

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

Aged Care Act 1997

Fees and Payments Principles 2014 (No. 2)

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

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

Among the Principles made under section 96-1 are the *Fees and Payments Principles 2014 (No. 2)* (the Principles).

The Principles will replace the *Fees and Payments Principles 2014* that were made in January 2014.

The Principles outline:

- arrangements for fees for both home care and residential care services (for care recipients who enter care on or after 1 July 2014);
- the requirements in relation to accommodation payments, whether they are made as a daily accommodation payment or a refundable accommodation deposit;
- the requirements in relation to accommodation contributions, whether they are made as a daily accommodation contribution or a refundable accommodation contribution;
- the rules around refunds of refundable deposits (including accommodation bonds); and
- the prudential obligations of providers holding accommodation bonds or refundable deposits.

These Principles were created by drawing on information from the *User Rights Principles 1997*, *Fees and Payments Principles 2014* and the *Residential Care Subsidy Principles 1997*, and also include new provisions reflecting changes made to the Act that take effect from 1 July 2014.

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

Consultation

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

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

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

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

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

Regulation Impact Statement

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

Commencement

The Principles commence on 1 July 2014.

Details of the Fees and Payments Principles 2014 (No. 2)

Part 1 – Preliminary

Section 1 – Name of principles

This section states that the name of the Principles is the *Fees and Payments Principles 2014 (No. 2)* (the Principles).

Section 2 – Commencement

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

Section 3 – Authority

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

Section 4 – Definitions

This section defines certain terms used in the Principles.

Act means the *Aged Care Act 1997*.

annual prudential compliance statement for an approved provider, means the statement that is given to the Secretary within 4 months of the end of each financial year that includes the items that are listed in section 51.

approval day, for a Pricing Commissioner approved amount, means the later of 1 July 2014 and the day on which the approval of the amount takes effect.

approval year, for a Pricing Commissioner approved amount, means the period of one year beginning on the approval day for the Pricing Commissioner approved amount or any later anniversary of that day.

base interest rate means a rate that is the sum of the below threshold rate and 2% (expressed as a percentage) that takes effect on the first day of the month that follows the day when the below threshold rate is determined.

below threshold rate means the rate that is determined under subsection 1082(1) of the *Social Security Act 1991*.

entry day for a person, means the day the person first began receiving care through the residential care service (or eligible flexible care service) or if the person is transferred from respite care to permanent accommodation, the day of the transfer. This term is intended to capture the actual day that the person enters or is transferred to the service. It is not intended to capture those days prior to entry when the care recipient may be on pre-entry leave, as defined by subsection 42-3(3) of the Act (for example, the time between when a person accepts a place in a service and the time that they actually enter the service).

essential expenses has the meaning given by section 39.

financial hardship determination, in relation to a person, means a determination made under subsection 52K-1(1) of the Act. For the purposes of these Principles this is a determination made by the Secretary that a person must not be charged an accommodation payment or accommodation contribution more than the amount specified in the determination, because charging the person any more than the amount specified would cause the person financial hardship.

financial year for an approved provider of residential care, means a period of 12 months commencing on 1 July, or another period determined by the Secretary under section 32 of the *Accountability Principles 2014*. For approved providers of multi-purpose services, a financial year means a period of 12 months commencing on 1 July 2014 or such other period determined by the Secretary under these Principles.

index number, for a quarter, means the Consumer Price Index (CPI) number which is the weighted average of the 8 capital cities published by the Australian Statistician in respect of that quarter.

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 6.

Minister's maximum accommodation payment amount means the maximum amount of accommodation payment determined by the Minister under section 52G-3 of the Act.

multi-purpose service has the same meaning as in the *Subsidy Principles 2014*.

part, of a room that is intended to provide accommodation for 2 or more persons, means an area of the room that is intended to be occupied as personal space by an individual person.

price agreement day, for a person and a residential care service or an eligible flexible care service, means:

- the day on which the person and the approved provider of the service agree, under paragraph 52F-1(1)(b) of the Act, about the maximum amount that would be payable if the person paid an accommodation payment for the service; or
- if the accommodation agreement with the person is varied because the person proposes to move to a new room, or a new part of a room, in the service, and the proposed move is voluntary - the day on which the accommodation agreement is varied; or
- if the person is notified that the person is to be moved to a new room, or a new part of a room, in the service for 28 days or longer, and the proposed move is not voluntary - the day on which the notice is given.

A note at the end of this definition reminds the reader that subsections 17(3) and (5) deal with other matters relating to moves by a person within a service.

Pricing Commissioner approved amount means a higher maximum amount of accommodation payment (expressed as a refundable accommodation deposit amount)

approved by the Aged Care Pricing Commissioner under subsection 52G-4(5) of the Act. Division 3 of Part 4 of the Principles deals with how applications may be made to the Aged Care Pricing Commissioner for approval of a higher amount of accommodation payment.

quarter means a period of 3 months commencing on 1 January, 1 April, 1 July or 1 October of a year.

refundable deposit register, of an approved provider, means the register established and maintained by the approved provider in accordance with Division 3 of Part 5.

refund day, in relation to the refund of an entry contribution balance, means the last day for the entry contribution balance to be refunded by the approved provider under a formal agreement applying in respect of the entry contribution balance.

refunding event means an event referred to in paragraph 52P-1(2)(a) or (b) of the Act.

refund period means the period specified in paragraph 52P-1(4)(a), subparagraph 52P-1(4)(b)(ii) or (iii) or paragraph 52P-1(4)(c) of the Act within which a refundable deposit balance must be refunded.

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

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

transfer, of a care recipient from respite care to permanent accommodation, means the entry by the care recipient to the residential care service concerned on a permanent basis after having received respite care.

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

This section notes that a number of other expressions used in this Principle are defined in Schedule 1 of the Act.

Section 5 – Eligible flexible care service

This section allows multi-purpose services to charge accommodation payments. Multi-purpose services are a type of residential flexible care service.

Section 6 – Maximum permissible interest rate

This section provides a calculator for working out the maximum permissible interest rate for the relevant day.

The maximum permissible interest rate for the relevant day may be worked out by:

- working out the general interest charge rate for the relevant day under section 8AAD of the *Taxation Administration Act 1953*; and
- multiplying that by the number of days in the calendar year in which the relevant day falls and then subtracting 3 percentage points from this amount.

Part 2 – Resident fees

Section 7 – Purpose of this Part

This section states that the purpose of Part 2 is to describe additional amounts that may be included in resident fees and also to describe additional responsibilities of an approved provider in relation to booking fees for respite care and refunding overpaid resident fees.

Section 8 – Additional amount for residential care service in remote area

This section describes an additional amount that may be added to the maximum daily amount of resident fees for residential care provided in a remote area.

The additional amount is worked out in accordance with the following formula:

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

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

Section 9 – Additional amount 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 52C-3 of the 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 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 Act 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 Act, 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 52C-3 of the Act, the additional fee agreed upon is added at Step 5 of the calculation of the maximum daily amount of resident fees.

Section 10 – Booking fee for respite care

This section specifies responsibilities of an approved provider of a residential care service in relation to a booking fee that may be charged by the approved provider for respite care provided to a care recipient through the service.

The booking fee must:

- not exceed the lesser of one week's fee for the respite care and 25% of the fee for the proposed period of respite care;
- be deducted from the fee for the respite care;
- be refunded if the care recipient enters hospital or dies either before entering the service for the provision of the respite care or after entering the service for the provision of the respite care but before the end of the booked period;
- if the care recipient cancels a booking more than 7 days before the proposed day for entry into the service for respite care, the booking fee must be refunded within 14 days after the approved provider was notified that the care recipient cancelled the booking. However, if the care recipient cancels a booking within 7 days before the proposed day for entry into the service for the provision of the respite care and the reason for the cancellation is other than the care recipient entering hospital or the death of the care recipient before that day, the whole or part of the booking fee may be retained; and
- be refunded if the provider requires the care recipient to leave the service where the respite care is being provided before the end of the booked period. If the care recipient chooses to leave the service before the end of the booked period, the whole or part of the fee for the unused part of the booked period may be taken from the booking fee.

