owed

This section states that the maximum rate of interest that the approved provider may charge must not be more than the maximum permissible interest rate for the care recipient's entry day.

Interest may only be charged for the period that:

- begins on the day after the day 1 month after the day when the amount becomes payable under the accommodation bond agreement, resident agreement or extra service agreement; and
- ends on the day when the amount owed to the provider is paid or the residential care service ceases to provide care to the care recipient (whichever is earlier).

Subdivision C - Deduction of retention amounts in respect of accommodation bond

Section 96 - Purpose of this Subdivision

The purpose of this Subdivision is to outline how to calculate the maximum retention amount a provider may deduct from a care recipient's accommodation bond balance.

Section 97 - Maximum retention amount

This section states that the maximum retention amount that may be deducted from a care recipient's accommodation bond balance, for a year, is:

- if the bond is not more than X - 10% of X; or
- if the bond is more than X but not more than Y - 10% of the bond; or
- if the bond is more than Y - 10% of Y.

The maximum retention amount for any year is the same as the maximum retention amount for the first year.

The section describes the value of X and Y for a year beginning on 1 July 1997 and also enables the Secretary to publish an amount for X and Y for any other years. This amount is worked out in accordance with section 98.

The maximum monthly retention amount is the amount worked out under this section divided by 12.

Section 98 - Indexation of maximum retention amounts

This section describes the formula for working out the indexation applied to maximum retention amounts.

Subdivision D - Restriction on deduction of amounts

Section 99 - Purpose of this Subdivision

The purpose of this Subdivision is to specify circumstances in which an approved provider must not deduct any amounts from a care recipient's accommodation bond balance.

Section 100 - When amounts must not be deducted from accommodation bond balance

This section states that a provider may not deduct any amount from a care recipient's accommodation bond balance if the service's certification is suspended under paragraph 66-1(i) of the *Aged Care Act 1997*.

Section 101 - Financial hardship – period to be disregarded

This section states that a provider may not deduct any amount from a care recipient's accommodation bond balance when a determination of financial hardship is in place for the care recipient.

Subdivision E - Period for deduction of retention amounts

Section 102 - Purpose of this Subdivision

The purpose of this Subdivision is to outline alternative periods for when a provider may deduct retention amounts from a care recipient's accommodation bond balance and how to determine the different starting day (for when retention amounts may be deducted) in such circumstances.

Section 103 - Period of suspension of certification to be disregarded

This section applies if a sanction is imposed suspending the certification of a residential care service. Paragraph 66-1(i) of the *Aged Care Act 1997* provides for this sanction.

Paragraph 57-20(4)(b) of the Transitional Provisions Act states that retention amounts must not be deducted from an accommodation bond balance if the residential care service is not certified.

This section provides that if there are any periods when a service is not certified because the service's certification has been suspended, these periods are not taken into account when calculating the period of 5 years referred to in subsection 57-20(4) of the Transitional Provisions Act during which retention amounts may be deducted. The period of 5 years is calculated by adding together all periods during which the service was certified (referred to in this section as subsidiary periods) and disregarding any periods when the certification of the service was suspended.

Section 104 - Entry date if care recipient is transferred from respite care to permanent accommodation

This section applies where a care recipient is transferred to permanent accommodation from respite care. It states that the transfer day for paragraph 57-20(4)(d) of the Transitional Provisions Act is the starting day of the period during which retention amounts may be deducted from the care recipient's accommodation bond balance.

Part 2 - Accommodation charges

Division 1 - Basic rules about accommodation charges

Section 105 - Purpose of this Division

The purpose of this Division is to specify:

- information about the accommodation charge that an approved provider must give a person before they enter care;
 - other rules relating to charging an accommodation charge;
 - matters that the Secretary must have regard to in considering whether to extend the period within which an accommodation charge agreement must be entered into;
- and

- periods when the approved provider must not charge the daily accommodation charge or must not charge more than the maximum amount.

A note in the section reminds readers that section 57A-2 of the Transitional Provisions Act sets out the basic rules about accommodation charges.

Section 106 - Information about accommodation charges

For care recipients eligible to pay an accommodation charge, this section states that the approved provider must inform the care recipient whether the service charges an accommodation charge.

If the service charges an accommodation charge and the care recipient is eligible, the approved provider must give the care recipient the following information:

- the requirement, if the care recipient has given the provider enough information to decide the value of the care recipient's assets, for the care recipient to be left, after paying the accommodation charge, with assets having a value of at least the care recipient's minimum permissible asset value;
- details of the interest rate to be charged on amounts owed;
- the amount of the accommodation charge;
- when an accommodation charge is not required or must not be charged at more than a specified maximum daily amount because a financial hardship determination is in force or if paid, is refundable.

