

EXPLANATORY STATEMENT

Aged Care Act 1997

Aged Care Legislation Amendment (Increasing Consumer Choice) Principles 2016

Authority

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.

Purpose

Amendments are required to various Principles under the Act that are consequential to amendments made to the Act by the *Aged Care Legislation Amendment (Increasing Consumer Choice) Act 2016* (the Amendment Act), which gives effect to the first stage of the home care reforms announced by the Government in the 2015-16 Federal Budget.

This instrument makes changes to the following Principles:

- *Accountability Principles 2014*; to introduce an additional requirement for approved providers to notify the Commonwealth within 31 days of a care recipient ceasing home care through a home care service.
- *Allocation Principles 2014*; to remove home care from the operation of the Allocation Principles.
- *Approval of Care Recipients Principles 2014*; to allow people to be assessed and approved as eligible for home care at a specific package level.
- *Approved Provider Principles 2014*; to give effect to the simplified approved provider criteria under the Amendment Act.
- *Quality Agency Principles 2013*; to require approved home care providers to give self-assessment information to the Australian Aged Care Quality Agency when requested.
- *Records Principles 2014*; to require approved providers to keep records relating to unspent home care amounts and published exit amounts.
- *Sanctions Principles 2014*; to introduce a new sanction to address non-compliance with the responsibility to treat unspent home care amounts in the manner to be set out in the User Rights Principles.
- *Subsidy Principles 2014*; to limit the payment of home care supplements to a single approved provider in respect of a care recipient on a day.
- *User Rights Principles 2014*; to set out responsibilities for the treatment of unspent home care amounts and exit amounts, and to outline a new care recipient right and responsibility.

Separate legislative instruments will amend the *Aged Care (Subsidy, Fees and Payments) Determination 2014* and the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014*. A new set of Principles, the *Prioritised Home Care Recipients Principles 2016*, will also be created by a separate instrument.

Background

The Government announced significant reforms to home care as part of the Increasing Choice for Older Australians 2015-16 Budget Measure (the measure).

The Amendment Act amends the Act and the *Aged Care (Transitional Provisions) Act 1997* in three main areas:

1. Funding for a home care package will follow the care recipient, replacing the current system where home care places are allocated to individual approved providers to deliver services in a particular location or region. This will provide more choice for people in selecting an approved provider and will allow flexibility for care recipients to change provider, including if they move to another area to live. Approved providers will no longer have to apply for new home care places through the Aged Care Approvals Round (ACAR), significantly reducing red tape and regulation for businesses.
2. There will be a consistent national approach to prioritising access to home care through My Aged Care. The Amendment Act establishes a framework for a new national prioritisation process which will assign home care packages to people who have been approved for home care. This will allow for a more equitable and flexible distribution of home care packages based on an individual's needs and circumstances, and the time they have been waiting for care, regardless of where they live.
3. There will be a simplified process for organisations seeking to become approved providers under the Act. This will encourage new providers to enter the home care market, supporting greater choice for consumers. All providers will still need to demonstrate their suitability to become an approved provider and meet quality standards.

Documents Incorporated by Reference

A Regulation Impact Statement (OBPR ID: 18376) for the first stage of the Increasing Choice in Home Care measure was assessed as compliant by the Office of Best Practice Regulation on 27 January 2016. The Regulation Impact Statement was included in the Explanatory Memorandum to the Amendment Act.

Consultation

The Government has been strongly committed to a co-design approach with the aged care sector to inform program design, legislation design and implementation. The Department of Health (the Department) has consulted widely and worked closely with stakeholders in developing the proposed legislative arrangements for the first stage of the measure.

A key component of the consultation has been the release of two public discussion papers. The first discussion paper, released in September 2015, was on the policy framework to inform the primary legislation and received 101 submissions. The second discussion paper, released in May 2016, included an exposure draft of the delegated legislation and received 74 submissions. The discussion papers are available at agedcare.health.gov.au/increasing-choice-in-home-care.

To complement the discussion papers, several webinars have been held by the Department to explain the changes to the legislation and provide an opportunity for interested parties to provide comments and ask questions about the amendments. The webinars, including slides and transcripts, are available for viewing at agedcare.health.gov.au/increasing-choice-in-home-care.

In addition, a Home Care Reforms Advisory Group has been established under the National Aged Care Alliance (NACA) to provide ongoing advice to the Minister and the Department on policy, implementation, communication and monitoring issues. The Advisory Group comprises representatives from providers, consumers, carers, unions, health professionals, and state and territory governments.

Stakeholder feedback received through the Advisory Group, through written submissions, and through webinars has informed the final programme design and the drafting of these legislative instruments.

Commencement

The majority of the amendments made under this Instrument will commence with the Amendment Act on 27 February 2017.

Transitional amendments in the User Rights Principles will commence the day after this Instrument is registered. These amendments are required to support disclosure of exit amounts in home care agreements entered into or varied before 27 February 2017.

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

Details of the Aged Care Legislation Amendment (Increasing Consumer Choice) Principles 2016

1 Name

Section 1 states that the name of the amending Instrument is the *Aged Care Legislation Amendment (Increasing Consumer Choice) Principles 2016*.

2 Commencement

This section sets out the commencement of this Instrument.

The items contained in Schedule 1, Part 1 of the Instrument commence on the day after registration.

The items contained in Schedule 1, Part 2 of the Instrument commence on 27 February 2017, at the same time as the *Aged Care Legislation Amendment (Increasing Consumer Choice) Act 2016* (the Amendment Act).

3 Authority

This section provides that the authority for making the Instrument is the *Aged Care Act 1997* (the Act), and the *Australian Aged Care Quality Agency Act 2013* (which provides that the Minister may make Quality Agency Principles providing for matters that are required or permitted by that Act to be provided, or necessary or convenient to be provided in order to carry out or give effect to that Act).

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

Accordingly, the power in section 96-1 of the *Aged Care Act 1997* to make Principles is relied on, in conjunction with subsection 33(3) of the Acts Interpretation Act, to vary seven of the Principles varied by this instrument. Section 53 of the *Australian Aged Care Quality Agency Act 2013* is relied upon in conjunction with the Acts Interpretation Act to vary the Quality Agency Principles 2013.

4 Schedules

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

Schedule 1 Amendments

The amendments to Schedule 1 are made in two parts:

- Part 1—Amendments commencing the day after registration
- Part 2—Amendments commencing 27 February 2017

Part 1- Amendments commencing the day after registration

User Rights Principles 2014

The following items amend the *User Rights Principles 2014* (the User Rights Principles).

The User Rights Principles set out the responsibilities of approved providers in providing residential care, home care and flexible care. It also sets out care recipients' rights and responsibilities in relation to each of those types of care.

The purpose of the amendments is to set out responsibilities of approved providers in preparing for the introduction of unspent home care amounts and exit amounts from 27 February 2017, at which time home care packages will be portable for the care recipient.