Section 11 – Refund of overpaid resident fees

This section provides that if the amount of resident fees paid by a care recipient is higher than the amount of resident fees that is properly payable, the approved provider must refund to the care recipient the difference between the amount of resident fees that was properly payable and the amount of resident fees that was paid.

Part 3 – Home care fees

Section 12 – Purpose of this Part

This section states that Part 3 specifies additional responsibilities of an approved provider in relation to refunding overpaid home care fees.

Section 13 – Refund of overpaid home care fees

This section provides that if the amount of home care fees paid by a care recipient is higher than the amount of home care fees that was properly payable, the approved

provider must refund to the care recipient the difference between the amount of home care fees that was properly payable and the amount of home care fees that was paid.

Part 4 – Accommodation payments and accommodation contributions

Division 1 – Accommodation agreements

Section 14 – Purpose of this Division

This section states that the purpose of Division 1 of Part 4 is to specify:

- additional information that must be given to a person before they enter a residential care service or multi-purpose service;
- matters the Secretary must have regard to in considering whether to extend the period for an accommodation agreement to be entered into between an approved provider and a care recipient; and
- other matters to be set out in an accommodation agreement.

Section 15 – Information to be given before person enters residential care service or eligible flexible care service

This section outlines additional information that must be provided, in writing, to a care recipient by an approved provider before a care recipient enters a residential care service or a multi-purpose service.

This information includes:

- a statement that, if the person pays part or all of his or her accommodation payment or accommodation contribution by refundable deposit, the approved provider will, within 7 days of receiving a request from the person, give the person the information and documents referred to in subsection 57(1) of these Principles. This subsection requires providers to give care recipients information such as a copy of the provider's audited accounts and information about whether the provider has complied with its prudential responsibilities and its responsibility to refund refundable deposits;
- information about the interest rate payable if there is a delay in the payment of daily accommodation payments or daily accommodation contributions;
- the method and timing by which any overpaid accommodation payments or accommodation contributions will be refunded to the person;
- information about refund arrangements for refundable accommodation deposits and refundable accommodation contributions; and
- the prudential arrangements applying to refundable accommodation deposits and refundable accommodation contributions.

The statement about the information to be provided within seven days of a request carries over a provision with the same effect that was formerly part of the Disclosure Standard. Enabling prospective care recipients and care recipients who have paid accommodation payments to request, and have provided, this information supports informed decision making.

Section 16 – Extension of time for entering into accommodation agreement

Subsection 52F-2(2) of the Act enables the Secretary to extend the timeframe for a care recipient and an approved provider to enter into an accommodation agreement in

circumstances where the care recipient has a mental impairment and a process has begun to appoint a legal representative for the care recipient.

This section of the Principles provides that, in considering the extension period, the Secretary may have regard to any matter the Secretary considers relevant.

Section 17 – Content of accommodation agreements

Section 52F-3 of the Act sets out matters that must be included in an accommodation agreement. This section of the Principles describes additional matters that must also be included in an accommodation agreement. Specifically, an accommodation agreement must set out:

- the specific accommodation that will be provided;
- any services that the accommodation payment entitles the person to be provided with;
- that an accommodation payment is still payable if the person applies to the Secretary for a determination of financial hardship and the Secretary refuses to make the determination or it is made but later ceases to be in force; and
- that if a person moves within a service, the day of the move is not to be taken as the date they entered the service. In particular, the care recipient does not have 28 days in which to make a choice of payment method for their accommodation payment, and there is no requirement for the provider to not accept a refundable deposit amount that would leave the resident with less than the minimum permissible asset level.

The section also specifies additional matters that must be included in the accommodation agreement in relation to:

- voluntary moves between rooms within the service; and
- non-voluntary moves between rooms within the service. A move is not voluntary if:
 - the move is assessed as necessary on medical grounds by an aged care assessment team or at least two medical or other health practitioners where one is independent from the approved provider and chosen by the person, and both are competent to assess the aged care needs of the person;
 - when the place occupied by the person becomes an extra service place and the person chooses not to pay the extra service fee; or
 - the move is necessary to carry out repairs or improvements to the service.

For a voluntary move within a service, the accommodation agreement must set out that:

- the accommodation agreement must be varied, before the move occurs, to specify the new room or new part of the room;
- the day the agreement is varied will become the price agreement day for the person;
- the person may be charged an accommodation payment amount that is higher or lower than that they were paying before the move, however this amount cannot be higher than the maximum accommodation payment amount that was published on the new price agreement day (i.e. the day the agreement is varied); and

- if a person is to be charged a higher accommodation payment amount, they may choose to pay the additional amount by daily payments, a refundable deposit or a combination of the two.

For a move that is not voluntary and is for less than 28 days, the accommodation agreement must set out that:

- the provider must notify the person in writing of the new accommodation before the move occurs; and
- there will be no change to the person's price agreement day or to the amount of accommodation payment they are paying.

For a move that is not voluntary and is for 28 days or longer, the accommodation agreement must set out that:

- the provider must notify the person in writing of the new accommodation before the move occurs;
- the day on which notice is given will become the price agreement day for the person;
- the person must not be charged an accommodation payment that is higher than the amount they were paying before the move; and
- if the published maximum accommodation payment amount for the new accommodation is lower than the person was paying before the move, the person may be charged no more than the published maximum accommodation payment amount for the new accommodation.

Division 2 – Rules about charging accommodation payments

Section 18 – Purpose of this Division

This section describes the purpose of Division 2 which is to specify the rules that must be complied with by an approved provider in relation to charging accommodation payments. These rules expand on those set out in section 52G-2 of the Act.

Section 19 – Approved provider must publish information about maximum accommodation payment amount etc.

This section sets out the information that must be made publicly available by an approved provider, if the approved provider intends to charge an accommodation payment in relation to a room, or part of a room in a service.

The information that must be published includes:

- a statement that describes the key accommodation features of the room, or part of the room. This statement must include:
 - the location of the service;
 - a description of the quality, condition, size and amenity of the room or part of the room;
 - information about the number of occupants in the room;
 - information about access to a shared bathroom or private ensuite;
 - a description of the quality, condition, size, and amenity of the common areas that an occupant of the room would have access to;
 - a description of any specific design features of the room or part of the room;

- a description of any specific accommodation or design features provided by the service that may be accessible to an occupant of the room; and
- information about any additional care or services that are included in the accommodation payment amount and offered to the occupant of the room at no additional charge; and
- any extra service fee associated with the room or part of the room and a description of the services offered for the extra service fee.
- the maximum accommodation payment amount that could be charged to a person for the room, or part of the room. This must be expressed as both a lump sum amount (refundable accommodation deposit amount) and as a daily accommodation payment amount;
- information explaining the options for paying accommodation payments; and
- at least one example of the daily accommodation payment amount that would be payable for the room, or part of the room, if the payment was made by a combination of refundable accommodation deposit and daily accommodation payments.

The information described above must be:

- published on the approved provider's website;
- provided to the Secretary for publication; and
- included in written material given to prospective care recipients.

Section 20 – Equivalence between provider's refundable accommodation deposit amount and daily accommodation payment amount – general

This section describes the method for working out the amount of daily accommodation payment that is equivalent to a given amount of refundable accommodation deposit for the purpose of publishing prices.