Section 107 - Accommodation charge agreement required even if financial hardship determination is sought

This section applies if the care recipient is not a concessional or charge exempt resident and the approved provider or care recipient has applied for a financial hardship determination.

The section provides that an accommodation charge agreement must still be made even if the hardship application has not been decided and the approved provider intends to charge an accommodation charge if the hardship application is refused.

The agreement must state that the accommodation charge is payable if the Secretary refuses to make the determination or if the determination is made but later ceases to be in force.

Section 108 - Extension of time for entering into accommodation charge agreement

This section states that the Secretary may consider any relevant matters in deciding whether to extend the period for entering into an accommodation charge agreement in accordance with subsection 57A-2(2) of the Transitional Provisions Act.

Section 109 - Period of respite care

This section states that if a care recipient is transferred from respite care to permanent accommodation, a provider must not charge a daily accommodation charge for the period when the care recipient was in respite care.

Section 110 - Period of suspension of certification of service

This section states that a provider must not charge the daily accommodation charge when the service's certification is suspended under paragraph 66-1(i) of the *Aged Care Act 1997*.

Section 111 - Period of prohibition on charging accommodation charge

This section states that a provider must not charge the daily accommodation charge when a service is prohibited under paragraph 66-1(j) of the *Aged Care Act 1997*.

Section 112 - Period of financial hardship

This section states that a provider must not charge an accommodation charge (or a charge of more than the maximum amount determined by the Secretary) when a financial hardship determination is in place for a care recipient.

Division 2 - Contents of accommodation charge agreements

Section 113 - Purpose of this Division

The purpose of this Division is to specify matters that must be included in an accommodation charge agreement between a provider and a care recipient.

Section 114 - Amount of accommodation charge - no financial hardship

This section applies if an accommodation charge is not paid because the approved provider or care recipient has applied to the Secretary for a financial hardship determination for the care recipient. In such circumstances, the accommodation charge agreement must state the amount of accommodation charge payable by the care recipient if the Secretary refuses to make the determination or if the determination is made but later ceases to be in force.

Section 115 - Providing information to third parties

This section provides that the accommodation charge agreement must state that, if the care recipient wishes to move from one residential care service (the *original service*) to another residential care service (the *new service*), the provider of the original service may ask the care recipient for permission to provide the following information to the provider of the new service:

- whether the care recipient has agreed to pay an accommodation charge and if so, the amount agreed; and
- the number of days for which the charge accrued under section 57A-7 of the Transitional Provisions Act.

Division 3 - Maximum daily accrual amount of accommodation charge

Section 116 - Purpose of this Division

The purpose of this Division is to specify the maximum daily amounts of accommodation charge which accrue for certain types of care recipients.

Section 117 - Specified amounts for maximum daily accommodation charge – pre-2008 reform residents

This section specifies different amounts of maximum daily accommodation charge that may be charged for pre-2008 reform residents who first entered a residential care service before 1 July 2004 and those who first entered on or after 1 July 2004.

Section 118 - Specified amounts for maximum daily accommodation charge – post-2008 reform residents

This section specifies amounts of maximum daily accommodation charge that may be charged for post-2008 reform residents that first entered a residential care service before 1 July 2004 and those that first entered on or after 1 July 2004.

Section 119 - Indexation of maximum daily accommodation charge

This section describes how amounts of maximum daily accommodation charge should be indexed.

Division 4 - Financial hardship determinations

Section 120 - Purpose of this Division

The purpose of this Division is to specify matters to which the Secretary must have regard in deciding whether to make a financial hardship determination in relation to a care recipient's capacity to pay an accommodation charge and in what circumstances such a decision can be revoked.

Section 121 - Matters to which Secretary must have regard in deciding whether to make financial hardship determination

For section 57A-9 of the Transitional Provisions Act, this section sets out matters that the Secretary must take into account in making a hardship determination.

There are three circumstances in which the Secretary must not make a financial hardship determination in relation to a care recipient:

- If the care recipient has not had their means assessed the Secretary must not make a financial hardship determination.
- The value of the care recipient's assets, as assessed under the *Aged Care Act 1997* and the *Subsidy Principles 2014* must be less than or equal to 1.5 times the basic age pension amount (as defined in Schedule 1 to the *Aged Care Act 1997*), the pension supplement amount and the clean energy supplement. If the assets exceed this amount, the Secretary must not make a financial hardship determination. When considering the value of the care recipient's assets, unrealisable assets will not be considered. An unrealisable asset is defined in the Social Security Act. It includes an asset the person cannot sell or realise, or cannot be reasonably expected to sell or realise. It also includes an asset the person cannot use as a security for borrowing or be reasonably expected to use as a security for borrowing.
- The Secretary must not make a determination if the care recipient has gifted more than \$10,000 in the previous 12 months or more than \$30,000 in the previous five years.