The Amendment Act provides for these new responsibilities through:

- Definition of the ***unspent home care amount*** of a care recipient, as having the meaning given by the User Rights Principles; and
- Amendment to paragraph 46-1(f) of the Act and the *Aged Care (Transitional Provisions) Act 1997* (the Transitional Provisions Act) that in order to be eligible for home care subsidy, an approved provider has agreed to deal with care recipient's ***unspent home care amount*** in accordance with the User Rights Principles.

Unspent home care amounts refer to the total amount of home care subsidy (including any supplements) and home care fees paid to the approved provider for the care recipient that have not been committed on care. This is defined in section 21C of the amended User Rights Principles.

Item 1: Section 4

This item inserts a new defined term, ***agreement exit amount***, to section 4 of the User Rights Principles, to have the meaning given by new paragraph 23(2)(cba), which is outlined below.

Item 2: Paragraph 23(2)(cba)

Section 23 of the User Rights Principles specifies provisions that a home care agreement between a care recipient and an approved provider must contain.

The item sets out that a home care agreement must contain a statement of the maximum exit amount (the ***agreement exit amount***) that may be deducted under the agreement if the following conditions apply:

- the approved provider ceases to provide home care to the care recipient on or after 27 February 2017; and

- the provider intends to deduct an exit amount from the care recipient's unspent home care amount.

This provision ensures that any agreement exit amount, as mutually agreed, is clearly disclosed in the home care agreement in the lead-up to 27 February 2017.

The User Rights Principles set out provisions that have implications for the way in which, and the process by which, an agreement exit amount is included in a home care agreement, in particular:

- Paragraph 22(3)(c) of the User Rights Principles sets out that the care recipient must be informed of, and helped to understand, the terms of the home care agreement, in particular the terms about the fees and other charges to be paid under the agreement; and
- Subparagraph 23(3)(a)(ii) of the User Rights Principles specifies that a home care agreement must provide that the agreement may be varied by mutual consent, following adequate consultation, of the care recipient and approved provider.

Enabling approved providers to deduct an exit amount from any unspent home care amount is intended to assist with covering administrative costs associated with managing unspent home care amounts when a care recipient ceases care with that approved provider. The policy intent of regulating the approach to exit amounts is to ensure there is transparency and upfront disclosure with care recipients as to the maximum exit amount (if any) that will apply upon leaving a home care provider.

Item 3: At the end of Part 5

Item 3 adds Division 2 to the end of Part 5 of the User Rights Principles.

Division 2 sets out transitional provisions relating to the *Aged Care Legislation Amendment (Increasing Consumer Choice) Principles 2016*.

Section 27 sets out that in Division 2, the term **Amending Principles** means *the Aged Care Legislation Amendment (Increasing Consumer Choice) Principles 2016*.

Section 28 sets out the application of amendments made by Part 1 of Schedule 1 to the Amending Principles. The section specifies that paragraph 23(2)(c) (provisions of home care agreement) applies in relation to any home care agreements, whether entered into before or after this section commences.

This means that approved providers intending to deduct an exit amount from the care recipient's unspent home care amount from 27 February 2017 will always be required to disclose the agreement exit amount to the care recipient in the home care agreement, regardless of when the home care agreement was entered into.

Section 29 sets out a transitional provision in relation to published exit amounts. The section specifies new responsibilities for approved providers in the lead-up to 27 February 2017.

Subsection 29(1) requires approved providers to notify the Secretary in writing before 27 February 2017 of the maximum exit amount included in any home care agreements entered into before 27 February 2017. These amounts will be published by the Department of Health from 27 February 2017, to represent the maximum exit amount that may be deducted by the approved provider from any care recipient's unspent home care amount upon an approved provider ceasing to provide home care to the care recipient.

The policy intent of this subsection is to make exit amounts transparent and publicly available so that they can be considered when searching for and selecting a home care provider from 27 February 2017. The language used in subsection 29(1) with regard to the home care agreement is slightly different to the language used in section 61-1 of the Act because it covers an approved provider's preparation of a home care agreement (i.e. before the home care agreement is offered to the care recipient or entered into between a care recipient and an approved provider).

Subsection 29(2) provides that the written notice referred to in subsection 29(1) must be given in a form approved, in writing, by the Secretary. The Department of Health will let providers know how the written notice is to be provided.

Subsection 29(3) provides that, after Part 2 of Schedule 1 to the Amending Principles commences (i.e. from 27 February 2017), the written notice referred to in subsection 29(1) is taken to have been given by the approved provider under section 21J, for the purposes of these principles and the *Records Principles 2014* (Records Principles).

Written notices of the published exit amount given before 27 February 2017 have an ongoing effect from 27 February 2017. There will be a continuing requirement for approved providers to:

- Notify or provide updates to the Secretary in writing of the maximum exit amount included in any home care agreements (section 21J of the amended User Rights Principles); and
- retain copies of notices of published exit amounts given to the Secretary (paragraph 7(u) of the amended Records Principles).

Sections 28 and 29 will take effect from the day after the instrument is registered, which will allow approved providers and care recipients to include an exit amount in home care agreements that are entered into or varied before 27 February 2017.

Part 2 – Amendments commencing 27 February 2017

Accountability Principles 2014

The following items amend the *Accountability Principles 2014* (Accountability Principles).

The amendments require the provision of timely information to the Secretary to support the national prioritisation system for the allocation of home care packages to care recipients. Information on a care recipient's commencement and cessation of home care through a home care service will:

- allow the Commonwealth to assign and remove packages within the legislated timeframes; and
- facilitate the portability of a home care package (and therefore home care subsidy) when a care recipient changes home care providers.

Item 4: Section 29

Section 29 of the Accountability Principles outlines the purpose of Division 2 (Information about home care services) for paragraph 63-1(1)(m) of the Act.

Item 4 amends section 29 to replace the words “start to be provided with home care through the service on or after 1 July 2014”, with “start or cease to be provided with home care through the service”.

This change is consequential in nature, as it reflects that:

- approved providers of a home care service will be required to notify the Secretary of certain information about care recipients who start or cease to be provided with home care through the service (as outlined in sections 30 and 30A); and
- the reference date, on or after 1 July 2014, has passed and is no longer relevant.

Item 5: Section 30

Item 4 replaces the existing heading of section 30, ‘Notification of start of home care’, with a new heading ‘Notification of start of home care *through a home care service*’.

This item does not change the current requirements for notification of the start of home care. It simply clarifies that approved providers must notify the Secretary of each care recipient who starts to be provided with home care through the service, regardless of whether the care recipient is changing approved providers. In practice, the notification occurs through submission of an Aged Care Entry Record to the Department of Human Services (DHS), within 28 days of a care recipient starting care through the home care service.

