



Aged Care Amendment (Red Tape Reduction in Places Management) Act 2016

No. 1, 2016

**An Act to amend the law relating to aged care, and
for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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An Act to amend the law relating to aged care, and for related purposes

[Assented to 10 February 2016]

The Parliament of Australia enacts:

1 Short title

*This Act may be cited as the Aged Care Amendment (Red Tape
Reduction in Places Management) Act 2016.*

*No. 1, 2016 Aged Care Amendment (Red Tape Reduction in Places Management) 1
Act 2016*

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	11 February 2016

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Transfer of places

Aged Care Act 1997

1 Division 16

Repeal the Division, substitute:

Division 16—How are allocated places transferred from one person to another?

Subdivision 16-A—Transfer of places other than provisionally allocated places

16-1 Application of this Subdivision

This Subdivision applies to an allocated *place, other than a *provisionally allocated place.

16-2 Transfer notice

- (1) An approved provider to whom the *place has been allocated under Division 14 may give the Secretary a notice (the *transfer notice*) relating to the transfer of the place to another person.
- (2) The notice must:
 - (a) be in a form approved by the Secretary; and
 - (b) include the information referred to in subsection (3); and
 - (c) be signed by the transferor and the transferee; and
 - (d) set out any variation of the conditions to which the allocation is subject under section 14-5, for which approval is being sought as part of the transfer; and
 - (e) if, after the transfer, the *place would relate to a different *aged care service—set out the proposals for ensuring that care needs are appropriately met for care recipients who are being provided with care in respect of a place of that kind.
- (3) The information to be included in the notice is as follows:
 - (a) the transferor's name;

- (b) the number of *places to be transferred;
 - (c) the *aged care service to which the places currently relate, and its location;
 - (d) the proposed transfer day;
 - (e) the transferee's name;
 - (f) if, after the transfer, the places would relate to a different aged care service—that aged care service, and its location;
 - (g) whether any of the places are places included in a residential care service, or a *distinct part of a residential care service, that has *extra service status;
 - (h) such other information as is specified in the Allocation Principles.
- (4) The notice must be given:
- (a) if the transferee has been approved under section 8-1 as a provider of *aged care (even if the approval has not yet begun to be in force)—no later than 60 days, or such other period as the Secretary determines under subsection (5), before the proposed transfer day specified in the notice; or
 - (b) if the transferee has not been approved under section 8-1 as a provider of aged care—no later than 90 days, or such other period as the Secretary determines under subsection (5), before the proposed transfer day specified in the notice.
- (5) The Secretary may, at the request of the transferor and the transferee, determine another period under paragraph (4)(a) or (b) if the Secretary is satisfied that it is justified in the circumstances.
- (6) In deciding whether to make a determination, and in determining another period, the Secretary must consider any matters set out in the Allocation Principles.
- (7) The Secretary must give written notice of his or her decision under subsection (5) to the transferor and the transferee.
- (8) If the information included in a transfer notice changes, the notice is taken not to have been given under this section unless the transferor and the transferee give the Secretary written notice of the changes.

16-3 Consideration of notices

- (1) If the Secretary receives a transfer notice, the Secretary must consider whether the Secretary is satisfied of the following:
 - (a) whether the transfer would meet the objectives of the planning process set out in section 12-2;
 - (b) if the places were allocated to meet the needs of *people with special needs—whether those needs would continue to be met after the transfer;
 - (c) the suitability of the transferee to provide the aged care to which the places to be transferred relate;
 - (d) if, after the transfer, the *places would relate to a different *aged care service:
 - (i) the financial viability, if the transfer were to occur, of the aged care service in which the places are currently included; and
 - (ii) the financial viability, if the transfer were to occur, of the aged care service in which the places would be included; and
 - (iii) the suitability of the premises being used, or proposed to be used, to provide care through that aged care service; and
 - (iv) the adequacy of the standard of care, accommodation and other services provided, or proposed to be provided, by that aged care service; and
 - (v) whether the proposals set out in the notice, for ensuring that care needs are appropriately met for care recipients who are being provided with care in respect of those places, are satisfactory;
 - (e) if the transferee has been a provider of aged care—its satisfactory conduct as such a provider, and its compliance with its responsibilities as such a provider and its obligations arising from the receipt of any payments from the Commonwealth for providing that aged care;
 - (f) if the transferee has relevant *key personnel in common with a person who is or has been an approved provider—the satisfactory conduct of that person as a provider of aged care, and its compliance with its responsibilities as such a provider

- and its obligations arising from the receipt of any payments from the Commonwealth for providing that aged care;
- (g) any other matters set out in the Allocation Principles.
- (2) The reference in paragraphs (1)(e) and (f) to aged care includes a reference to any care for the aged, whether provided before or after the commencement of this subsection, in respect of which any payment was or is payable under a law of the Commonwealth.
- (3) For the purposes of paragraph (1)(f), the transferee has ***relevant key personnel in common*** with a person who is or has been an approved provider if:
- (a) at the time the person provided *aged care as an approved provider, another person was one of its *key personnel; and
- (b) that other person is one of the key personnel of the transferee.