The provider's daily accommodation payment amount is calculated by multiplying the maximum permissible interest rate (MPIR) by the refundable accommodation deposit amount for the relevant day and dividing this amount by 365 days. To calculate an equivalent refundable accommodation deposit amount from a daily accommodation payment amount, the daily accommodation payment amount is multiplied by 365 and divided by the MPIR.

The MPIR for the relevant day is calculated by multiplying the general interest charge (which is determined by the *Taxation Administration Act 1953*) for the day by the number of days in the calendar year, and then deducting three percentage points.

The section also:

- explains how to calculate the daily accommodation payment amount for a combination payment. The accommodation payment, expressed as a refundable accommodation deposit, is reduced by the amount that will be paid by a refundable accommodation deposit. It is then multiplied by the MPIR and divided by 365; and
- makes it a responsibility of approved providers to ensure that, on any day, there is equivalence between a published refundable accommodation deposit and the daily accommodation payment for a room or part of a room in a service.

Section 21 – Approved provider must not charge more than provider’s published maximum accommodation payment amount

This section prohibits approved providers from charging more than the maximum accommodation payment amount for a room, or a part of a room, that they have published (as at the care recipient’s price agreement day). However, the provider and care recipient may negotiate a lower accommodation payment.

Providers must also:

- comply with paragraph 52G-2(c) of the Act, which states that providers must not charge a care recipient an accommodation payment that is higher than the Minister’s maximum amount of accommodation payment or a higher maximum amount that has been approved by the Pricing Commissioner; and
- not accept a payment that would result in a care recipient paying an accommodation payment that is greater than the amount agreed to in the accommodation agreement.

Section 22 – Equivalence between provider’s refundable accommodation deposit amount and daily accommodation payment amount - for a particular person

This section requires that approved providers must ensure there is equivalence between the refundable accommodation deposit and the daily accommodation payment for a care recipient. The section also sets out how to calculate the equivalent daily accommodation payment amount.

The daily accommodation payment amount, for the care recipient, is calculated by working out the difference between the agreed accommodation payment (expressed as a refundable accommodation deposit amount) and any amount of refundable accommodation deposit paid by the care recipient on or before the relevant day for the room or the part of the room, multiplying this amount by the MPIR on the care recipient’s price agreement day and dividing this amount by 365 days.

To calculate an equivalent refundable accommodation deposit amount from a daily accommodation payment amount, the daily accommodation payment amount is multiplied by 365 and divided by the MPIR on the care recipient’s price agreement day.

The MPIR for the care recipient’s price agreement day is calculated by multiplying the general interest charge, determined by the *Tax Administration Act 1953*, on the care recipient’s price agreement day by the number of days in the calendar year, then deducting three percentage points.

The MPIR used to calculate equivalence between the refundable accommodation deposit and daily accommodation payment will be fixed at the date the care recipient and the provider agree on the maximum amount of accommodation payment (the price agreement day).

Division 3 – Approval of higher maximum accommodation payment amount

Section 23 – Purpose of this Division

This section states that Division 3 sets out the requirements for applying to the Pricing Commissioner for charging an accommodation payment that is higher than the

amount approved by the Minister and specifies the period in which an application must not be made. Division 3 also sets out the matters for the Pricing Commissioner to consider in deciding whether to approve an application and other matters relating to approvals of higher accommodation payment amounts.

Section 24 – Interpretation

This section states that in Division 3 any reference to a residential care service or an eligible flexible care service, a room, or part of a room, also includes a proposed service, proposed room and proposed part of a room.

Section 25 – Applications for approval to charge higher maximum accommodation payment amount

This section sets out how an approved provider may make an application to the Pricing Commissioner to charge a higher maximum accommodation payment amount, for a room, or part of a room, than that determined by the Minister.

The application must:

- be in writing and in a form approved by the Pricing Commissioner;
- be supported by any relevant information specified by the approved form;
- relate to one service only but may relate to a room that is intended for an individual or a part of a room that is intended for 2 or more people;
- specify each room relevant to the application and the amount that the applicant is seeking approval to change. For different rooms or parts of rooms, a different higher maximum accommodation payment amount may be sought (expressed as a refundable accommodation deposit amount).

This section notes that the Pricing Commissioner may require further information from an approved provider in relation to an application and if the requested information is not provided within the required time, the application is taken to have been withdrawn.

A period of four months must pass before the Pricing Commissioner can consider a second application for a higher maximum accommodation payment amount in respect of the same room or part of a room. This does not prevent an application being made for a different room or part of a room.

Section 26 – Decision by Aged Care Pricing Commissioner

This section:

- requires the Pricing Commissioner to consider certain factors when deciding whether to approve a higher maximum amount of accommodation payment; and
- allows the Pricing Commissioner to approve an application subject to conditions.

Factors to be considered

In deciding whether to approve a higher maximum accommodation payment for the room, or a part of the room, in the relevant service, the Pricing Commissioner must consider:

- the proposed higher maximum accommodation payment amount;
- the location of the service;

- the quality, condition, size and amenity of the room or the part of the room and of common areas;
- the number of residents who may be provided with accommodation in the room;
- whether the room has a shared bathroom or a private ensuite;
- any specific accommodation or design features in the room or the part of the room and in common areas; and
- any additional care or services included in the accommodation payment amount and offered at no additional cost to the person being provided with the accommodation. This must not include care and services that the approved provider is required to provide, as specified in the *Quality of Care Principles 2014*.

The Pricing Commissioner may also consider the cost of providing the accommodation and any other relevant matter. In considering the cost of providing the accommodation in an application for a proposed room or proposed part of a room, the Pricing Commissioner may consider the proposed cost of the construction or refurbishment. This does not limit the other matters that the Pricing Commissioner may consider in the cost of providing the accommodation, existing or proposed, such as financing costs.

Conditional approvals

The Pricing Commissioner may also approve higher amounts of accommodation payments for proposed accommodation, such as accommodation yet to be built or yet to be refurbished. Such approvals are subject to the condition that the approval not take effect until:

- the provider gives the Pricing Commissioner, in writing:
 - information demonstrating the accommodation is completed and the completed accommodation is equivalent to, or better than, was proposed;
 - information setting out the total actual cost of the completed construction or refurbishment; and
- the Pricing Commissioner is satisfied, after having regard to the above information:
 - that the completed accommodation is equivalent to, or better than, was proposed; and
 - that if the actual cost of the construction or refurbishment is significantly lower than the proposed cost, if this lower cost had been the proposed cost in the original application, that the Pricing Commissioner would still have approved the higher maximum accommodation payment amount.

The Pricing Commissioner must decide whether he or she is satisfied of the above matters and, within 28 days of receiving the information from the provider, notify the provider (in writing) of the decision. If the Pricing Commissioner is satisfied by the information, the notice of the decision to approve the higher maximum accommodation payment amount must specify the date on which the approval takes effect.

A decision not to approve a higher maximum amount of accommodation payment, because the Pricing Commissioner is not satisfied of the matters detailed above, is a reviewable decision under section 85-1 of the Act.

Section 27 – Notification of Aged Care Pricing Commissioner’s decision

This section requires the Pricing Commissioner to notify, in writing, an applicant of a decision whether or not the higher maximum amount of accommodation payment is approved. This must be done within 60 days of receiving an application. The 60 days does not include any period where the Pricing Commissioner is waiting for requested information.

If the approval does not relate to a proposed room that is subject to conditions, the notice must set out the date on which the approval is to take effect.

If the approval is for a proposed room and is subject to conditions, the notice must describe the conditions (in accordance with section 26).

Notes to the section remind the reader that:

- a decision not to approve a higher maximum amount of accommodation payment is a reviewable decision under Part 6.1 of the Act; and
- an approved higher maximum amount of accommodation payment only applies to care recipients who, at the date of the approval, had not entered into an accommodation agreement with the provider, and who enter the relevant service on or after the date of approval.