In deciding whether to make a financial hardship determination, the Secretary may have regard to:

- the care recipient's total assessable income worked out under the *Aged Care Act 1997* and the *Subsidy Principles 2014* and the amount of income available to the care recipient after expenditure on essential expenses. In particular the Secretary will consider whether the care recipient has less than 15 per cent of the basic age pension amount remaining after paying essential expenses. The list of essential expenses is included at section 41 of the *Subsidy Principles 2014*;

- the care recipient's financial arrangements;
- the care recipient's entitlement to income support;
- whether the care recipient has sought to determine his or her entitlement to a pension, benefit or other income support payment;
- whether the care recipient has access to financial assistance under section 1129 or Division 4 of Part 3.12 of the Social Security Act or from any other source;
- whether the care recipient is unable to access any of their income;
- whether there is a charge over the care recipient's income over which the payment of an accommodation charge cannot practically take precedence;
- whether the care recipient is in Australia on a permanent basis; and
- any other matters the Secretary considers relevant.

Section 122 - Circumstances in which Secretary may revoke financial hardship determination

This section provides that a hardship determination may be revoked by the Secretary if:

- the care recipient's circumstances have changed. An example of how a person's circumstances may change is if the person's unrealisable assets become realisable; and
- the Secretary is satisfied that paying an accommodation charge would not cause the person financial hardship or paying an accommodation charge of more than the maximum daily amount specified in the determination would not cause the person financial hardship.

Division 5 - Interest on accommodation charge

Section 123 - Purpose of this Division

The purpose of this Division is to specify the maximum interest rate that may be charged on an outstanding balance of an accommodation charge under an accommodation charge agreement.

Section 124 - Rate of interest on outstanding accommodation charge

This section states that the maximum interest rate that may be charged on an outstanding balance of an accommodation charge under a charge agreement is a rate that is not more than twice the below threshold rate determined by the Minister under subsection 1082(1) of the Social Security Act.

Part 3 - Resident fees

Section 125 - Purpose of this Part

The purpose of Part 3 is to specify:

- an additional amount that may be added to the maximum daily amount of resident fees; and
- the circumstances in which an amount agreed between a care recipient and approved provider may be included in working out the maximum daily resident fees.

Section 126 - Additional amount for residential care service in remote area

This section specifies that an amount may be added to the maximum daily fee for residential care provided through a service that is located in a remote area (as defined in section 4).

The additional amount is to be worked out using the following formula:

$$\frac{\text{Remote area amount} - 0.70}{14} \times \frac{85}{100}$$

where:

remote area amount means the amount referred to in column 4 (basic allowance per fortnight) of table item 1 (person whose family situation is not a member of a couple) of Table H—Remote area allowance set out in section 1064-H2 of the Social Security Act.

The amount worked out using the formula is an amount equal to 85% of the daily equivalent of the fortnightly amount of remote area allowance at the rate in force immediately before the commencement of the *A New Tax System (Compensation Measures Legislation Amendment) Act 1999*.

Section 127 - Additional amounts may be agreed by care recipient in unfunded place

This section specifies the circumstances in which an approved provider and an approved care recipient can agree that an additional fee will be payable, over and above the maximum daily amount of resident fees that would otherwise be payable in accordance with the calculator in section 58-2 of the Transitional Provisions Act, because the care recipient is, or will be, receiving care in an unfunded place. An unfunded place is a capacity within an aged care service for the provision of care for which residential care subsidy is not payable.

Under paragraph 42-1(2)(a) and section 42-7 of the Transitional Provisions Act, an approved provider is not eligible to receive residential care subsidy for any care recipients admitted to a service once the number of residential care places allocated to the approved provider under Part 2.2 of the *Aged Care Act 1997* in respect of the service have been filled.

An approved provider and an approved care recipient can agree, however, that the care recipient will be provided with residential care on the basis that the care recipient will pay an additional fee to meet the cost of their care in the absence of subsidy payments. The approved provider must inform the care recipient, in writing, that the proposed maximum daily fee is more than the daily fee that would be payable if the care recipient were to receive care in a funded place and the care recipient must agree to pay the additional amount before the fee is incurred.

Under paragraph 54-1(2)(b), section 56-5 and paragraph 63-1(2)(b) of the *Aged Care Act 1997*, an approved provider has the same responsibilities towards an approved care recipient in a funded or unfunded place except that, in the circumstances specified in this section, an approved provider and a care recipient can agree that a higher daily care fee will be payable for care provided in an unfunded place. Using

the calculator in section 58-2 of the Transitional Provisions Act, the additional fee agreed upon is added at step 5 of the calculation of the maximum daily amount of resident fees.