16-4 Notice to resolve

- (1) If the Secretary receives a transfer notice and any issues relating to the transfer are of concern to the Secretary, then no more than 28 days after receiving the transfer notice the Secretary may issue the transferor and transferee a notice to resolve.
- (2) The notice to resolve must:
- (a) be in writing; and
- (b) specify the issue of concern to the Secretary; and
- (c) specify the person who is to resolve the issue; and
- (d) specify the action the Secretary requires the person to take to resolve the issue; and
- (e) invite the transferee and transferor to make submissions addressing the matters, in writing, to the Secretary within 28 days after receiving the notice or such shorter period as is specified in the notice; and
- (f) state that, if any matters specified in that notice remain of concern to the Secretary after the submissions (if any) have been considered, the Secretary may issue a veto notice under section 16-6.

16-5 Change to proposed transfer day

- (1) A proposed transfer day (the *changing proposed transfer day*) becomes a later day if one of the following occurs:
 - (a) the Secretary is given a notice under subsection 16-2(8) no more than 28 days before the changing proposed transfer day;
 - (b) the Secretary issues the transferor and transferee a notice to resolve under section 16-4.

Note: This section may operate multiple times in respect of one transfer.

- (2) Subject to subsection (3), the proposed transfer day becomes the 29th day after the changing proposed transfer day.
- (3) However, if before the end of the 28th day after the changing proposed transfer day:
 - (a) the transferor and transferee agree, in writing, to another proposed transfer day that is later than the 29th day after the changing proposed transfer day; and
 - (b) the Secretary agrees, in writing, to the other proposed transfer day;the other proposed transfer day becomes the proposed transfer day.

16-6 Veto notice

- (1) If the Secretary receives a transfer notice relating to a *place, the Secretary may, at least 7 days before the proposed transfer day, give the transferor and transferee a veto notice rejecting the transfer if:
 - (a) a notice to resolve has been given in respect of the transfer and issues specified in that notice remain of concern to the Secretary; or
 - (b) the Secretary is not satisfied of the matters in section 16-3 in relation to the transfer; or
 - (c) for cases where the transfer would result in residential care in respect of the place being provided through a residential care service in a different location where that residential care service has, or a *distinct part of that service has, *extra service status—neither subsection 16-7(1) nor (2) applies in relation to the transfer; or

- (d) the proposed transfer would result in the place being transferred to another State or Territory; or
- (e) circumstances specified in the Allocation Principles exist.

Note: Decisions to give a veto notice are reviewable under Part 6.1.

- (2) A veto notice must:
 - (a) be in writing; and
 - (b) contain a statement that it is a notice under this section; and
 - (c) state the reasons for giving the veto notice.

16-7 Transfer of places to service with extra service status

- (1) This subsection applies in relation to a transfer if the Secretary is satisfied that the *places other than the places to be transferred could, after the allocation, form one or more distinct parts of the residential care service.
- (2) This subsection applies in relation to a transfer if the Secretary is satisfied that:
 - (a) granting the transfer would be reasonable, having regard to the criteria set out in section 32-4; and
 - (b) granting the transfer would not result in the maximum proportion of *extra service places under section 32-7, for the State, Territory or region concerned, being exceeded; and
 - (c) any other requirements set out in the Allocation Principles are satisfied.

16-8 Transfer day

- (1) Subject to this section, a transfer of a *place to which this Subdivision applies from one person to another takes effect on the transfer day.
- (2) The transfer day is the day that is:
 - (a) the proposed transfer day specified in the transfer notice; or
 - (b) if another day is, by operation of this Act, the proposed transfer day—that other day.

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- (3) The transfer of a *place does not occur if a veto notice has been given rejecting the transfer and the notice is in effect on the transfer day.
 - (4) The transfer of a *place does not occur if the transferee is not an approved provider on the transfer day.