In the case where a care recipient moves home care services operated by a single approved provider, the approved provider must notify the Secretary under sections 30 and 30A that the care recipient has ceased with one home care service and commenced with another home care service.

Item 6: Subsection 30(1)

Item 6 omits the words “on or after 1 July 2014” from subsection 30(1). This change is consequential in nature, as it reflects that the reference date has passed and is no longer relevant.

Item 7: At the end of Division 2 of Part 3

Item 7 sets out new section 30A with a new approved provider responsibility to provide notification of cessation of home care through a home care service.

Subsection 30A(1) outlines that an approved provider of a home care service must notify the Secretary, in writing, of each care recipient who ceases to be provided with home care through the service on or after 27 February 2017 and the day the care recipient ceases to be provided with that home care.

Subsection 30A(2) outlines that the notice must be given within 31 days after the care recipient ceases to be provided with home care through the service, in a form approved, in writing, by the Secretary.

Although this is a new requirement within the Accountability Principles, the provision of cessation information already occurs through the aged care payment system (i.e. the home care claim form or the Aged Care Online Services system). The 31 day period allows sufficient time for providers to submit the cessation information with claims for home care subsidy at the end of the month, in line with current practice.

Subsections 30A(1) and 30A(2) are significant because the notification of a care recipient’s commencement and cessation of home care through a home care service facilitate the portability of a home care package (and therefore home care subsidy) for a care recipient when they change home care providers.

It is a joint responsibility of the care recipient and the approved provider to agree upon a cessation day. The cessation day should be agreed between the care recipient and the approved provider with due consideration of the circumstances, the terms of the home care agreement, and the legislative rules governing home care, which include:

- Eligibility for home care subsidy (sections 46-1 of the Act and the Transitional Provisions Act);
- Responsibilities of approved providers of home care (section 56-2 of the Act);
- Requirements for home care agreements (Division 61 of the Act); and
- the Charter of care recipients’ rights and responsibilities for home care (Schedule 2 of the User Rights Principles).

Allocation Principles 2014

The following items amend the *Allocation Principles 2014* (the Allocation Principles).

The Allocation Principles provide for the allocation of aged care places and the treatment of those places post allocation.

From 27 February 2017 home care places will no longer be allocated to individual approved providers to deliver services in a particular location or region. Instead, people will be assigned a home care package which they will be able to use to seek services from an approved provider of their choice.

As a result, the existing allocation process for home care will be replaced by the national prioritisation process outlined in Part 2.3A of the Amendment Act and the Prioritised Home Care Recipients Principles.

Amendments to the Allocation Principles are required to reflect this approach.

The Allocation Principles will continue to operate in relation to residential and flexible care.

Items 8 and 9: Paragraphs 10(d) and 10(e)

Item 8 makes a minor consequential amendment to paragraph 10(d) to reflect that it is now the final paragraph in the section.

Paragraph 10(e) specifies that the Secretary must consider people needing a particular level of care in determining the allocation of places. This consideration was only for the purposes of home care places as levels of care do not exist in other care places. As home care places will cease to exist at the commencement of this item, the paragraph will be repealed.

Items 10 and 11: Paragraphs 26(d) and 26(e)

Item 10 makes a minor consequential amendment to paragraph 26(d) to reflect that it is now the final paragraph in the section.

Paragraph 26(e) provides that the Secretary must specify the proportion of places that must be provided at a particular level of care in invitations to apply for allocation of places. This consideration was only for the purposes of home care places as levels of care do not exist in other care places. As home care places will cease to exist at the commencement of this item, the paragraph will be repealed.

Items 12 and 13: Subsection 28(1) and Paragraph 28(1)(c)

Section 28 sets out the matters that the Secretary must consider when deciding on applications for the allocation of places. This item deletes the reference to home care in subsection 28(1) as home care will not form part of the places allocations process.

Item 13 repeals paragraph 28(1)(c), as consideration of the ability of the applicant to provide the appropriate level of care is relevant to home care only (noting that levels of care do not exist in other care types).

Items 14, 15 and 16: Section 29 and paragraphs (e) and (f) of the example

Section 29 currently sets out that, when assessing applications for the allocation of residential care or home care places, the Secretary must consider whether the allocation would increase diversity of choice for care recipients, their families and carers.

Item 14 removes the reference to home care in this section as there will no longer be an allocation of home care places.

The note under section 29 provides examples of how diversity of choice can be promoted. Item 15 makes a minor consequential amendment to paragraph (e) of the example to reflect it is now the final paragraph in the example. Item 16 repeals paragraph (f) of the example as care being provided on a consumer directed care basis is a requirement specific to home care.

Items 17 and 18: Section 30 and 31

These items make consequential amendments to sections 30 and 31 to remove references to home care subsidy.

Item 19: Section 44

Section 44 currently sets out what information must be included in a notice for the transfer of home care places.

The transfer of home care places between providers will no longer occur at the commencement of this item when home care packages are assigned to prioritised home care recipients. As such, procedures for the transfer of home care places will be redundant and section 44 will be repealed.

Item 20: Subsection 48(2) (example for paragraphs (2)(a) and (b))

This item removes reference to home care from the example of what the Secretary may take into account when considering a proposed transfer of places.

Items 21, 22 and 23: Paragraph 64(1)(b), Subparagraphs 64(1)(d)(ii) and 64(1)(d)(iii),

Section 64 currently sets out information that must be included in an application to vary the conditions of an allocation of places.

These items will remove references to home care as there will no longer be conditions of allocations for home care when home care places are no longer allocated to approved providers.

Item 24: Subsection 66(2) (example for paragraphs (2)(a) and (b))

This item removes the reference to home care from the example of what the Secretary may take into account when considering an application to vary a condition of allocation.

Item 25: Division 2 of Part 9

Part 9, Division 2 sets out the matters that must be dealt with by an approved provider in a notice of intention to relinquish home care places.

This item repeals Part 9, Division 2 as home care places will no longer be allocated to approved providers and as such will no longer need to be relinquished.

Approval of Care Recipients Principles 2014

The following items amend the *Approval of Care Recipients Principles 2014* (the Approval of Care Recipients Principles).

The Approval of Care Recipients Principles set out matters relating to a person's eligibility to be a recipient of aged care.

The purpose of the amendments is to allow for eligibility for home care to be determined at a specific level of home care (i.e. level 1, 2, 3 or 4), as opposed to the current approach which determines eligibility at a broadbanded level (broadbanded levels 1-2 and 3-4).

Determination at a specific level of care is required to ensure that people approved for home care are assigned home care packages under the national prioritisation system in the most equitable and efficient way.

Item 25: Section 7

Paragraph 21-3 (c) of the Act indicates that a person must meet the criteria specified in the Approval of Care Recipients Principles in order to be eligible for subsidised care. Section 7 sets out these eligibility criteria for home care.