Section 28 – Duration of approval

This section provides that an approval for a higher maximum amount of accommodation payment ceases to take effect if there is a change in the location of the residential care service (or eligible flexible care service) or at the end of four years beginning on the approval day, whichever takes place earlier.

Section 29 – Indexation of Pricing Commissioner approved amount

This section provides for the higher maximum amount of accommodation payment approved by the Pricing Commissioner to be indexed annually by the All Groups Consumer Price Index, but does not require indexation be done. Indexation may be applied by the approved provider to the approved higher maximum amount of accommodation payment from the second year of approval. The indexed price will only apply to care recipients entering care from the day the higher maximum amount of accommodation payment is indexed.

Division 4 – Rules about charging accommodation contributions

Section 30 – Purpose of this Division

This section states that Division 4 outlines the rules that approved providers must comply with in relation to charging accommodation contributions.

A note to the section reminds the reader that the approved provider must also comply with other rules set out in section 52G-6 of the Act. These rules include a requirement that the amount of accommodation contribution a care recipient can be charged for a day cannot exceed the accommodation supplement payable to that service or the amount assessed for the person based on the person’s means tested amount.

Section 31 – Equivalence between person’s daily accommodation contribution amount and refundable accommodation contribution amount

This section requires an approved provider to ensure that on any given day, there is equivalence between a care recipient’s daily accommodation contribution amount and the maximum refundable accommodation contribution that the care recipient may be charged.

The section includes a calculator to determine the maximum refundable accommodation contribution amount. To work out the maximum refundable accommodation contribution amount the approved provider could charge, the maximum daily accommodation contribution amount for the care recipient for the relevant day is multiplied by 365 and the total is divided by the MPIR for the care recipient’s entry day.

The result is the maximum refundable accommodation contribution amount that the approved provider could charge the care recipient on the relevant day. If the care recipient paid any of their accommodation contribution as a lump sum the provider should seek to ensure the care recipient is left with ‘minimum permissible assets’ as per section 52J-5 of the Act.

The Department of Human Services will advise the approved provider of the maximum daily amount of accommodation contribution a person can be asked to pay based on the person’s means tested amount and the maximum accommodation supplement payable to the service.

Example 1

Amelia is entering a residential care service on 4 July 2014, which has been significantly refurbished and can therefore receive the highest amount of accommodation supplement from the Government. Amelia receives the full age pension and has assets valued at \$120,000. Assume that:

- the maximum accommodation supplement is \$52.49 per day;
- Amelia’s means tested amount is \$36.06 per day; and
- the MPIR is 6.63 per cent.

If Amelia elected to pay her accommodation contribution as a daily amount, she would be required to pay \$36.06 per day (her means tested amount). The Government will pay the difference of \$16.43 per day, so that the approved provider would receive a total of \$52.49 per day.

To calculate the equivalent maximum refundable accommodation contribution:

- Step 1: The maximum daily accommodation contribution amount for the relevant day is \$36.06.
- Step 2: Multiply the amount at step 1 by 365 ($\$36.06 \times 365 = \$13,161.90$)
- Step 3: Divide the amount worked out at step 2 by the MPIR ($\$13,161.90 / 6.63\%$)
- = \$198,520.36 (rounded to two decimal places).

This is the maximum refundable accommodation contribution the provider could charge Amelia while her maximum daily accommodation contribution was \$36.06 based on her assessed means.

Section 32 – Additional daily accommodation contribution amount payable if part of accommodation contribution paid by refundable accommodation contribution

Section 32 sets out how to calculate the additional daily accommodation contribution amount that would be payable if a care recipient pays part of his or her accommodation contribution as a refundable accommodation contribution amount. The note to this section reminds the reader that a care recipient can only be charged an accommodation contribution if at entry into the service their means tested amount was less than the maximum accommodation supplement for that day. This rule is described at paragraph 52G-6(a) of the Act.

The daily accommodation contribution amount (the additional daily accommodation contribution amount) that the approved provider of the service could charge the care recipient on a day (the relevant day) for the service, in addition to the refundable accommodation contribution amount already paid by the care recipient, must be the amount worked out as follows:

- Step 1: Work out the MPIR for the care recipient's entry day using the calculator in section 6. In other words, the MPIR is the rate that was current on the day the care recipient first began receiving care.
- Step 2: Work out the amount that is the difference between: the maximum refundable accommodation contribution amount for the care recipient for the relevant day worked out using the calculator in section 31; and the balance of the refundable accommodation contribution amount paid by the care recipient as at the relevant day.
- Step 3: Multiply the rate worked out at step 1 by the amount worked out at step 2.
- Step 4: Divide the amount worked out at Step 3 by 365.

For the purposes of calculating the maximum refundable accommodation contribution amount, the term 'relevant day' in this section refers to the day for which the accommodation contribution is payable.

Example 2

Assume Amelia is entering a residential care service on 4 July 2014, which has been significantly refurbished and can therefore receive the highest amount of accommodation supplement from the Government. Amelia receives the full age pension and has assets valued at \$120,000. The assets consist of \$70,000 in a bank account, \$5,000 in household contents and \$45,000 as a stamp collection. Assume:

- the maximum accommodation supplement is \$52.49 per day;
- Amelia's means tested amount is \$36.06 per day;
- the MPIR is 6.63 per cent; and
- the minimum permissible asset value is \$45,000.

Amelia and her provider are advised that Amelia can be asked to pay up to \$36.06 per day as an accommodation contribution. Amelia decides to withdraw the \$70,000 from her back account and meet part of her accommodation contribution by way of a lump sum. As Amelia is paying part of her accommodation contribution as a refundable deposit she must be left with 'minimum permissible assets'.

Her provider is required to calculate the additional daily accommodation contribution amount that is payable.

- Step 1: Work out the MPIR for the care recipient's entry day using the calculator in section 6. We have assumed this is 6.63 per cent.
- Step 2: Work out the amount that is the difference between the maximum refundable accommodation contribution amount for the care recipient for the relevant day worked out using the calculator in section 31 and the balance of the refundable accommodation contribution amount paid by the care recipient as at the relevant day.
 - The maximum refundable accommodation contribution amount was calculated in Example 1. It is \$198,520.36 (rounded to two decimal places).
 - The refundable accommodation contribution amount paid by Amelia is \$70,000.
 - The difference is $\$198,520.36 - \$70,000 = \$128,520.36$.
- Step 3: Multiply the rate worked out at Step 1 by the amount worked out at Step 2 ($\$128,520.36 \times 6.63\% = \$8,520.90$ (rounded to two decimal places)).
- Step 4: Divide the amount worked out at Step 3 by 365 ($\$8,520.90 / 365 = \23.34 per day).

In addition to the lump sum amount (\$70,000), Amelia's provider can ask her to pay an additional \$23.34 per day. Amelia can meet this additional daily amount by asking her provider to draw down on the refundable deposit she has paid or she can source the daily contribution from her other means.

When Amelia leaves the aged care service, the balance of the refundable deposit is required to be refunded.

Division 5 – Rules about daily payments

Section 33 – Purpose of this Division

This section states that Division 5 specifies the rules about when daily payments are to be made. The section also notes that the rules in this Division are in addition to the rules set out in Division 52H of the Act.

Section 34 – Frequency of daily payments

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

Division 6 – Rules about refundable deposits

Section 35 – Purpose of this Division

This section states that the purpose of Division 6 is to specify how a choice for paying refundable deposits is made.

Section 36 – Choice to pay refundable deposit

This section states that a choice about how to pay a refundable deposit must be recorded in writing.