16-9 Effect of transfer on certain matters

If a transfer of a *place takes effect under this Subdivision on the transfer day:

- (a) the transferee is taken, from the transfer day, to be the person to whom the place is allocated; and
- (b) any entitlement of the transferor to an amount of *subsidy, in respect of the *place being transferred, that is payable but has not been paid passes to the transferee; and
- (c) any responsibilities under Part 4.2 that the transferor had, immediately before that transfer day, in relation to a *refundable deposit balance or *accommodation bond balance connected with the place become responsibilities of the transferee under Part 4.2; and
- (d) the transferee is subject to any obligations to which the transferor was subject, immediately before that day, under a *resident agreement or *home care agreement entered into with a care recipient provided with care in respect of the place; and
- (e) if, as part of the transfer, the transfer notice sought approval for one or more variations of the conditions to which the allocation is subject under section 14-5—the Secretary is taken to have made the variations of the conditions, or such other conditions as have been agreed to as the result of matters relating to the issue of a notice to resolve.

16-10 Information to be given to transferee

- (1) The Secretary may give to the transferee information specified in the Allocation Principles at such times as are specified in those Principles.

- (2) The Allocation Principles must not specify information that would, or would be likely to, disclose the identity of any care recipient.

16-11 Transferors to provide transferee with certain records

- (1) If the transfer is completed, the transferor must give to the transferee such records, or copies of such records, as are necessary to ensure that the transferee can provide care in respect of the *places being transferred.
- (2) These records must include the following:
- (a) the assessment and classification records of care recipients receiving care from the *aged care service to which the *places being transferred relate;
 - (b) the individual care plans of those care recipients;
 - (c) the medical records, progress notes and other clinical records of those care recipients;
 - (d) the schedules of fees and charges for those care recipients;
 - (e) any agreements between those care recipients and the transferor;
 - (f) the accounts of those care recipients;
 - (g) where applicable, the prudential requirements for *refundable deposits and accommodation bonds for that aged care service;
 - (h) the records specified in the Allocation Principles.

Note: Approved providers have a responsibility under Part 4.3 to comply with this obligation. Failure to comply with a responsibility can result in a sanction being imposed under Part 4.4.

Subdivision 16-B—Transfer of provisionally allocated places

16-12 Application of this Subdivision

This Subdivision applies to a *provisionally allocated place.

16-13 Transfer notice

- (1) An approved provider to whom the *place has been *provisionally allocated under Division 14 may give the Secretary a notice (the
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transfer notice) relating to the transfer of the place to another person.

- (2) The notice must:
- (a) be in a form approved by the Secretary; and
 - (b) include the information referred to in subsection (3); and
 - (c) be signed by the transferor and the transferee; and
 - (d) set out any variation of the conditions to which the *provisional allocation is subject under section 14-5, for which approval is being sought as part of the transfer.
- (3) The information to be included in the notice is as follows:
- (a) the transferor's name;
 - (b) the number of *places to be transferred;
 - (c) the *aged care service to which the places currently relate, and its location;
 - (d) the proposed transfer day;
 - (e) the transferee's name;
 - (f) if, after the transfer, the places would relate to a different aged care service—that aged care service, and its location;
 - (g) the day on which, if the transfer were to take place, the transferee would be in a position to provide care in respect of a place of that kind;
 - (h) whether any of the places are places included in a residential care service, or a *distinct part of a residential care service, that has *extra service status;
 - (i) evidence of the progress made by the transferor towards being in a position to provide care in respect of the places;
 - (j) such other information as is specified in the Allocation Principles.
- (4) The notice must be given:
- (a) if the transferee has been approved under section 8-1 as a provider of *aged care (even if the approval has not yet begun to be in force)—no later than 60 days, or such other period as the Secretary determines under subsection (5), before the proposed transfer day specified in the notice; or
 - (b) if the transferee has not been approved under section 8-1 as a provider of aged care—no later than 90 days, or such other

period as the Secretary determines under subsection (5), before the proposed transfer day specified in the notice.

- (5) The Secretary may, at the request of the transferor and the transferee, determine another period under paragraph (4)(a) or (b) if the Secretary is satisfied that it is justified in the circumstances.
- (6) In deciding whether to make a determination, and in determining another period, the Secretary must consider any matters set out in the Allocation Principles.
- (7) The Secretary must give written notice of his or her decision under subsection (5) to the transferor and the transferee.
- (8) If the information included in a transfer notice changes, the notice is taken not to have been given under this section unless the transferor and the transferee give the Secretary written notice of the changes.

