

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Aged Care

Aged Care Act 1997

Allocation Principles Amendment Principle 2016

Purpose

The *Aged Care Amendment (Red Tape Reduction in Places Management) Act 2015* (Places Management Act) made amendments to the *Aged Care Act 1997* (the Aged Care Act) to streamline the transfer of places between approved providers, and the management of provisionally allocated places, while still ensuring a high level of care is provided to older Australians.

The amendments in the Places Management Act simplified the process for transferring places between approved providers by deeming proposed transfers as approved. This approval is subject to the Secretary's power to veto any proposed transfer which ensures only transfers that uphold standards of appropriate care will progress.

The Places Management Act also reduced red tape for approved providers by extending the current provisional allocation period and as a result reducing the need for approved providers to apply for extensions. The Places Management Act also ensures that care is provided to older Australians in a reasonable timeframe by limiting the number of extensions available.

As a result of changes made by the Places Management Act outlined above, consequential amendments are required to the *Allocations Principles 2014* (the Principles), which is the purpose of this Principle. Section 96-1 of the Act allows the Minister to make Principles providing for various matters required or permitted by a Part or section of the Act.

Background

Before the Places Management Act commenced, an approved provider had to submit an application to the Department for the transfer of places to another approved provider. The Secretary of the Department was then required to consider and either reject or approve the application. The amendments made by the Places Management Act remove the need for approved providers to make applications and wait for the Secretary's decision. Proposed transfers are deemed as approved, after a transfer notice has been submitted by the approved provider. However, the appropriateness of the transfer will still be considered, with the Secretary retaining the capacity to review the proposed transfer and where quality of care, prudential, financial or other significant concerns exist, the Secretary has the right to issue a Notice of Veto to prevent the transfer from proceeding.

This means only suitable and appropriate transfers will take effect.

Before the amendments made by the Places Management Act, approval from the Secretary of the Department was required for any extension of the provisional allocation period after the initial provisional allocation period of two years had expired. The amendments to this Schedule will increase the initial provisional allocation period from two years to four years. This reduces regulation for approved providers as it means they will not have to apply for an extension until four years after their place has been provisionally allocated.

Before these amendments, an unlimited number of extensions were available to extend the provisional allocation period beyond the initial two year period. This meant that places could be allocated without care being provided for an indefinite period of time. The amendments to this Schedule ensure that timely care is provided to older Australians by limiting the amount of extensions available to two years with a further extension available only in exceptional circumstances. This will ensure that provisionally allocated places take effect and care is provided to older Australians in reasonable timeframes.

The amendments to the Allocation Principles made by this Principle are consequential to the amendments made by the Places Management Act. It primarily updates the terminology used and refines the matters to be considered by the Secretary when making decisions on the transfer of places and extensions of provisional allocation periods.

Commencement

The instrument commences the day after registration.

Consultation

In developing the policy design of the Places Management Act, the aged care sector was consulted through meetings held throughout 2015. The consequential amendments required to the *Allocation Principles 2014* formed part of the comprehensive discussion with the aged care sector.

Regulation Impact Statement (RIS)

Following consultation with the Office of Best Practice Regulation (OBPR), a RIS not required. OBPR reference numbers are: 17901 and 17902.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Explanation of the provisions

Section 1

This section provides how the proposed instrument is to be cited, that is, as *Allocation Principles Amendment Principle 2016*.

Section 2

This section sets out the commencement of this instrument. The commencement date is the day after registration.

Section 3

This section provides the authority for making this instrument. This instrument is made under section 96-1 of the *Aged Care Act 1997*.

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

Accordingly, the power in section 96-1 of the Aged Care Act is relied on, in conjunction with subsection 33(3) of the Acts Interpretation Act, to vary the Allocation Principles.

Section 4

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Allocation Principles 2014

Item 1 – this item inserts words into the definitions section of the Allocations Principles, to clarify that where the Principles use a word or term that is defined in the Aged Care Act, the word or term has the same meaning as that Act.

Item 2 inserts a new definition of ***commencing service*** into the Principles that replicates the definition used in the *Quality Agency Principles 2013* as this definition is required for amendments made by **items 17** and **21** below.

On 16 September 2015 the *Social Services Legislation Amendment (No 2) Act 2015* repealed section 12-7 of the Aged Care Act, and therefore abolished the Aged Care Planning Advisory Committees.

Consequently, **Item 3** repeals the definition of **Committee** from the Principles, as it the reference to Aged Care Planning Advisory Committees is no longer required.

Item 4 repeals the definition of **planning objectives**, as this is a concept used in Part 3 which is repealed by item 7 below.

Items 5 and 6 repeal Part 2 Division 1 of the Principles, and the heading for Division 2 of Part 2, as the Secretary is no longer required to consult with the Aged Care Planning Advisory Committees as they have been abolished.

Item 7 repeals all of Part 3 of the Principles, which set out the functions and powers of the now abolished Aged Care Planning Advisory Committees.