Division 7 – Financial hardship

Section 37 – Purpose of this Division

Division 52K of the Act provides that the Secretary may make a financial hardship determination in relation to the accommodation costs a person is liable to pay. Section 37 of these Principles provides that the purpose of Division 7 is to specify the matters the Secretary must have regard to in deciding whether to make a financial hardship determination in relation to accommodation payments and accommodation contributions and the circumstances in which the Secretary may revoke the determination.

Similar provisions are included in the *Subsidy Principles 2014* for financial hardship determinations in relation to care fees.

Section 38 – Matters to which Secretary must have regard in deciding whether to make financial hardship determination

Section 38 sets out the matters the Secretary must have regard to when making a financial hardship determination in relation to a person.

There are three circumstances in which the Secretary must not make a financial hardship determination in relation to a person.

- If the person has not had their means assessed at the time of submitting the application the Secretary must not make a financial hardship determination.
- The value of the person's assets, as assessed under the Act 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 Act), the pension supplement amount and the clean energy supplement. If the person's assets exceed this amount, the Secretary must not make a financial hardship determination. When considering the value of the person's assets, unrealisable assets will not be considered. An unrealisable asset is defined in the *Social Security Act 1991*. 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 person 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 person's total assessable income worked out under the Act and the *Subsidy Principles 2014* and the amount of income available to the person after expenditure on essential expenses. In particular the Secretary will consider whether the person has less than 15 per cent of their income remaining after paying essential expenses. The list of essential expenses is included at section 39;
- the person's financial arrangements;
- the person's entitlement to income support;
- whether the person has sought to determine his or her entitlement to a pension, benefit or other income support payment;
- whether the person has access to financial assistance under section 1129 or Division 4 of Part 3.12 of the *Social Security Act 1991*;
- whether the person is unable to access any of their income;
- whether there is a charge over the person's income over which the payment of an accommodation payment or accommodation contribution cannot reasonably take precedence;
- whether the person is in Australia on a permanent basis; and
- any other matters the Secretary considers relevant.

A financial hardship determination can take effect from a date before it is made.

Section 39 – Meaning of *essential expenses*

This section lists the items that would be considered an essential expense. It is not an exhaustive list. Essential expenses include:

- resident fees;
- rent or mortgage payments for the principal home where the person's partner or dependent child lives in the person's principal home;
- private health insurance;
- ambulance cover;
- medical expenses including expenses incurred under a health professional's direction;
- transport costs to attend medical appointments;
- dental care;
- one pair of prescription glasses per year or contact lenses;
- artificial limbs, eyes or hearing aids that are not already covered by other government schemes or programs;
- wheelchair or mobility aids; and
- a funeral plan which is being paid on a periodic basis.

The section also lists three types of expenditure that will not be considered essential expenses by the Secretary when deciding to make a financial hardship determination. These expenditures are:

- extra service fees for a place in a residential care service that has extra service status;

- amounts paid for additional care and services;
- amounts spent by someone else authorised to act on the person's behalf other than for the benefit of the person.

Section 40 – 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 an accommodation payment or accommodation contribution that is more than the amount specified in the determination.

Part 5 – Prudential standards

Division 1 – General

Section 41 – Purpose of this Part

This section sets out the purpose of the Prudential Standards. These standards serve as a mechanism for:

- protecting refundable deposit balances, accommodation bond balances and entry contribution balances (Liquidity Standard);
- providing sound financial management (Records Standard);
- governance systems for managing refundable deposit balances, accommodation bond balances and entry contribution balances held on behalf of care recipients (Governance Standard); and
- the provision of information about the financial management of approved providers (Disclosure Standard).

This Part also specifies, for paragraphs 56-1(n) and 56-3(m) of the Act, that it is a responsibility of an approved provider to which this Part applies to comply with the Prudential Standards.

Section 42 – Application of this Part

This section provides information about which approved providers must comply with the Prudential Standards.

In summary, the following approved providers must comply with the Prudential Standards:

- those who are paid a refundable deposit on, or after, 1 July 2014;
- those who are paid an accommodation bond on, or after, 1 July 2006; and
- those who were paid accommodation bonds or entry contributions before 1 July 2006 and still held an accommodation bond balance or entry contribution balance on 1 July 2006.

Section 42A – Responsibilities of approved providers

For the purposes of paragraphs 56-1(n) and 56-3(m) this section makes it a responsibility of approved providers to whom this Part applies, to comply with the Prudential Standards.

Division 2 – Liquidity Standard

Section 43 – Requirement for sufficient liquidity

This section requires that an approved provider have sufficient liquidity in order to refund refundable deposit balances, accommodation bond balances or entry contribution balances, which can be expected to fall due in the following 12 months. This is intended to ensure that approved providers maintain ready access to funds to allow them to repay lump sum balances, as, and when, they fall due. Approved providers are expected to continuously have sufficient liquidity to refund these lump sum payments. For example, at 28 June of any year, an approved provider would need enough liquidity for the next 12 months, not just until the end of the current financial year.

Section 44 – Requirement to implement, maintain and comply with liquidity management strategy

This section requires approved providers holding refundable deposit balances, accommodation bond balances or entry contribution balances to implement and maintain a written liquidity management strategy. The strategy must set out:

- the amount, expressed in whole dollars, that ensures that the approved provider has sufficient liquidity for the purposes of section 43 (the minimum level of liquidity);
- the factors that the approved provider had regard to in determining the minimum level of liquidity. Approved providers are expected to determine (and assess) relevant factors based on their own individual circumstances and experiences. Examples of the types of factors that approved providers may wish to consider include, their historical pattern of refunds, the characteristics of the care recipients for whom they care that may influence the timing of refunds, the average value of lump sums held and the likely timing and value of any incoming lump sum payments; and
- the form in which the approved provider will maintain the minimum level of liquidity. In order to ensure that an approved provider is able to meet its obligation to refund lump sum balances as they fall due, it is important that the minimum level of liquidity for an approved provider is maintained in a form(s) that can be readily accessed. There is a wide range of financial instruments that have a high level of liquidity including, for example, cash, bank deposits, bank bills, stand-by lines of credit and guarantees.

The section also requires that an approved provider must:

- maintain, as specified in the approved provider's liquidity management strategy, the minimum level of liquidity;
- ensure the liquidity management strategy is up to date and complies with the requirements described above; and
- modify or replace the liquidity management strategy if the approved provider becomes aware that the current liquidity management strategy no longer complies with the requirements described above.

These requirements are aimed at assisting approved providers to meet their refund obligations and to apply a systematic approach and a level of rigor to determining the level of funding that will be required to meet expected refunds as, and when, they fall due.

Division 3 – Records Standard

Section 45 – Refundable deposit register

This section requires an approved provider to establish and maintain a refundable deposit register that sets out information in relation to refundable deposits, accommodation bonds and entry contributions. The refundable deposit register must also include any other information, as prescribed by the Secretary in a legislative instrument.

The Records Standard is designed to ensure that accurate, comprehensive and up-to-date information on refundable deposits is collected and maintained. An accurate record of refundable deposits will help approved providers to refund refundable deposit balances within required timeframes once a care recipient leaves a service.

Section 46 – Information about refundable deposits

Refundable deposits paid and refundable deposit balances held

This section outlines the information that must be captured in the refundable deposit register for refundable deposits paid and refundable deposit balances held, including:

- the care recipient's name;
- the care recipient's Resident Identification Number;
- the date the care recipient entered the aged care service;
- the date on which the whole or each part of the refundable deposit was paid;
- the amount of each payment;
- the amount of any deduction made from the refundable deposit;
- the date of any deduction made from the refundable deposit;
- the reason for any deduction made from the refundable deposit;
- the refundable deposit balance as at the end of each calendar month during which the approved provider held a refundable deposit balance;
- any amount refunded to the care recipient in accordance with section 75; and
- the date of any refund as in accordance with section 75.