16-14 Consideration of notices

- (1) If the Secretary receives a transfer notice, the Secretary must consider whether the Secretary is satisfied of the following:
 - (a) whether the transfer would meet the objectives of the planning process set out in section 12-2;
 - (b) the adequacy of the standard of care, accommodation and other services proposed to be provided by the *aged care service in which the places would be included if the transfer were to occur;
 - (c) the suitability of the transferee to provide the *aged care to which the places to be transferred relate;
 - (d) the suitability of the premises proposed to be used to provide care through the aged care service in which the places would be included if the transfer were to occur;
 - (e) if the places were allocated to meet the needs of *people with special needs—whether those needs would be met once the allocation of the places to be transferred took effect;
 - (f) if the transferee has been a provider of aged care—its satisfactory conduct as such a provider, and its compliance with its responsibilities as such a provider and its obligations

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- arising from the receipt of any payments from the Commonwealth for providing that aged care;
- (g) if the transferee has relevant *key personnel in common with a person who is or has been an approved provider—the satisfactory conduct of that person as a provider of aged care, and its compliance with its responsibilities as such a provider and its obligations arising from the receipt of any payments from the Commonwealth for providing that aged care;
 - (h) the financial viability, if the transfer were to occur, of the transferee and the aged care service in which the places would be included if the transfer were to occur;
 - (i) the location in respect of which the place is provisionally allocated will not change as a result of the transfer;
 - (j) any other matters set out in the Allocation Principles.
- (2) The reference in paragraphs (1)(f) and (g) to aged care includes a reference to any care for the aged, whether provided before or after the commencement of this subsection, in respect of which any payment was or is payable under a law of the Commonwealth.
- (3) For the purposes of paragraph (1)(g), the transferee has **relevant key personnel in common** with a person who is or has been an approved provider if:
- (a) at the time the person provided *aged care as an approved provider, another person was one of its *key personnel; and
 - (b) that other person is one of the key personnel of the transferee.

16-15 Notice to resolve

- (1) If the Secretary receives a transfer notice and any issues relating to the transfer are of concern to the Secretary, then no more than 28 days after receiving the transfer notice the Secretary may issue the transferor and transferee a notice to resolve.
- (2) The notice to resolve must:
 - (a) be in writing; and
 - (b) specify the issue of concern to the Secretary; and
 - (c) specify the person who is to resolve the issue; and
 - (d) specify the action the Secretary requires the person to take to resolve the issue; and

- (e) invite the transferee and transferor to make submissions addressing the matters, in writing, to the Secretary within 28 days after receiving the notice or such shorter period as is specified in the notice; and
- (f) state that, if any matters specified in that notice remain of concern to the Secretary after the submissions (if any) have been considered, the Secretary may issue a veto notice under section 16-17.

16-16 Change to proposed transfer day

- (1) A proposed transfer day (the *changing proposed transfer day*) becomes a later day if one of the following occurs:
 - (a) the Secretary is given a notice under subsection 16-13(8) no more than 28 days before the changing proposed transfer day;
 - (b) the Secretary issues the transferor and transferee a notice to resolve under section 16-15.

Note: This section may operate multiple times in respect of one transfer.

- (2) Subject to subsection (3), the proposed transfer day becomes the 29th day after the changing proposed transfer day.
- (3) However, if before the end of the 28th day after the changing proposed transfer day:
 - (a) the transferor and transferee agree, in writing, to another proposed transfer day that is later than the 29th day after the changing proposed transfer day; and
 - (b) the Secretary agrees, in writing, to the other proposed transfer day;the other proposed transfer day becomes the proposed transfer day.

16-17 Veto notice

- (1) If the Secretary receives a transfer notice relating to a *provisionally allocated place, the Secretary may, at least 7 days before the proposed transfer day, give the transferor and transferee a veto notice rejecting the transfer if:
 - (a) a notice to resolve has been given in respect of the transfer and issues specified in that notice remain of concern to the Secretary; or

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- (b) the Secretary is not satisfied of the matters in section 16-14 in relation to the transfer; or
 - (c) for cases where the transfer would result in residential care in respect of the place being provided through a different residential care service where that residential care service has, or a *distinct part of that service has, *extra service status—neither subsection 16-18(1) nor (2) applies in relation to the transfer; or
 - (d) the proposed transfer would result in the place being transferred to another State or Territory; or
 - (e) circumstances specified in the Allocation Principles exist.

Note: Decisions to give a veto notice are reviewable under Part 6.1.

- (2) A veto notice must:
 - (a) be in writing; and
 - (b) contain a statement that it is a notice under this section; and
 - (c) state the reasons for giving the veto notice.

16-18 Transfer of places to service with extra service status

- (1) This subsection applies in relation to a transfer if the Secretary is satisfied that the provisionally allocated places other than the places to be transferred could, after the allocation, form one or more distinct parts of the residential care service.
- (2) This subsection applies in relation to a transfer if the Secretary is satisfied that:
 - (a) granting the transfer would be reasonable, having regard to the criteria set out in section 32-4; and
 - (b) granting the transfer would not result in the maximum proportion of *extra service places under section 32-7, for the State, Territory or region concerned, being exceeded; and
 - (c) any other requirements set out in the Allocation Principles are satisfied.