Item 25 repeals section 7, which specifies eligibility for home care at two broadbanded levels (levels 1-2 for people with low level care needs and levels 3-4 for people with high level care needs) and replaces it with eligibility criteria for each home care package level (levels 1, 2, 3 and 4).

This will allow for an approved home care recipient's approval to be limited to the level of care their needs were assessed as requiring at the time they were approved for home care (or had their approval varied following a reassessment). The national prioritisation process, outlined in Part 2.3A of the Amendment Act and the Prioritised Home Care Recipients Principles, will assign packages to a person at a specific package level, based on the level(s) of care for which they have been approved.

Eligibility for all levels of home care will continue to require:

- the person to be assessed as having needs that can only be met by a coordinated package of care services; and
- the person to prefer to remain living at home; and
- for a person who is not an aged person, that there are no other care facilities or services more appropriate to meet the person's needs.

In addition to the above eligibility requirements, the following factors will determine eligibility for each of the home care levels:

- eligibility criteria specific to home care level 1:
 - the person is assessed as requiring a basic level of home care; and
 - the person is assessed as being able to live at home with the support of level 1 home care
- eligibility criteria specific to home care level 2:
 - the person is assessed as requiring a low level of home care; and

- the person is assessed as being able to live at home with the support of level 2 home care
- eligibility criteria specific to home care level 3:
 - the person is assessed as requiring an intermediate level of home care; and
 - the person is assessed as being able to live at home with the support of level 3 home care
- eligibility criteria specific to home care level 4:
 - the person is assessed as requiring a high level of home care; and
 - the person is assessed as being able to live at home with the support of level 4 home care.

An individual's approval for home care at a particular level will continue to be determined through the comprehensive assessment, using the National Screening and Assessment Form.

It will still be the case that a person approved as a recipient of a particular level of home care will be able to access a lower level of home care (i.e. limitation only applies to accessing levels of home care that are higher than the approved level). This will be managed through the national prioritisation process.

Item 27: At the end of Part 6

This item inserts a new section 18 which provides for transitional arrangements for people with a home care approval in effect at commencement.

The transitional provisions will support individuals with an existing home care approval at the commencement of the reforms through deeming them as eligible for home care at the highest level within their approved broadbanded level.

Subsection 18(1) provides that if, immediately before commencement, a person is eligible for home care at the broadbanded 1-2 level home care, they will be eligible for level 2 home care at commencement of this item.

Subsection 18(2) provides that if, immediately before commencement, a person is eligible for home care at the broadbanded 3-4 level home care, they will be eligible for level 4 home care at commencement of this item.

Approved Provider Principles 2014

The following items amend the *Approved Provider Principles 2014* (Approved Provider Principles).

The Approved Provider Principles set out additional matters in the approval of providers of aged care.

The Amendment Act will amend subsection 8-3(1) of the Act to simplify the criteria used by the Secretary to assess an organisation's suitability to become an approved provider for all types of care.

The revised matters the Secretary must take into consideration under section 8-3(1) are:

- (a) the applicant's experience in providing aged care or other relevant forms of care; and
- (b) the applicant's demonstrated understanding of its responsibilities as a provider of the type of care for which approval is sought; and
- (c) the systems that the applicant has, or proposes to have, in place to meet its responsibilities as a provider of the type of care for which approval is sought; and
- (d) the applicant's record of financial management, and the methods that the applicant uses, or proposes to use, in order to ensure sound financial management; and
- (e) if the applicant has been a provider of aged care—its conduct as a provider, and its compliance with its responsibilities as a provider and obligations arising from the receipt of any payments from the Commonwealth for providing that aged care; and
- (f) any other matters specified in the Approved Provider Principles.

The Secretary will retain the power to consider the organisation's key personnel in relation to the matters specified in subsection 8-1(2), where considered relevant.

The following amendments to the Approved Provider Principles will reflect these changes.

Item 28: Section 4 (note)

This item repeals the note in section 4 and replaces it with a new note that specifies that key personnel is defined in the Act. This is required due to the amendments in item 29 which remove the other terms from the Approved Provider Principles currently referred to in this note.

Item 29: Part 2

Part 2 specifies additional matters for the Secretary to consider under subsections 8-3(1) and (5) of the Act in deciding whether a provider is suitable to provide aged care.

This item repeals Part 2, which is no longer required as the simplified criteria in the Act will sufficiently capture the types of matters to which the Secretary must have regard when assessing a person's suitability to be an aged care provider. Detail on

how the applicant is to demonstrate their ability to meet the criteria will be specified in the approved provider application form.

All approved providers must continue to meet relevant quality and accreditation standards.

Quality Agency Principles 2013

The following item amends the *Quality Agency Principles 2013* (Quality Agency Principles).

The Quality Agency Principles provide for the functions of the Quality Agency in accrediting residential services and conducting quality reviews of home care services.

The purpose of the amendments is to provide the Quality Agency with the discretion to require approved providers to undertake a self-assessment for the Quality Agency's consideration.

Item 30: At the end of section 3.15

This item inserts a new subsection 3.15(3) to require approved home care providers to give self-assessment information to the CEO of the Quality Agency if the CEO makes an assessment contact and requests this information. In line with creating a single quality framework across aged care, the amendment to the Quality Agency Principles will also apply to approved providers of short-term restorative care (where care is provided in a home care setting). The Quality Agency previously had the ability to assess approved providers' performance against the standards as part of an assessment contact. The change will strengthen this power by explicitly stating the provider must give the self-assessment information if requested by the Quality Agency.

Currently, approved provider status lapses after two years if the provider does not hold an allocation of places. Through the Amendment Act, an approved provider's status will not lapse and will come into force at the time of their approval.

Subsection 3.15(3) will enable the Quality Agency to take a proportionate risk based approach. For example the CEO of the Quality Agency may request self-assessment information from new approved providers of home care, approved providers recommencing a service after a period of inactivity or in any other circumstance where the CEO wants to assess the service's performance.

Following consideration of the self-assessment, the Quality Agency will determine whether further scrutiny is required. This could include, for example, an assessment contact or site visit.

Records Principles 2014

The following item amends the Records Principles.

The Records Principles describe the kinds of records that must be kept and retained by an approved provider, for Division 88 of the Act.

The purpose of the amendments is to provide for records relating to unspent home care amounts and published exit amounts to be retained as a source of information to assist with:

- the resolution of issues between approved providers, care recipients and their representatives;
- the resolution of complaints through the Aged Care Complaints Scheme; and
- to examine potential instances of non-compliance.

Item 31: At the end of section 7

Item 31 adds three new records that an approved provider must keep under Section 7 of the Records Principles.

Paragraph 7(s) requires an approved provider to keep copies of notices given to care recipients under section 21E of the User Rights Principles relating to the care recipient's unspent home care amount.