Refundable deposit balances refunded

The refundable deposit register must also capture the following information for each care recipient in respect of whom a refundable deposit balance is refunded:

- if the balance was refunded because the care recipient died, the date of the death and the date that the approved provider was shown the probate of the will or letters of administration of the estate of the care recipient;
- if the balance was refunded because care ceased to be provided to the care recipient, the date on which the care ceased to be provided;

- if care ceased to be provided and the care recipient notified the approved provider that they were intending to enter another service before care ceased to be provided, the date of the notification;
- if the balance was refunded because the service ceased to be certified, the date the service ceased to be certified;
- the date on which the balance is, or was, due to be refunded to the care recipient (worked out in accordance with Division 52P of the Act);
- the date the balance was refunded;
- the amount that was refunded; and
- the amount of base interest and maximum permissible interest (if any) that was paid in accordance with Division 1 of Part 7 and the date on which it was paid.

The approved provider may also choose to record any other useful information relevant to refundable deposits in the refundable deposit register.

Section 47 – Information about accommodation bonds

Accommodation bonds paid and accommodation bond balances held

This section requires the refundable deposit register to include the following information for each care recipient in respect of whom an accommodation bond was paid on or after 1 July 2006 or in respect of whom the approved provider holds an accommodation bond balance on or after that date:

- the name of the care recipient;
- the care recipient's Resident Identification Number;
- the care recipient's date of entry into the service if the entry date was on or after 1 July 2006;
- if the care recipient entered an aged care service and paid an accommodation bond immediately prior to entering the subsequent aged care service, the date of entry into the original service;
- the date on which an accommodation bond, or part of an accommodation bond, that was paid as a lump sum, was paid;
- if an accommodation payment was paid in instalments, the date and amount of each instalment;
- the amount of any deductions made from the accommodation bond on or after 1 July 2006;
- the date of any deductions made;
- the reason for any deductions made;
- the balance as at 1 July 2006; and
- the balance at the end of each calendar month commencing on or after 1 July 2006.

Accommodation bond balances refunded

The refundable deposit register must also include the following information for each care recipient in respect of whom an accommodation bond balance is refunded on or after 1 July 2006:

- if the balance was refunded because the care recipient died, the date of the death and the date that the approved provider was shown the probate of the will or letters of administration of the estate of the care recipient;

- if the balance was refunded because care ceased to be provided to the care recipient, the date on which the care ceased to be provided;
- if care ceased to be provided and the care recipient notified the approved provider that they were intending to enter another service before care ceased to be provided, the date of the notification;
- if the balance was refunded because the service ceased to be certified, the date the service ceased to be certified;
- the date on which the balance is, or was, due to be refunded to the care recipient (worked out in accordance with Division 52P of the Act). If an event referred to in paragraph 57-21(1)(a), (b) or (c) of the Act, as in force immediately before 31 May 2006, occurred before 31 May 2006, the date on which, or by which, the approved provider is required to refund the balance to the care recipient is worked out in accordance with Subdivision 57-G of the Act, as in force immediately before 31 May 2006;
- the date the balance was refunded;
- the amount that was refunded; and
- the amount of base interest and maximum permissible interest (if any) that was paid in accordance with Division 1 of Part 7 and the date on which it was paid.

The approved provider may also choose to record any other useful information relevant to accommodation bonds in the refundable deposit register.

Section 48 – Information about entry contributions

Entry contributions paid and entry contribution balances held

This section requires the refundable deposit register to include the following information for each care recipient in respect of whom the approved provider holds an entry contribution balance on or after 1 July 2006:

- the name of the care recipient;
- the care recipient's Resident Identification Number;
- the date the entry contribution was paid;
- the amount of the entry contribution; and
- the entry contribution balance at the end of each month commencing on or after 1 July 2006.

Entry contributions balances refunded

The refundable deposit register must also include the following information for each care recipient in respect of whom an entry contribution balance is refunded on or after 1 July 2006:

- the date care ceased to be provided to the care recipient;
- the date the entry contribution balance was required to be refunded to the care recipient;
- the date the entry contribution balance was refunded;
- the amount that was refunded; and
- the amount (if any) of maximum permissible interest that was paid in accordance with Division 2 of Part 7 and the date on which it was paid.

The approved provider may also choose to record any other useful information relevant to entry contributions in the refundable deposit register.

Division 4 – Governance Standard

Section 49 – Requirement for governance system

The section requires approved providers that hold one or more refundable deposit balances or accommodation bond balances to implement and maintain a governance system that ensures that the balances are only used for permitted uses and are refunded to care recipients in accordance with section 52P-1 of the Act.

The intent is not to compel approved providers to have a particular governance system, but rather to ensure that approved providers meet specified outcomes. This gives flexibility to implement governance systems that fit corporate structures while providing surety that governance systems are appropriate to the prudent and accountable management of accommodation bond balances and refundable deposit balances.

While not limiting the overall matters that a governance system may deal with, this section outlines the provisions that must be captured as part of an approved provider's governance system, including:

- the allocation of responsibilities to key personnel for the management of refundable deposit balances or accommodation bond balances;
- monitoring and controlling and delegation or outsourcing of the allocated responsibilities;
- reporting mechanisms for the allocated responsibilities that ensure that the key personnel who are responsible for the executive decisions of the approved provider can effectively monitor and control the use of refundable deposit balances and accommodation bond balances;
- ensuring the key personnel that are allocated responsibilities (including those to whom responsibilities are delegated or outsourced) are aware of the requirements of the Act and Principles in relation to refundable deposits and accommodation bonds; and
- detecting, recording and responding to any failure to comply with the requirements under the Act or the Principles in relation to refundable deposits and accommodation bonds.

The approved provider must also:

- keep any written documentation relating to the provider's governance system;
- ensure this written documentation is up to date; and
- modify or replace its governance system if the system no longer complies with the requirements of the Act or the Principles.

The Governance Standard applies specifically to governance arrangements relating to the management and protection of accommodation bond balances and refundable deposit balances. Broader corporate governance continues to be a matter for approved providers' commercial judgment and the legislation under which they are incorporated.

Section 50 – Requirement for investment management strategy

This section sets out the circumstances in which an approved provider holding accommodation bond balances or refundable deposit balances is required to have an investment management strategy in place.

Under this section, approved providers are required to implement and maintain a written investment management strategy if they propose to invest refundable deposit balances or accommodation bond balances in a Religious Charitable Development Fund or in financial products other than a deposit taking facility (made available by an Authorised Deposit-taking Institution in the course of its banking business).

While investment in particular financial products and Religious Charitable Development Funds is a permitted use for refundable deposits, these investments bring with them a range of risks that need to be recognised and appropriately managed. The aim of an investment management strategy is to ensure that approved providers have arrangements in place to make informed and prudent decisions on the investment of refundable deposits; to assess the risks of financial investments and investments in Religious Charitable Development Funds, including to their liquidity and obligation to refund refundable deposit balances; and respond to changing risk.

The investment management strategy is outcomes based and its complexity will depend on the sophistication and risks of the investment approach. If an approved provider invests refundable deposits solely in a deposit-taking facility provided by an Authorised Deposit-taking Institution then the approved provider is not required to implement an investment management strategy in accordance with this section.

This section requires that:

- the written investment management strategy that must be implemented and maintained by the approved provider, must include:
 - the investment objectives of the provider;
 - the assessed level of risk of the ability to refund the refundable deposit balances or accommodation bond balances;
 - a strategy for achieving the investment objectives whilst ensuring the ability to refund the refundable deposit balances and accommodation bond balances;
 - the asset classes the provider is able to invest in;
 - the investment limits for each asset class;
 - the appropriate key personnel who are responsible for implementing the investment management strategy;
- the key personnel responsible for the executive decisions of the approved provider must approve the investment management strategy; and
- the approved provider must:
 - ensure that the investment of any refundable deposits or accommodation bonds must be in accordance with the investment management strategy of the provider;
 - ensure that the investment management strategy of the provider is kept up to date and complies with requirements set out in the Act and Principles; and

- modify or replace, its investment management strategy if the provider becomes aware that it no longer complies with the requirements set out in the Act or Principles.