Item 8 makes amendments to section 37 to reflect that Division 2 of Part 5 of the Principles will now set out the matters to be considered by the Secretary, or his delegate, when deciding whether there are exceptional circumstances justifying a third extension of the provisional allocation period. The Division no longer sets out the matters the Secretary must consider when deciding whether to grant the first or second extensions.

Item 9 repeals the existing section 38 and inserts a new section 38 into the Principles. New section 38 sets out the matters the Secretary must consider when determining whether there are exceptional circumstances justifying a third extension of the provisional allocation period. The Secretary is not required to be satisfied of all the matters set out in new section 38 before finding there are exceptional circumstances justifying the final extension. However, the Secretary must consider these matters before making a final decision on whether exceptional circumstances exist.

Item 10 is the insertion of an explanatory note. This note indicates that the Secretary is only required to consider exceptional circumstances when the provisional allocation period is being extended beyond six years.

Items 11 and 12 repeal sections 39 and 40 respectively. These sections are no longer required as the Division only sets out the matters the Secretary must consider when determining there are exceptional circumstances justifying a third extension of the provisional allocation period. The Division does not set out any matters to be considered for the earlier extensions of the provisional allocation period.

Items 13, 14 and 15 make consequential amendments to the heading of Division 2 of Part 6, paragraph 42(a) and the heading to section 43 to reflect that approved providers no longer lodge applications to transfer places and instead simply notify the Department of the intended transfer.

Item 16 repeals and replaces subsection 43(1). This item makes consequential changes to subsection 43(1) that reflect Division 16 of the Aged Care Act was renumbered by the Places Management Act. This item also streamlines the additional information that must be included in transfer notices, compared to applications to transfer residential or flexible care places, when approved providers notify the Department of the intended transfer.

Item 17 makes consequential amendments to subsection 43(2) to streamline the information that must be included in transfer notices, compared to applications to transfer residential or flexible care places, when approved providers notify the Department of the intended transfer.

Item 18 makes amendments to subsection 43(3) of the Principles to make it easier for approved providers to give the Department information about their financial circumstances when seeking to transfer residential or flexible care places. The Department no longer requires the approved provider's last audited company statements and will instead require the latest financial statements.

Item 19 makes consequential amendments to the heading to section 44 to reflect that approved providers no longer lodge applications to transfer places and instead simply notify the Department of the intended transfer.

Item 20 repeals and replaces subsection 44(1). This item makes consequential changes to subsection 44(1) that reflect Division 16 of the Aged Care Act was renumbered by the Places Management Act. This item also streamlines the additional information that must be included in transfer notices, compared to applications to transfer home care places, when approved providers notify the Department of the intended transfer.

Item 21 makes consequential amendments to subsection 44(2) to reflect that approved providers no longer lodge applications to transfer places and instead simply notify the Department of the intended transfer. This item also streamlines the additional information that must be included in transfer notices, compared to applications to transfer home care places, when approved providers notify the Department of the intended transfer.

Item 22 makes amendments to subsection 44(3) of the Principles to make it easier for approved providers to give the Department information about their financial circumstances when seeking to transfer home care places. The Department no longer requires the approved provider's last audited company statements and will instead require the latest financial statements.

Item 23 makes consequential amendments to the heading to section 45 to reflect that approved providers no longer lodge applications to transfer places and instead simply notify the Department of the intended transfer.

Item 24 repeals and replaces subsection 45(1) to streamline the matters to be considered by the Secretary when deciding whether to determine a notice period shorter than the 60 or 90 days specified in subsection 16-2(4) of the Aged Care Act.

Item 25 makes consequential amendments to the heading to section 46 to reflect that approved providers no longer lodge applications to transfer places and instead simply notify the Department of the intended transfer.

Item 26 repeals and replaces subsection 46(1) to streamline the matters to be considered by the Secretary when determining what the notice period is if it is shorter than the 60 or 90 days specified in subsection 16-2(4) of the Aged Care Act.

Item 27 makes consequential amendments to the heading to Division 3 of Part 6 to reflect that approved providers no longer lodge applications to transfer places and instead simply notify the Department of the intended transfer.

Item 28 makes changes to section 47 to reflect that approved providers no longer lodge applications to transfer place, and instead send in transfer notices. The amendments also reflect that the Secretary no longer approves transfers, but instead considers the transfer for possible veto in the event of some matter of concern.

Items 29, and 30 make consequential changes to section 48 remove the words ‘if the application is approved’ because approved providers no longer need to apply to have transfers approved, as well as remove one of the matters the Secretary must consider. The Secretary will no longer be required to consider any issues raised by the transferor and transferee in the transfer notice, because at a practical level, neither party ever raises concerns or issues as part of the transfer process.

Item 31 repeals section 50 of the Principles, because the Secretary no longer makes a decision on an application for transfer. Accordingly there is no need to specify the information that must be included in that decision letter.

Items 32, 33, 34, 36 and 38 make consequential changes to sections 51, 52 and 54 that reflect Division 16 of the Act was renumbered by the Places Management Act. These items make amendments to correctly cross-reference the various sections of the Act.