This notice is important because it sets out the final reconciliation of a care recipient's home care package, including the following mandatory information:

- the cessation day; and
- the care recipient's unspent home care amount; and
- the Commonwealth portion, care recipient portion and transfer portion of the care recipient's unspent home care amount; and
- any exit amount deducted; and
- the amount of any unpaid home care fees deducted; and
- an explanation of the arrangements for payment of the care recipient portion, Commonwealth portion and/or transfer portion.

Paragraph 7(t) requires an approved provider to keep records relating to the payment of the care recipient portion or transfer portion of care recipient's unspent home care amounts under section 21F of the User Rights Principles.

Approved providers are responsible for making payment of the care recipient portion or transfer portion of the care recipient's unspent home care amount within 70 days after the cessation day, as specified in the User Rights Principles. Retaining these records will ensure information is available, should it be required, to confirm:

- when payments were made;
- to whom payments were made; and
- the payment amounts.

Paragraph 7(u) requires an approved provider to keep copies of notices of published exit amounts given under section 21J of the User Rights Principles.

Approved providers must give their maximum exit amount to the Secretary for publication before an agreement exit amount is included in a home care agreement, as specified in the User Rights Principles.

The published exit amount represents the maximum exit amount that may be included in a home care agreement from the point in time it is given to the Secretary for publication.

Retaining a record of notices of published exit amounts given to the Secretary will:

- ensure providers can manage any queries or complaints about exit amounts from care recipients or their representatives;
- assist with the resolution of complaints through the Aged Care Complaints Scheme; and
- assist with examining potential instances of non-compliance.

Sanctions Principles 2014

The following items amend the *Sanctions Principles 2014* (the Sanctions Principles).

The Sanctions Principles set out matters relating to the sanctions that the Secretary may impose on approved providers under Part 4 of the Act.

The purpose of the amendments is to provide for a new sanction to address circumstances where an approved provider is non-compliant with its responsibilities to make payment of a care receipt portion or transfer portion of a care recipient's unspent home care amount under the User Rights Principles.

Section 66-1 of the Act describes the sanctions that may be imposed on an approved provider that has not complied, or is not complying, with its responsibilities under Part 4.1 (Quality of care), 4.2 (User rights) or 4.3 (Accountability etc.) of the Act. The power to create sanctions in the Sanctions Principles is in paragraph 66-1(l) of the Act.

Item 32: After Part 2

Item 32 inserts a new Part 2A to the Sanctions Principles.

Section 6A sets out the purpose of Part 2A, for paragraph 66-1(l) of the Act, in relation to sanctions that may be imposed on an approved provider that has not complied, or is not complying, with one or more of its responsibilities under Part 4.1, 4.2 or 4.3 of the Act.

Section 6B sets out a new sanction for failing to pay the care recipient portion or transfer portion of a care recipient's unspent home care amount in accordance with new Division 3A in the User Rights Principles. The sanction is the requirement that the approved provider pay the unspent home care amount.

The policy intent of the new sanction is to support the implementation of portability arrangements for home care packages and unspent home care amounts, using a proportionate approach to non-compliance.

Subsidy Principles 2014

The following items amend the *Subsidy Principles 2014* (Subsidy Principles).

The Subsidy Principles set out matters relating to the payment of subsidy to approved providers for care provided to care recipients.

The power for the Minister to determine eligibility for supplements is set out in subsections 48-3(2) and 48-9(2) of the Act, which outlines that the Subsidy Principles may specify, in respect of each supplement, the circumstances in which the supplement will apply to a care recipient in respect of a payment period.

Amendments will limit the payment of the oxygen, enteral feeding, dementia and cognition, veterans' and viability supplements to one home care provider in respect of the same care recipient on the same day. Where two or more approved providers claim subsidy for the same care recipient on the same day, payment will be made to the approved provider that first entered into a home care agreement with the care recipient.

The amendments support the requirement for approved providers and care recipients to reach a mutually agreed cessation day. A mutually agreed cessation day is necessary to support changes under the Amendment Act and User Rights Principles, which require approved providers to account for the care recipient's unspent home care amount when an approved provider ceases to provide home care to a care recipient. Once a cessation day is agreed, the approved provider has certainty of the days for which the approved provider can claim home care subsidy; and the period for calculating the care recipient's unspent home care amount.

Before providing home care services to a care recipient who has transferred providers, an approved provider should confirm the agreed cessation day with both the care recipient and the outgoing approved provider.

It is a joint responsibility of the care recipient and the approved provider to agree upon a cessation day. The cessation day should be agreed between the care recipient and the approved provider with due consideration of the circumstances, the terms of the home care agreement and the legislation governing home care.

Similar amendments are also being made to limit payment to one home care provider in respect of the same care recipient on the same day for:

- subsidy amounts and the hardship supplement for non-continuing care recipients – refer to the *Aged Care (Subsidy, Fees and Payments) Amendment (Increasing Consumer Choice) Determination 2016*.
- subsidy and supplement amounts for continuing care recipients - *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (Increasing Consumer Choice) Determination 2016*.

Item 33: Section 74

This item reclassifies section 74 as subsection 74(1), in order to add subsection 74(2).

Item 34: At the end of section 74

This item adds subsection 74(2) to the Subsidy Principles. It outlines that a day is to be disregarded for the purposes of subsection (1) in respect of the oxygen supplement for a care recipient if:

- (a) more than one approved provider is eligible for home care subsidy for the day for the care recipient; and
- (b) the approved provider for the home care service in question was not the first of the approved providers referred to in paragraph (a) to have entered into a home care agreement with the care recipient.

The effect of this is that the Commonwealth will not pay the oxygen supplement to more than one home care provider in respect of the same care recipient on the same day. Where two or more approved providers claim home care subsidy in respect of the same care recipient on the same day, payment of the oxygen supplement will be made to the approved provider that first entered into a home care agreement with the care recipient.

Item 35: Section 76

This item updates a reference in Section 76 to align with the amendments to Section 74.

Item 36: Section 78

This item reclassifies section 78 as subsection 78(1), in order to add subsection 78(2).

Item 37: At the end of section 78

This item adds subsection 78(2) to the Subsidy Principles. It outlines that a day is to be disregarded for the purposes of subsection (1) in respect of the enteral feeding supplement for a care recipient if:

- (a) more than one approved provider is eligible for home care subsidy for the day for the care recipient; and
- (b) the approved provider for the home care service in question was not the first of the approved providers referred to in paragraph (a) to have entered into a home care agreement with the care recipient.

The effect of this is that the Commonwealth will not pay the enteral feeding supplement to more than one home care provider in respect of the same care recipient on the same day. Where two or more approved providers claim home care subsidy in respect of the same care recipient on the same day, payment of the enteral feeding supplement will be made to the approved provider that first entered into a home care agreement with the care recipient.

Item 38: Section 80

This item updates a reference in Section 80 to align with the amendments to Section 78.