Division 5 – Disclosure Standard

Section 51 – Annual prudential compliance statement

This section requires that within four months of the end of each financial year (other than the 2013-2014 financial year for which there are different arrangements), the approved provider must give the Secretary a written statement which includes information as required by sections 52, 53, 54 and 55 and any other information required by the Secretary and reflected in a legislative instrument.

This written statement is known as an annual prudential compliance statement. An annual prudential compliance statement must:

- be in a form approved by the Secretary;
- not contain false or misleading information; and
- be signed by one of the approved provider's key personnel who is authorised by the approved provider to sign the statement.

Section 52 – Information about refundable deposits that must be included in annual prudential compliance statement

This section sets out the information that an approved provider is required to include in the approved provider's annual prudential compliance statement in relation to the refundable deposits received and refunded by the approved provider during a financial year and the refundable deposit balances held at the end of their financial year. The information also relates to the approved providers compliance with its responsibilities in relation to refunding refundable deposit balances.

While most of the information to be included in the statement is self-explanatory, one of the pieces of information to be provided is the expenditure on uses for which refundable deposits would be permitted. This is designed to indicate if a provider may not have spent as much on permitted uses as they received in refundable deposits, therefore suggesting that refundable deposits may have been spent on uses other than those that are permitted.

For providers with a financial year of 1 July to 30 June, this information will not be required to be disclosed until 31 October 2015. This is because approved providers are not able to accept refundable deposits until 1 July 2014, so this information will not be included in the 2013-14 annual prudential compliance statement.

Section 53 – Information about accommodation bonds that must be included in annual prudential compliance statement

This section describes the information to be included in an annual prudential compliance statement in relation to the accommodation bonds received and refunded by the approved provider during a financial year and the accommodation bonds balances held at the end of their financial year. The information also relates to the approved providers compliance with its responsibilities in relation to refunding accommodation bond balances.

While most of the information to be included in the statement is self-explanatory, one of the pieces of information to be provided is the expenditure on uses for which accommodation bonds would be permitted. This is designed to indicate if a provider may not have spent as much on permitted uses as they received in accommodation bonds, therefore suggesting that accommodation bonds may have been spent on uses other than those that are permitted.

Section 54 – Information about entry contributions that must be included in annual prudential compliance statement

This section describes the information to be included in an annual prudential compliance statement in relation to the entry contributions refunded by the approved provider during a financial year and the entry contribution balances held at the end of their financial year. The information also relates to the approved providers compliance with its responsibilities in relation to refunding entry contribution balances.

Section 55 – Statement and other information that must be included in annual prudential compliance statement

This section sets out other statements and information that an approved provider is required to include in the approved provider's annual prudential compliance statement for each financial year. This includes, for example, statements about whether the provider has complied with the Prudential Standards and if not, the reasons why.

Section 56 – Audit of annual prudential compliance statement

This section requires that the annual prudential compliance statement be supported by an independent audit provided by a registered company auditor or a person approved by the Secretary.

Section 57 – Disclosure to care recipients

This section requires that within 7 days after an accommodation agreement is entered into between an approved provider and a care recipient, the approved provider must notify the care recipient in writing, that the approved provider will give the care recipient the following information and documents within 7 days of a request by the care recipient:

- a summary of the permitted uses for which refundable deposits and accommodation bonds have been used by the approved provider during the previous financial year;
- information about whether the approved provider has, during the previous financial year, complied with sections 52M-1 and 52N-1 of the Act;
- information about the number (if any) of refundable deposit balances or accommodation bond balances that, in the previous financial year, were not refunded in accordance with subsection 52P-1(4) of the Act and the number (if any) of entry contribution balances that, in the previous financial year, were not refunded in accordance with a formal agreement;
- if the approved provider is investing refundable deposits or accommodation bonds in certain financial products, the approved provider's investment objectives and the asset classes the provider may invest in, as recorded in the approved provider's investment management strategy;
- a copy of the audit opinion for the previous financial year;

- a copy of either the most recent statement of the audited accounts in relation to the aged care service or if the service is operated as part of a broader organisation, the most recent statement of the audited accounts of the organisation's aged care component; and
- a copy of the entry in the refundable deposit register that relates to the care recipient, as at the time of the request.

If a care recipient who has paid a refundable deposit, an accommodation bond or an entry contribution requests the approved provider to give them the information described above, the requested information must be given to the care recipient within 7 days after the provider received the request.

This section also requires that, within 4 months after the end of each financial year, the approved provider must give each care recipient who has paid a refundable deposit, an accommodation bond or an entry contribution:

- a copy of the entry in the refundable deposit register that relates to the care recipient as at the end of the financial year; and
- a written statement that the approved provider will provide, within 7 days of a request by the care recipient, the information and documents referred to above.

Section 58 – Disclosure to prospective care recipients

This section specifies that an approved provider must, if requested to do so by a prospective care recipient or their representative, provide information about their compliance with the prudential requirements and other relevant financial information as referred to in section 57, within 7 days of the request being made.

For example, a prospective care recipient for residential aged care services is someone who is approved by an Aged Care Assessment Team to receive residential aged care services.

Section 59 – Determination by Secretary of different financial year for approved provider of eligible flexible care service

This section enables an approved provider of a multi-purpose service to apply to the Secretary to determine a period of 12 months, other than the period starting on 1 July, to be the approved provider's financial year.

This is consistent with a similar provision in the *Accountability Principles 2014* (section 32) that enables an approved provider of a residential care service to apply to the Secretary to determine a period of 12 months, other than the period starting on 1 July, to be the approved provider's financial year.

If the Secretary receives an application for such a determination the Secretary must:

- make, or refuse to make, the determination; and
- notify the approved provider, in writing, of the Secretary's decision within 28 days or, if the Secretary has requested further information in relation to the application, within 28 days, excluding the period within which the information is requested and received.

If the Secretary's decision is to refuse to make a determination, the Secretary must also give the approved provider a written statement of the reasons for the decision.

The Secretary may determine another period to be the approved provider's financial year only if the Secretary is satisfied, on reasonable grounds, that it would be impracticable for the provider to comply with the requirements of this Division in relation to a period of 12 months starting on 1 July.

Section 60 – Reviewable decision

This section provides that a decision to refuse to make a determination under section 59 is a reviewable decision. Part 6.1 of the Act applies to a reviewable decision as if a reference in that Part to this Act includes a reference to these principles.

Part 6 – Permitted uses of refundable deposits and accommodation bonds

Section 61 – Purpose of this Part

This section states that the purpose of Part 6 is to specify the permitted uses for refundable deposits or accommodation bonds.

Section 61A – Responsibilities of approved providers

This section makes it a responsibility of an approved provider of a residential care service or flexible care service to not use a refundable deposit or an accommodation bond unless the use is permitted under Division 52N of the Act or under this Part.

Section 62 – Use for capital expenditure

This section outlines the kinds of capital expenditure for which a refundable deposit or an accommodation bond may be used. A refundable deposit or accommodation bond may be used:

- to acquire land for the provision of residential or flexible care;
- to acquire, erect, extend or significantly alter premises used or proposed to be used for the provision of residential or flexible care;
- to acquire or install furniture, fittings or equipment for the premises, or proposed premises used for the provision of residential or flexible care, when the premises has been initially erected, following an extension or a significant refurbishment; and
- for expenditure that is directly attributable to doing one or more of the things referred to above.