16-19 Transfer day

- (1) Subject to this section, a transfer of a *provisionally allocated place to which this Subdivision applies from one person to another takes effect on the transfer day.
- (2) The transfer day is the day that is:
 - (a) the proposed transfer day specified in the transfer notice; or
 - (b) if another day is, by operation of this Act, the proposed transfer day—that other day.
- (3) The transfer of a *place does not occur if a veto notice has been given rejecting the transfer and the notice is in effect on the transfer day.
- (4) The transfer of a *place does not occur if the transferee is not an approved provider on the transfer day.

16-20 Effect of transfer on certain matters

If a transfer of a *provisionally allocated place takes effect under this Subdivision on the transfer day the transferee is taken, from the transfer day, to be the person to whom the place is allocated.

16-21 Information to be given to transferee

The Secretary may give to the transferee information specified in the Allocation Principles at such times as are specified in those Principles.

2 Paragraph 31-3(1)(b)

Omit “, 16-8(2) or 16-20(2)”, substitute “or Division 16”.

3 Paragraph 63-1(1)(e)

Omit “section 16-10”, substitute “section 16-11”.

4 Section 85-1 (table items 10 to 12C)

Repeal the items, substitute:

10 To give a veto notice rejecting the transfer of an subsection 16-6(1)

allocated place, other than a provisionally
allocated place

- 11 To give a veto notice rejecting the transfer of a subsection 16-17(1)
provisionally allocated place

5 At the end of subsection 85-2(1)

Add:

Note: This subsection cannot apply to decisions under Division 16 (How are allocated places transferred from one person to another?).

6 Subsection 89-1(2)

Omit “section 16-10”, substitute “section 16-11”.

7 Application and saving provisions

- (1) Division 16 of the *Aged Care Act 1997*, as repealed and substituted by this Schedule, applies in relation to allocated places, or provisionally allocated places, whether the allocation occurred before, on and after, the commencement of this Schedule.
- (2) Division 16 of the *Aged Care Act 1997*, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to applications for transfers of places, and applications for transfers of provisionally allocated places, where those applications were made before that commencement.

Schedule 2—Provisionally allocated places

Aged Care Act 1997

1 Subsection 15-7(1)

Omit “2 years”, substitute “4 years”.

2 Paragraph 15-7(2)(b)

Omit “2 years” (wherever occurring), substitute “4 years”.

3 Paragraphs 15-7(3)(b) and (c)

Repeal the paragraphs, substitute:

- (b) one of the following applies:
- (i) the applicant has not previously sought an extension and the Secretary is satisfied that the extension is justified in the circumstances;
 - (ii) the applicant has been granted an extension once previously and the Secretary is satisfied that the further extension is justified in the circumstances;
 - (iii) the applicant has been granted an extension more than once previously and the Secretary is satisfied that exceptional circumstances justify the granting of a further extension; and

4 After subsection 15-7(3)

Insert:

- (3A) The Allocation Principles may specify matters to which the Secretary must have regard in considering whether exceptional circumstances justify the granting of a further extension.

5 Paragraph 15-7(5)(b)

Omit “application;”, substitute “application.”.

6 Subsection 15-7(5)

Omit “and, within that period, notify the person accordingly.”.

7 After subsection 15-7(5)

Insert:

- (5A) The Secretary must notify the person of the decision to grant an extension or reject the application by a time that is:
- (a) 14 days or more before the end of the *provisional allocation period; and
 - (b) within 28 days after receiving the application for the extension.

8 Subsection 15-7(6)

Omit “unless the Secretary is satisfied that the applicant meets the criteria in the Allocation Principles for increasing or decreasing the period of the extension”.

9 At the end of section 15-7

Add:

- (7) Despite this section, if the Secretary rejects an application for an extension, the *provisional allocation period ends at the later of:
- (a) the end of the day that is 28 days after the person is notified of the decision; or
 - (b) the time when there is no further reconsideration or review of the decision pending.

10 Application provision

The amendments made to section 15-7 of the *Aged Care Act 1997* by this Schedule apply in relation to:

- (a) allocations made before the commencement of this Schedule where the provisional allocation period had not ended before that commencement; and
- (b) allocations made on or after the commencement of this Schedule.

*[Minister's second reading speech made in—
House of Representatives on 25 November 2015
Senate on 2 February 2016]*

(188/15)

20 *Aged Care Amendment (Red Tape Reduction in Places Management)* *No. 1, 2016*
Act 2016