Item 39: Section 82

This item reclassifies section 82 as subsection 82(1), in order to add subsection 82(2).

Item 40: At the end of section 82

This item adds subsection 82(2) to the Subsidy Principles. It outlines that a day is to be disregarded for the purposes of subsection (1) in respect of the dementia and cognition supplement for a care recipient if:

- (a) more than one approved provider is eligible for home care subsidy for the day for the care recipient; and
- (b) the approved provider for the home care service in question was not the first of the approved providers referred to in paragraph (a) to have entered into a home care agreement with the care recipient.

The effect of this is that the Commonwealth will not pay the dementia and cognition supplement to more than one home care provider in respect of the same care recipient on the same day. Where two or more approved providers claim home care subsidy in respect of the same care recipient on the same day, payment of the dementia and cognition supplement will be made to the approved provider that first entered into a home care agreement with the care recipient.

Item 41: Section 84

This item reclassifies section 84 as subsection 84(1), in order to add subsection 84(2).

Item 42: At the end of section 84

This item adds subsection 84(2) to the Subsidy Principles. It outlines that a day is to be disregarded for the purposes of subsection (1) in respect of the veterans' supplement for a care recipient if:

- (a) more than one approved provider is eligible for home care subsidy for the day for the care recipient; and
- (b) the approved provider for the home care service in question was not the first of the approved providers referred to in paragraph (a) to have entered into a home care agreement with the care recipient.

The effect of this is that the Commonwealth will not pay the veterans' supplement to more than one home care provider in respect of the same care recipient on the same day. Where two or more approved providers claim home care subsidy in respect of the same care recipient on the same day, payment of the veterans' supplement will be made to the approved provider that first entered into a home care agreement with the care recipient.

Item 43: Section 98

This item reclassifies section 98 as subsection 98(1), in order to add subsection 98(2).

Item 44: At the end of section 98

This item adds subsection 98(2) to the Subsidy Principles. It outlines that a day is to be disregarded for the purposes of subsection (1) in respect of the viability supplement for a care recipient if:

- (a) more than one approved provider is eligible for home care subsidy for the day for the care recipient; and
- (b) the approved provider for the home care service in question was not the first of the approved providers referred to in paragraph (a) to have entered into a home care agreement with the care recipient.

The effect of this is that the Commonwealth will not pay the viability supplement to more than one home care provider in respect of the same care recipient on the same day. Where two or more approved providers claim home care subsidy in respect of the same care recipient on the same day, payment of the viability supplement will be made to the approved provider that first entered into a home care agreement with the care recipient.

User Rights Principles 2014

The following items amend the User Rights Principles.

The User Rights Principles set out the responsibilities of approved providers in providing residential care, home care and flexible care. It also sets out care recipients' rights and responsibilities in relation to each of those types of care.

The purpose of the amendments is to set out responsibilities of approved providers in dealing with unspent home care amounts from 27 February 2017, at which time home care packages will be portable for the care recipient.

The Amendment Act provides for these new responsibilities through:

- Definition of the ***unspent home care amount*** of a care recipient, as having the meaning given by the User Rights Principles; and
- Amendments to paragraphs 46-1(f) of the Act and the Transitional Provisions Act that in order to be eligible for home care subsidy, an approved provider has agreed to deal with care recipient's ***unspent home care amount*** in accordance with the User Rights Principles.

Unspent home care amounts refer to the total amount of home care subsidy (including any supplements) and home care fees paid to the approved provider for the care recipient that have not been committed on care. This is defined in section 21C of the amended User Rights Principles.

Item 45: Section 4

This item inserts the following definitions to the User Rights Principles.

care recipient portion has the meaning given by step 7 of the calculator in section 21D. This definition is required to identify unspent home care amounts that are attributed to home care fees paid to an approved provider by a care recipient.

Commonwealth portion has the meaning given by step 6 of the calculator in section 21D. This definition is required to identify unspent home care amounts that are attributed to home care subsidy paid to an approved provider for a care recipient.

exit amount means an amount deducted by an approved provider in working out a care recipient's unspent home care amount when the approved provider ceases to provide home care to the care recipient. This definition is required to regulate the application of exit amounts by approved providers.

published exit amount has the meaning given by subsection 21J(1). This definition is required to regulate the application of exit amounts by approved providers.

transfer portion has the meaning given by step 8 of the calculator in section 21D. This definition is required to identify the amount that must be transferred to another approved provider in specified circumstances.

unspent home care amount has the meaning given by section 21C. This definition is required to provide clarity to approved providers on the process for calculating the

amount of funding remaining in a care recipient's home care package upon cessation of home care with that approved provider.

Item 46: Paragraph 16(1)(a)

Subsection 16(1) of the User Rights Principles outlines the purpose of Part 3 of the User Rights Principles, which is to specify the responsibilities of an approved provider of a home care service in relation to care recipients to whom the approved provider provides, or is to provide, home care.

Item 46 sets out a consequential change to Paragraph 16(1)(a) of the User Rights Principles in relation to the security of tenure that approved providers must provide to care recipients. Item 46 replaces the concept of security of tenure for a care recipient's 'place' in the service, with security of tenure for a care recipient 'receiving home care through the service'.

This consequential change is consistent with the Amendment Act, under which the concept of a home care place is removed.

Item 47: Subsection 16(2)

Item 47 repeals subsection 16(2) of the User Rights Principles and replaces it with paragraphs 16(2)(a), 16(2)(b), 16(2)(c) and 16(2)(d).

These paragraphs outline the purpose of Part 3 of the User Rights Principles as they relate to the Act and the Transitional Provisions Act.

Paragraph 16(2)(a) outlines that Part 3 of the User Rights Principles will set out the responsibilities of an approved provider in relation to the care recipients' unspent home care amounts and in relation to exit amounts, as provided for in paragraphs 46-1(1)(f) and 56-2(1) of the Act and paragraph 46-1(1)(f) of the Transitional Provisions Act.

Paragraph 16(2)(b) outlines that Part 3 of the User Rights Principles specifies requirements that a home care agreement entered into between a care recipient and an approved provider must comply with, as provided for in subsection 61-1(2) of the Act. This paragraph has the same effect as the repealed subsection 16(2) of the User Rights Principles.

Paragraph 16(2)(c) outlines that Part 3 of the User Rights Principles specifies the definition of *unspent home care amount*, as provided for in clause 1 of Schedule 1 to the Act, and clause 1 of Schedule 1 to the Transitional Provisions Act.

Paragraph 16(2)(d) outlines that Part 3 of the User Rights Principles specifies the definition of *Commonwealth portion*, as provided for in clause 1 of Schedule 1 to the Act.

Item 48: Paragraph 21B(2)(f)

Section 21B of the User Rights Principles sets out the responsibilities of approved providers to give care recipients a written monthly statement of available funds and expenditure in respect of the home care provided to the care recipient during the month.