Section 63 – Additional permitted uses

This section specifies additional permitted uses for which an approved provider may use a refundable deposit or an accommodation bond. These uses are:

- to meet reasonable business losses incurred in the period beginning when residential or flexible care subsidy begins to be received by the approved provider and ending 12 months after the approved provider begins to receive the relevant subsidy;
- to make a loan provided that: the loan is not made to an individual; the loan is made on a commercial basis; there is a written agreement supporting the loan; it is a condition of the agreement that the loan will only be used for the permitted uses described in paragraphs 52N-1(2)(d) or (e) of the Act; and

- to invest in a fund, but not a controlling entity of a fund, listed in item 2 of the first Schedule to Banking exemption No. 1 of 2013 made under the *Banking Act 1959*.

Section 64 – Investment in financial products

Section 52N-1 of the Act enables an approved provider to use refundable deposits and accommodation bonds to invest in those financial products that are specified in these Principles.

For the purposes of that section, this section of the Principles specifies the following financial products in relation to an aged care investment scheme:

- an interest in the scheme;
- a legal or equitable right or interest in an interest in the scheme; and
- an option to acquire, by way of issue, an interest or legal or equitable right to an interest in the scheme.

An aged care investment scheme is a scheme established for the purpose of investment in residential care or flexible care that is a managed investment scheme within the meaning of the *Corporations Act 2001* and is not a registered scheme within the meaning of that Act.

Part 7 – Refunds

Division 1 – Payment of interest on refund of refundable deposit balance or accommodation bond balance

Section 65 – Purpose of this Division

This section states that Division 1 specifies the circumstances in which interest is paid in relation to refunding refundable deposit balances or accommodation bond balances and the methods for working out the amount of interest to be paid.

Section 66 – Definitions

This section describes a definition that is specific to this Division. For the purposes of this Division, approved provider includes a former approved provider within the meaning of section 52P-2 of the Act.

Section 67 – Application

This section provides that Division 1 applies to an approved provider of a residential care service or a flexible care service if the provider is required under Division 52P of the Act to refund a refundable deposit balance or an accommodation bond balance to a care recipient and either:

- the approved provider has not made an agreement with the care recipient as referred to in subsection 52P-4(2) of the Act; or
- such an agreement was made, but has ceased to be in effect.

Subsection 52P-4(2) of the Act refers to an agreement to delay refunding the refundable deposit balance or accommodation bond balance on condition that, if the person requests re-entry to the service, the approved provider must allow entry (assuming that there are places available) and apply the refundable deposit balance or accommodation bond in payment for the service.

Section 68 – The person to whom, and the way in which, amounts of interest are to be paid

This section requires the approved provider to pay an amount of interest relating to a refund of refundable deposit balance or accommodation bond balance, worked out in accordance with section 69, to a care recipient on the day on which the approved provider refunds the refundable deposit balance or accommodation bond balance.

Section 69 – Working out of amount of interest on refundable deposit balance or accommodation bond balance

This section sets out the method for calculating the amount of interest to be paid by the approved provider, when refunding a refundable deposit balance or accommodation bond balance to a care recipient. The interest may be base interest only or may also include maximum permissible interest depending on when the refund was made.

Division 2 – Payment of interest on entry contribution balance

Section 70 – Purpose of this Division

This section states that Division 2 specifies the circumstances in which interest is to be paid on the refund of an entry contribution balance and sets out the method for determining the interest amount to be paid.

Section 71 – Definition

This section describes a definition that is specific to this Division. For the purposes of this Division, approved provider includes a former approved provider within the meaning of section 52P-2 of the Act.

Section 72 – Application

This section provides that Division 1 applies to an approved provider of an aged care service if the approved provider is required under a formal agreement to refund an entry contribution balance and either the approved provider has not made an agreement with the care recipient to secure re-entry to the service or if such an agreement was made, it has ceased to be in effect.

Section 73 – The person to whom, and the way in which, amounts of interest are to be paid

This section requires an approved provider to pay an amount of interest relating to a refund of an entry contribution balance, worked out in accordance with section 74, to a care recipient on the day on which the approved provider refunds the entry contribution balance to the care recipient.

Section 74 – Working out of amounts of interest on entry contribution

This section sets out the method for calculating the amount of interest to be paid by the approved provider, when refunding an entry contribution balance to a care recipient.

Division 3 – Additional responsibilities of approved providers in relation to refunds

Section 74A – Purpose of this Division

This Division specifies, for paragraphs 56-1(n) and 56-3(m) of the Act, the responsibilities of approved providers in relation to:

- the refund of an overpaid amount of accommodation payment or accommodation contribution; and
- the refund of a refundable deposit balance, an accommodation bond balance or an entry contribution balance when the care recipient leaves the service.

Section 75 – Refund of overpaid accommodation payment or accommodation contribution

This section describes the refund arrangements if a care recipient has paid a higher amount of accommodation payment or accommodation contribution than was properly payable.

In such a case, the provider must refund the overpaid amount, being the difference between the amount that was properly payable and the amount that was paid.

This section also provides that:

- the care recipient may ask the approved provider, in writing, to refund the overpaid amount; and
- if the approved provider does not refund the overpaid amount within 28 days of them receiving a written request for refund from the care recipient or them becoming aware of the overpayment (whichever is the earlier) they must pay an amount of interest to the care recipient. The section sets out the formula for calculating this interest.

Section 75A – Refund of refundable deposit balance, accommodation bond balance or entry contribution balance

This section provides that an approved provider to which Division 1 of this Part applies must comply with Division 52P of the Act and Division 1 of this Part of the Principles. In other words, the provider must refund all refundable deposit balances and accommodation bond balances in accordance with the timeframes set out in Division 52 of the Act and must also pay any interest worked out in accordance with these Principles.

An approved provider of a residential care service, or a flexible care service, to which Division 2 of this Part applies must also comply with that Division in relation to the refund of an entry contribution balance.

Part 8 – Miscellaneous

Section 76 – Choice to be covered by Chapters 3 and 3A of the Act if moving to another service - approved form

The Act defines continuing flexible care recipient, continuing home care recipient and continuing residential care recipient. In each case the definition of continuing care recipient refers to a circumstance whereby a care recipient may move between services within 28 day and before moving, make a written choice, in accordance with these Principles, to be covered by Chapters 3 and 3A of the Act in relation to the other service.

For the purposes of these definitions this section provides that the written choice must be made in a form approved by the Secretary.

Statement of Compatibility with Human Rights

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

Fees and Payments Principles 2014 (No. 2)

The *Fees and Payments Principles 2014 (No. 2)* (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

Care recipients contribute to the cost of their residential care or home care by paying resident fees or home care fees. Recipients of residential care or flexible care provided through a Multi-Purpose Service who can afford to do so may also contribute to the cost of accommodation provided with their care by paying an accommodation payment or accommodation contribution.

The Principles set out provisions relating to:

- resident fees and home care fees;
- accommodation payments and contributions;
- prudential standards for approved providers holding care recipients' refundable deposits and accommodation bonds;
- permitted uses of refundable deposits and accommodation bonds;
- refunds of refundable accommodation deposit balances, accommodation bond balances and entry contributions.

The Principles require approved providers to publish the maximum accommodation payment for a room or part of a room along with a key features statement and the payment options available. The Principles also enable the Aged Care Pricing Commissioner to approve prices above the maximum amount of accommodation payment determined by the Minister if an approved provider can justify charging a higher price.

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 setting out rules regarding what a care recipient can be asked to pay for their care and accommodation, including provisions dealing with care recipients who experience financial hardship. The Principles provide consumers with increased transparency regarding accommodation payment pricing and require approved providers to be prudent and accountable in their handling of care recipients' refundable accommodation deposits and accommodation bonds.

Conclusion

The Principles are compatible with human rights as they promote 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