Part 4 - Home care fees

Section 128 - Purpose of this Part

The purpose of this Part is to make provisions in relation to:

- the refund of home care fees if a care recipient dies or provision of care ceases; and
- matters for determining the maximum daily amount of home care fees payable if the approved provider requires the care recipient to pay ongoing home care fees.

Section 129 - Refund of home care fees

This section provides that any refundable fees must be paid as soon as practicable to the care recipient or a person authorised to receive the refund for the care recipient's estate such as the executor or legal personal representative.

Section 130 - Determination of levels of maximum daily amounts of home care fees

This section specifies matters for determining the maximum daily amount of home care fees payable if the approved provider requires the care recipient to pay ongoing home care fees.

In summary:

- subsection 130(2) provides that if the care recipient's income does not exceed the amount of the maximum basic rate of pension payable from time to time under Part 2.2 of the Social Security Act to persons classed as "Not a member of a couple", the fees must be determined so that they do not exceed 17.5% of that maximum basic rate of pension, unless subsection 130(4) applies;
- subsection 130(3) provides that if the care recipient's income exceeds the amount of the maximum basic rate of pension, the fees must be determined so that they do not exceed an amount equal to the amount of fees permitted under subsection 130(2) plus 50% of the amount by which the care recipient's income exceeds the amount of maximum basic rate of pension, unless subsection 130(4) applies;

Subsection 130(4) states that if the care recipient receives a pension under the Social Security Act and the care recipient's family situation under Part 2.2 of that Act is classified as "Partnered (partner getting pension or benefit)" or the care recipient receives an equivalent pension under the Veterans' Entitlements Act then the fees must be determined so that they do not exceed an amount equal to the amount of fees permitted under subsection 130(2) plus 50% of the amount by which the care recipient's income exceeds the amount of maximum basic rate of pension payable to the care recipient.

This section also provides that a care recipient must not be charged a home care fee for any period during which the provision of home care to the care recipient is suspended under section 46-2 of the Transitional Provisions Act because the care recipient is receiving transition care or residential respite care.

Chapter 5 - Miscellaneous

Section 131 - Expiry of certain provisions

This section provides that:

- provisions relating to the payroll tax supplement in relation to residential care expire on 1 April 2015 as if they had been repealed by another legislative instrument; and
- provisions relating to the dementia and severe behaviours supplement in relation to residential care expire on 1 November 2014 as if they had been repealed by another legislative instrument.

Leaving the provisions on the face of the legislation for 3 months after cessation of the supplements ensures transparency. This provision then enables the redundant provisions to be removed from the Principles without the need for further repeal.

Schedule 1 - Building requirements

This Schedule describes the building requirements for the purposes of paragraph 19(1)(b) of these Principles. This paragraph enables the Minister to determine a different amount of accommodation supplement based on whether the service meets the building requirements detailed in this Schedule relating to:

- fire and safety requirements;
- privacy and space requirements for pre-end-July 1999 buildings; and
- privacy and space requirements for post-end-July 1999 buildings.

Statement of Compatibility with Human Rights

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

Aged Care (Transitional Provisions) Principles 2014

The *Aged Care (Transitional Provisions) 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

The Principles are made under section 96-1 of the *Aged Care (Transitional Provisions) Act 1997* (the Transitional Provisions Act).

The Transitional Provisions Principles deal with:

- the eligibility requirements for the payment of subsidies and supplements in respect of continuing care recipients in residential care and home care;
- the reductions to subsidy that may be made for continuing care recipients in residential care;
- the responsibilities of approved providers in relation to accommodation bonds and accommodation charges paid by continuing care recipients; and
- matters relating to resident fees and home care fees for continuing care recipients.

These Principles only describe matters relating to residential care subsidy, home care subsidy and payments for entry to residential care for care recipients who are continuing care recipients. Continuing care recipients are care recipients who entered an aged care service before 1 July 2014 and have not since 1 July 2014 left care for a continuous period of more than 28 days or have not moved services and elected to be subject to the arrangements in the *Aged Care Act 1997*.

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 promote these rights by making provision for payments to approved providers for the provision of residential care and home care to continuing care recipients. The payments may include additional funding in the form of supplements to enable approved providers to meet the needs of care recipients with higher care needs and those who are able to contribute only a limited amount towards the cost of their care. The object of the Principles is to ensure access to high quality aged care that is affordable by people who require it and appropriate to their needs.

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