Items 35, 37 and 39 make consequential amendments to section 54 and 55 to reflect that approved providers no longer lodge applications to transfer places and instead simply notify the Department of the intended transfer.

Items 40 and 41 makes changes to subsection 55(1) and 55(2) to streamline the additional information that must be included in transfer notices, compared to applications to transfer, for provisionally allocated places when approved providers notify the Department of the intended transfer.

Item 42 makes amendments to subsection 55(3) of the Principles to make it easier for approved providers to give the Department information about their financial circumstances when seeking to transfer residential or flexible care places. The Department no longer requires the approved provider’s last audited company statements and will instead require the latest financial statements.

Items 43 and 44 make consequential amendments to section 56, including the heading, to reflect that approved providers no longer lodge applications to transfer places and instead simply notify the Department of the intended transfer. These items also reflect that Division 16 of the Aged Care Act was renumbered by the Places Management Act, and corrects the cross-reference to the relevant sections of the Aged Care Act.

Items 45 and 46 make consequential amendments to section 57, including the heading, to reflect that approved providers no longer lodge applications to transfer places and instead simply notify the Department of the intended transfer. These items also reflect that Division 16 of the Aged Care Act was renumbered by the

Places Management Act, and corrects the cross-reference to the relevant sections of the Aged Care Act.

Item 47 makes consequential amendments to the heading to Division 3 of Part 3 to reflect that approved providers no longer lodge applications to transfer places and instead simply notify the Department of the intended transfer.

Item 48 makes amendments to section 58 to reflect that Division 3 of Part 7 of the Principles will now set out the matters the Secretary, or his delegate, must be satisfied of when considering a transfer notice for the transfer of provisionally allocated places. The Division no longer sets out the matters the Secretary must consider when deciding whether the needs of the region will be best met by the transfer. The item also ensures the cross reference to the relevant section in Division 16 of the Aged Care Act is correct after the changes made by the Places Management Act.

Item 49 makes changes to subsection 59(1) to set out what the Secretary, or his delegate, must be satisfied of when considering transfer notices for provisionally allocated places. The item adds a new paragraph 59(1)(a) to the Principles, requiring the Secretary, or his delegate, to consider whether there are exceptional circumstances justifying the transfer of the provisionally allocated places. The remaining matters in subsection 59(1) are unchanged.

Item 50 repeals paragraph 59(2)(c) of the Principles. Typically, neither the transferor nor the transferee will set out matters of concern when advising the Department of the proposed transfer. Accordingly, as no information of this type is ever collected, there is no need for it to be considered during the process.

Item 51 amends the note at the end of section 59 to ensure the correct cross reference to division 16 of the Aged Care Act, and to reflect that the Secretary no longer approves or rejects transfers, but is able to veto transfers if concerns are raised.

Item 52 repeals section 61 because the Secretary no longer makes a decision on an application for transfer. Accordingly there is no need to specify the information that must be included in that decision letter.

Statement of Compatibility with Human Rights

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

Allocation Principles Amendment Principle 2016

This Principle is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Background

The *Aged Care Amendment (Red Tape Reduction in Places Management) Act 2015* (the Places Management Act) made amendments to the *Aged Care Act 1997* (the Aged Care Act) to streamline the transfer of places between approved providers, and the management of provisionally allocated places. As a result of changes made by the Places Management Act, consequential amendments were required to the *Allocations Principles 2014* (the Principles).

Transfer of Places

Prior to these amendments, an approved provider had to submit an application for the transfer of places to another approved provider. The Secretary of the Department was then required to consider and either reject or approve all applications. The amendments to this Schedule will streamline this process and remove the need for approved providers to make applications and wait for the Secretary's decision by deeming proposed transfers as approved after a notice of transfer has been submitted by the approved provider. However, the appropriateness of transfer will still be considered, with the Secretary having the power to veto a transfer to ensure that suitable arrangements and care are provided to older Australians. This means only suitable and appropriate transfers will take effect.

Provisionally Allocated Places

Prior to these amendments, approval from the Secretary of the Department was required for any extension of the initial two year provisional allocation period. The amendments to this Schedule will increase the provisional allocation period from two (2) to four (4) years. This reduces regulation for approved providers as it means they will not have to apply for an extension until four years after their place has been provisionally allocated.

Also prior to these amendments, an unlimited number of extensions were available to extend the provisional allocation period. This meant that places could be allocated without care being provided for an indefinite period of time. The amendments to this Schedule ensure that timely care is provided to older Australians by limiting the amount of extensions available to two 12 month periods with further extensions available only in exceptional circumstances. This will ensure that provisionally

allocated places take effect and care is provided to older Australians in reasonable timeframes.

Human rights implications

The proposed amendments to the *Allocations Principles 2014* do not engage any applicable human rights. The amendments reduce the regulatory burden on approved providers with no increase or detrimental impact on their existing human rights obligations.

Conclusion

This Bill is compatible with human rights as it does not raise any human rights issues.

The Hon Sussan Ley MP, the Minister for Aged Care