Item 48 repeals paragraph 21B(2)(f) of the User Rights Principles, which requires the monthly statement to specify that any amount of home care fees paid by the care recipient to the approved provider that has not been spent, and that is not refundable under paragraph 52D-1(2)(d) of the Act and section 13 of the Fees and Payments Principles 2014 (No. 2), will not be refunded to the care recipient if the approved provider ceases to provide home care to the care recipient.

Repealing paragraph 21B(2)(f) is consistent with the Amendment Act and other changes to the User Rights Principles that support the portability of home care packages and unspent home care amounts for the care recipient.

Item 48 requires the new approved provider to specify, in the care recipient's monthly statement, the transfer portion of the care recipient's unspent home care amount that was received from another approved provider during the period. This new provision ensures a care recipient is aware of the funding that has been transferred by the outgoing provider and received by the new approved provider to utilise on care and services.

Item 49: After Division 3 of Part 3

Item 49 sets out a new Division 3A which outlines responsibilities of approved providers of home care in relation to unspent home care amounts and exit amounts.

The new Division is structured in three subdivisions:

- Subdivision A - Definitions
- Subdivision B - Responsibilities to give notices and make payments in relation to unspent home care amounts
- Subdivision C - Responsibilities in relation to exit amounts

Subdivision A – Definitions

Section 21C sets out the meaning of *unspent home care amount*.

The term *unspent home care amount* is provided for in the Amendment Act.

Section 21C outlines the method for approved providers to calculate the unspent home care amount when an approved provider ceases to provide home care to the care recipient.

The unspent home care amount is worked out in relation to the period that:

- begins on the later of 1 July 2015 or the day the approved provider begins to provide home care to the care recipient; and
- ends on the day the approved provider ceases to provide home care to the care recipient.

For example:

- If a care recipient commences home care with an approved provider on 1 March 2015 and ceases home care with the same approved provider on 30 June 2017, the period for calculation of the unspent home care amount is: 1 July 2015 to 30 June 2017.

- If a care recipient commences home care with an approved provider on 1 April 2017 and ceases home care with the same approved provider on 30 November 2018, the period for the calculation of the unspent home care amount is: 1 April 2017 to 30 November 2018.

The explanatory note in Section 21C clarifies that an unspent home care amount of a care recipient is not required to be worked out under the section if a care recipient transfers from one home care service to another home care service operated by a single approved provider. The reason is that the approved provider is not ceasing to provide home care to the care recipient.

If a care recipient transfers from one home care service to another home care service operated by a single approved provider, the approved provider continues to be responsible for providing the care recipient with a monthly statement (under section 21B of the User Rights Principles), which includes the available funds, expenditure and balance of any funds that have not been spent.

A calculator is provided in section 21C for approved providers to work out the unspent home care amount.

Step 1 requires the approved provider to work out the total of the following amounts that are paid to the approved provider in relation to the period:

- (a) the amount of home care subsidy for the care recipient;
- (b) the amount of home care fees for the care recipient;
- (c) the amount (if any) of the transfer portion of the care recipient's unspent home care amount paid under section 21F by another approved provider.

The first note provided under step 1 explains that the amount of home care subsidy is worked out under section 48-1 of the Act or section 48-1 of the Transitional Provisions Act. The amount of home care subsidy includes both subsidies and supplements.

The second note provided under step 1 explains that the amount of home care fees is worked out under Division 52D of the Act, or Division 60 of the Transitional Provisions Act and section 130 of the *Aged Care (Transitional Provisions) Principles 2014* (the Transitional Provisions Principles). The amount of home care fees worked out under step 1(b) of the calculator at section 21C does not include any home care fees paid in advance. If the care recipient dies or provision of home care ceases, any home care fees paid in advance must be separately refunded by an approved provider in accordance with paragraph 52D-1(2)(d) of the Act and paragraph 60-1(d) of the Transitional Provisions Act.

Steps 1(a) and 1(b) provide for amounts of home care subsidy and home care fees that have been paid to the approved provider in relation to the period. The policy intent is that the final reconciliation of a care recipient's package by an approved provider should:

- account for any remaining claims for home care subsidy (including any periods of leave) in relation to the period;
- ensure that home care fees have been received in relation to the period; and
- ensure that all expenses have been identified and accounted for in relation to the period (including any expenses from subcontracted or brokered services).

Step 1(c) provides for the transfer portion of the care recipient's unspent home care amount, as paid to the approved provider by the approved provider that was providing home care to the care recipient immediately prior.

Step 2 requires the approved provider to work out the total amount spent or committed during the period by the approved provider on providing care and services during that period to the care recipient.

Step 3 requires the approved provider to subtract the total amount worked out under step 2 from the total amount worked out under step 1. If the result is negative, the amount is taken to be nil.

Step 4 allows the approved provider to subtract an exit amount from the amount worked out under step 3 if an exit amount may be deducted by the approved provider in accordance with section 21H.

The note provided under step 4 explains that the exit amount must not be more than the unspent home care amount worked out under step 3. This ensures that the exit amount does not result in a debt to the care recipient.

Step 5 provides that the amount (including a nil amount) worked out under step 3 (or 4 if an exit amount has been deducted) is the care recipient's unspent home care amount.

Example 1: Calculating the unspent home care amount

- Mai commenced a level 2 home care package with Provider A on 1 November 2015.
- In January 2017, Mai consents to the inclusion of an exit amount of \$200 in the home care agreement.
- After a period of two years, Mai decides to take her package to Provider B.
- Mai and Provider A agree on a cessation day of 31 October 2017.

Provider A calculates the unspent home care amount by completing the following steps:

Step	Activity	Amount
Step 1.	<p>Work out the total of the following amounts that are paid to the Provider A in relation to the period 1 November 2015 to 31 October 2017:</p> <ul style="list-style-type: none"> (a) the amount of home care subsidy for Mai ; (b) the amount of home care fees for Mai; (c) the amount (if any) of the transfer portion of the care recipient's unspent home care amount paid under section 21F by another approved provider (as a result of a previous application of this section) <p><i>Calculation:</i> \$28,000 + \$6,500 + \$0 = \$34,500</p>	\$34,500
Step 2.	<p>Work out the total amount spent or committed during the period by Provider A on providing care and services during that period to Mai.</p>	\$32,000
Step 3.	<p>Subtract the total amount worked out under step 2 from the total amount worked out under step 1. If the result is negative, the amount is taken to be nil.</p> <p><i>Calculation:</i> \$34,500 – \$32,000 = \$2,500</p>	\$2,500
Step 4.	<p>If an exit amount may be deducted by the Provider A in accordance with section 21H, subtract the exit amount from the amount worked out under step 3.</p> <p><i>Calculation:</i> \$2,500 – \$200 = \$2,300</p>	\$2,300
Step 5.	<p>The amount (including a nil amount) worked out under step 3 or 4, as the case requires, is Mai's <i>unspent home care amount</i>.</p>	\$2,300

Section 21D sets out the meaning of *Commonwealth portion*, *care recipient portion* and *transfer portion*.

