



Allocation Principles Amendment Principle 2016

I, Sussan Ley, Minister for Aged Care, make the following principle.

Dated 5 May 2016

Sussan Ley
Minister for Aged Care

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1 Name

This instrument is the *Allocation Principles Amendment Principle 2016*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 96-1 of the *Aged Care Act 1997*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

1 Section 4 definitions

After “In these principles”, insert “unless a contrary intention appears, an expression that is used in the *Aged Care Act 1997* has the same meaning, when used in this Principle, as in the *Aged Care Act 1997*, and”.

2 Section 4 definitions

Insert;

A residential care service is a *commencing service* if:

- (a) an approved provider has been allocated places, under Division 14 of the *Aged Care Act*, for the service; and
- (b) residential care has not previously been provided for those places through that service; and
- (c) the service is not an accredited service or a previously accredited service.

Note: A change in the approved provider to which places are allocated for a residential care service, or a change in the location of a residential care service, does not make the service a commencing service.

3 Section 4 (definition of *Committee*)

Repeal the definition.

4 Section 4 (definition of *planning objectives*)

Repeal the definition.

5 Part 2 Division 1

Repeal the division.

6 Part 2 Division 2 (heading)

Repeal the heading.

7 Part 3

Repeal the Part.

8 Section 37

Repeal the section, substitute:

“For subsection 15-7 (3A) of the Act, this Division specifies the matters that must be considered by the Secretary when determining whether exceptional circumstances exist that justify the granting of a further extension.”

9 Section 38

Repeal the section and substitute:

38 Matters to be considered

- (1) For subsection 15-7(3A) of the Act, the matters the Secretary must have regard to when considering whether exceptional circumstances justifying the granting of a further extension are:
 - (a) whether there are any unusual or unforeseen matters outside the control of the approved provider, including but not limited to the occurrence of a natural disaster or emergency situation, preventing the approved provider from applying under section 15-1 of the Act for a determination that the approved provider is in a position to provide care; and
 - (b) whether the approved provider will be in a position to provide care within the period of the extension; and
 - (c) whether granting the extension is necessary because no other provider is able to satisfy the care needs in the region.

10 At the end of section 38

Insert the following note:

“Note: The Secretary will consider the matters set out in this section when determining whether exceptional circumstances justify an extension of the provisional allocation period for a further 12 months, taking the total provisional allocation period beyond six years.

11 Section 39

Repeal the section.

12 Section 40

Repeal the section.

13 Part 6 Division 2

Repeal the heading, substitute:

Division 2—Transfer of places

14 Paragraph 42(a)

Omit “an application”, substitute “a transfer notice”.

15 Section 43 (heading)

Repeal the heading, substitute:

43 Other information to be included in transfer notice—places in respect of residential care or flexible care subsidy

16 Subsection 43(1)

Repeal the subsection, substitute:

- “(1) For subparagraph 16-2(3)(h) of the Act, a transfer notice from an approved provider to transfer places in respect of residential care or flexible care subsidy must include the following other information:
- (a) whether the provider has notified the affected care recipients, or their representatives, about the proposed transfer, and if so, how and when they were notified, or when it is proposed that they would be notified; and
 - (b) whether any concerns about the proposed transfer were expressed to the provider by care recipients, or their representatives, and if so, the measures the provider and the proposed transferee propose to take to deal with the concerns; and
 - (c) the measures that the provider proposes to take to;
 - (i) help the care recipients find suitable alternative care and accommodation of their choice if they do not wish to transfer to the new service;
 - (ii) maintain services for the affected care recipients, while transferring services;
 - (iii) help the affected care recipients move (with their personal possessions) if they are required to relocate;
 - (iv) ensure that the affected care recipients will not be disadvantaged because of the proposed transfer.”

17 Subsection 43(2)

Repeal the subsection, substitute:

- “(2) The transfer notice must also include the following information, given by the proposed transferee:
- (a) how the transferee proposes to;
 - (i) undertake the responsibilities of an approved provider under Parts 4.1 and 4.2 of the Act and Part 4.2 of the *Aged Care (Transitional Provisions) Act 1997*; and
 - (ii) provide accommodation and care for care recipients with special needs.
 - (b) if the transferee is a commencing service, or proposes to construct or develop premises to accommodate the transferred places;
 - (i) a description of the project; and
 - (ii) a detailed timetable for the project.
 - (c) how the transferee intends to comply with any existing conditions of allocation and any conditions that are varied as part of the application to transfer the places.”

18 Subsection 43(3)

Repeal the subsection, substitute:

“(3) The latest financial statements of the proposed transferee’s aged care services (if any) must also be included with the transfer notice.”

19 Section 44 (heading)

Repeal the heading, substitute:

44 Other information to be included in transfer notice—places in respect of home care subsidy

20 Subsection 44(1)

Repeal the subsection and substitute:

“(1) For paragraph 16-2(3)(h) of the Act, a transfer notice from an approved provider to transfer places in respect of home care subsidy must include the following other information:

- (a) whether the provider has notified the affected care recipients, or their representatives, about the proposed transfer and, if so how and when they were notified, or when it is proposed that they would be notified; and
- (b) the measures that the provider proposes to take while transferring the places, to maintain services for the affected care recipients; and
- (e) the guarantees that the provider proposes to give that the affected care recipients will not be disadvantaged because of the proposed transfer.”

21 Subsection 44(2)

Repeal the subsection and substitute:

- “(2) The transfer notice must also include the following information:
- (a) undertake the responsibilities of an approved provider under Parts 4.1 and 4.2 of the Act and Part 4.2 of the *Aged Care (Transitional Provisions) Act 1997*; and
 - (b) a timetable for implementing the provision of care before, during and after the transfer, including details of any suspension or reduction of care;
 - (c) details of relationships between the transferee’s aged care service and community organisations in the region concerned; and
 - (d) how the transferee will integrate any existing services with the new service.
 - (e) if the transferee is a commencing service how the transferee proposes to:
 - (i) ensure that each care recipient is given a planned, coordinated package of care services designed to meet the care recipient’s needs; and
 - (ii) provide ongoing assessment of care needs; and
 - (iii) ensuring continuing consumer consultation and involvement in the provision of care.

22 Subsection 44(3)

Repeal the subsection, substitute:

- “(3) The latest financial statements of the proposed transferee’s aged care services (if any) must also be included with the transfer notice.”

23 Section 45 (heading)

Repeal the heading, substitute:

45 Matters to be considered in deciding whether to determine different notice period

24 Subsection 45(1)

Repeal the subsection, substitute:

- “(1) For subsection 16-2(6) of the Act, the Secretary must consider the following matters in deciding whether to determine another notice period for paragraph 16-2(4)(a) or (b) of the Act:
- (a) the reasons why the different period has been requested;
 - (b) any concerns about the application expressed by care recipients in the aged care service about the timing of the transfer.”

25 Section 46 (heading)

Repeal the heading, substitute:

46 Matters to be considered in determining different notice period

26 Subsection 46(1)

Repeal the subsection, substitute:

- “(1) For subsection 16-2(6) of the Act, if the Secretary has decided to determine another notice period for paragraph 16-2(4)(a) or (b) of the Act, the Secretary must consider the following matters in determining the other notice period:
- (a) any concerns about the transfer notice expressed by care recipients who receive care through the applicant’s aged care service;
 - (b) whether the period will be adequate to allow for the processing of the transfer notice.”

27 Part 6 Division 3

Repeal the heading, substitute:

Division 3—Consideration of transfers

28 Section 47

Repeal the section, substitute:

“For paragraph 16-3(1)(g) of the Act, this Division sets out other matters that the Secretary must consider after receiving a transfer notice.”

29 Subsection 48(1)

Omit “if the application is approved,”.

30 Paragraph 48(2)(f)

Repeal the paragraph.

31 Section 50

Repeal the section.

32 Subsection 51(1)

Omit “16-9”, substitute “16-10”.

33 Note at the end of subsection 51(3)

Omit “16-7”, substitute “16-8”.

34 Subsection 52

Omit “16-10(2)(h)”, substitute “16-11(2)(h)”.

35 Part 7 Division 2

Repeal the heading, substitute:

Division 2—Transfer of provisionally allocated places

36 Section 54

Omit “16-4” substitute “16-13”.

37 Paragraph 54(a)

Omit “an application”, substitute “a transfer notice”.

38 Subparagraph 54(b)(i)

Omit “16-14(4)(a) or (b)” substitute “16-13(4)(a) or (b)”.

39 Section 55(heading)

Repeal the heading, substitute:

55 Other information to be included in transfer notice

40 Subsection 55(1)

Repeal the subsection, substitute:

“(1) For paragraph 16-13(3)(j) of the Act, a transfer notice by an approved provider (the *transferor*) to transfer provisionally allocated places must include the following other information:

- (a) the reasons why the transferor seeks to have the provisionally allocated places transferred;
- (b) the exceptional circumstances that the transferor considers will justify the transfer in meeting the needs of the aged care community in the region for which the places were provisionally allocated.”

41 Subsection 55(2)

Repeal the subsection, substitute:

- (2) The transfer notice must also include the following information, given by the proposed transferee:
 - (a) how the transferee proposes to undertake the responsibilities of an approved provider under Parts 4.1 and 4.2 of the Act and Part 4.2 of the *Aged Care (Transitional Provisions) Act 1997*;
 - (b) how the transferee proposes to provide accommodation and care for care recipients with special needs; and
 - (c) if the transferee proposes to construct or develop premises to accommodate the transferred places;
 - (i) a description of the project; and
 - (ii) a detailed timetable for the project; and
 - (iii) how the transferee intends to comply with any existing conditions of allocation and any conditions that are varied as part of the application to transfer the places.”

42 Subsection 55(3)

Repeal the subsection, substitute:

“(3) The latest financial statements of the proposed transferee’s aged care services (if any) must also be included with the transfer notice.”

43 Section 56(heading)

Repeal heading, substitute:

56 Matters to be considered in deciding whether to determine different notice period

44 Subsection 56(1)

Repeal subsection, substitute:

- (1) For subsection 16-13(6) of the Act, the Secretary must consider the following matters in deciding whether to determine another notice period for paragraph 16-13(4)(a) or (b) of the Act:

(a) the reasons why the different notice period has been requested;

45 Section 57(heading)

Repeal heading, substitute:

57 Matters to be considered in determining different notice period

46 Subsection 57(1)

Repeal subsection, substitute:

- “(1) For subsection 16-13(6) of the Act, if the Secretary has decided to determine another notice period for paragraph 16-13(4)(a) or (b) of the Act, the Secretary must consider the following matters in determining the other application period:

(a) whether the period will be adequate to allow for the processing of the transfer notice.”

47 Part 7 Division 3

Repeal the heading, substitute:

Division 3—Consideration of transfers

48 Section 58

Repeal section, substitute:

“For paragraph 16-14(1)(j) of the Act, this Division sets out other matters that the Secretary must be satisfied of when considering a transfer notice to transfer provisionally allocated places.”

49 Subsection 59(1)

Repeal subsection, substitute:

- “(1) The Secretary must consider whether the Secretary is satisfied of the following:
- (a) that there are exceptional circumstances justifying the transfer, having regard to the residential care needs of the region; and
 - (b) that the residential care needs of the region have changed since the provisional allocation of the places; and
 - (c) how the development of the service, to which the provisional allocation of places was made, has progressed; and
 - (d) the extent to which the care needs of the region would be better met by transferring the provisionally allocated places to the transferee than by not transferring the places.”.

50 Paragraph 59(2)(c)

Repeal the paragraph.

51 Section 59 (Note)

Omit the note, substitute:

Note: The Secretary may veto the transfer if the location for which the place is provisionally allocated will change as a result of the transfer (see paragraph 16-17(1)(d) of the Act).

52 Section 61

Repeal the section.