Commonwealth portion is provided for in the Amendment Act.

The *care recipient portion* and the *transfer portion* are not referenced in the Amendment Act.

Section 21D outlines the method for approved providers to calculate the *Commonwealth portion*, *the care recipient portion* and the *transfer portion* of a care recipient's unspent home care amount.

These portions are worked out when an approved provider ceases to provide home care to the care recipient, in relation to the period that:

- begins on the later of 1 July 2015 or the day the approved provider begins to provide home care to the care recipient; and
- ends on the day the approved provider ceases to provide home care to the care recipient.

A calculator is provided in section 21D for approved providers to work out the *Commonwealth portion*, *care recipient portion* and *transfer portion calculator*.

Step 1 requires the approved provider to work out the total of the following amounts that are paid to the approved provider in relation to the period:

- (a) the amount of home care subsidy for the care recipient (this will be the same amount as worked out under step 1(a) of the calculator in section 21C);
- (b) if the approved provider has been paid the transfer portion of the care recipient's unspent home care amount under section 21F by another approved provider—the Commonwealth portion of that unspent home care amount.

The note provided under step 1 explains that the amount of home care subsidy is worked out under section 48-1 of the Act or section 48-1 of the Transitional Provisions Act. The amount of home care subsidy includes both subsidies and supplements.

In relation to Step 1(b), if the approved provider was paid the transfer portion of the care recipient's unspent home care amount by another approved provider, a notice should have been issued under 21G(2) of the User Rights Principles which included the Commonwealth portion of the care recipient's unspent home care amount.

Step 2 requires the approved provider to work out the total of the following amounts that are paid to the approved provider in relation to the period:

- (a) the amount of home care fees for the care recipient (this will be the same amount as worked out under step 1(b) of the calculator in section 21C);
- (b) if the approved provider has been paid the transfer portion of the care recipient's unspent home care amount under section 21F by another approved provider—the care recipient portion of that unspent home care amount.

The note provided under step 2 explains that the amount of home care fees is worked out under Division 52D of the Act, or Division 60 of the Transitional Provisions Act

and section 130 of the Transitional Provisions Principles. The amount of home care fees in step 2(a) of the calculator at section 21D does not include any home care fees paid in advance. If the care recipient dies or provision of home care ceases, any home care fees paid in advance must be separately refunded by an approved provider in accordance with paragraph 52D-1(2)(d) of the Act and paragraph 60-1(d) of the Transitional Provisions Act.

In relation to Step 2(b), if the approved provider was paid the transfer portion of the care recipient's unspent home care amount by another approved provider, a notice should have been issued under 21G(2) of the User Rights Principles which included the care recipient portion of the care recipient's unspent home care amount.

Step 3 requires the approved provider to add the total amounts worked out under steps 1 and 2. This amount should be the same as the amount worked out under step 1 of the calculator in section 21C.

Step 4 requires the approved provider to divide the total amount worked out under step 1 by the total amount worked out under step 3, and express the result as a percentage. This will be the *Commonwealth percentage*.

Step 5 requires the approved provider to divide the total amount worked out under step 2 by the total amount worked out under step 3, and express the result as a percentage. This will be the *care recipient percentage*.

Step 6 outlines that the *Commonwealth portion* of the care recipient's unspent home care amount is worked out by multiplying the Commonwealth percentage by the unspent home care amount (worked out under the calculator in section 21C).

Step 7 outlines that the *care recipient portion* of the care recipient's unspent home care amount is worked out by

- (a) multiplying the care recipient percentage by the unspent home care amount (worked out under the calculator in section 21C); and subtracting
- (b) the amount of any home care fees that are payable by the care recipient to the approved provider, but have not been paid.

If the result is negative, the care recipient portion is taken to be nil.

The note provided under step 7 explains that the amount of home care fees is worked out under Division 52D of the Act, or Division 60 of the Transitional Provisions Act and section 130 of the Transitional Provisions Principles.

In the calculation of the care recipient portion of the care recipient's unspent home care amount, Step 7(b) provides for an approved provider to offset the amount of home care fees (if any) that are payable by the care recipient to the approved provider for the period of care, which have not been paid.

The amount of any unpaid home care fees should only include amounts that the care recipient properly owes, as reflected in the written individualised budget and the monthly statements given to the care recipient (i.e. it should not include any new

amounts which have not previously been disclosed to the care recipient, such as basic daily fees that the approved provider has reduced or waived).

The offset of unpaid home care fees is limited by the amount worked out in Step 7(a). The calculators do not allow unpaid home care fees to be offset from either the Commonwealth portion or the transfer portion of the care recipient's unspent home care amount. Under the *Quality of Care Principles 2014* (Section 13 and Schedule 3, Part 2), home care fees are an excluded item that must not be included in a package of care and services. The effect of this is that home care subsidy (i.e. the Commonwealth portion of the care recipient's unspent home care amount) cannot be used to offset unpaid home care fees.

If, after applying the offset provision at step 7(b), the care recipient still has unpaid home care fees, this is a matter for the approved provider to manage with the care recipient under the terms of the home care agreement. The unpaid home care fees remain a matter for the approved provider to whom the fees are owed – the User Rights Principles do not make provision for unpaid home care fees or any home care package deficits to be transferred to another home care provider.

Step 8 outlines that the ***transfer portion*** of a care recipient's unspent home care amount is the total of the Commonwealth portion (worked out under step 6 of this calculator) and the care recipient portion (worked out under step 7 of this calculator).

Example 2: Calculating the Commonwealth portion, care recipient portion and transfer portion of the care recipient's unspent home care amount

Following on from example 1:

- Mai received a level 2 home care package with Provider A from 1 November 2015 to 31 October 2017.
- Mai has decided to move interstate and take her package to Provider B.
- Provider A has calculated that Mai's unspent home care amount is \$2,300 using the unspent home care amount calculator (see example 1).
- Mai has \$137 in home care fees that are payable to Provider A but have not been paid.

Provider A calculates the Commonwealth portion, care recipient portion and transfer portion of the care recipient's unspent home care amount by completing the following steps.

Step	Activity	Amount
Step 1.	<p>Work out the total of the following amounts that are paid to the Provider A in relation to the period 1 November 2015 to 31 October 2017:</p> <ul style="list-style-type: none"> (a) the amount of home care subsidy for Mai ; (b) if the approved provider has been paid the transfer portion of Mai's unspent home care amount under section 21F by another approved provider—the Commonwealth portion of that unspent home care amount. <p><i>Calculation:</i> \$28,000 + \$0 = \$28,000</p>	\$28,000
Step 2.	<p>Work out the total of the following amounts that are paid to the Provider A in relation to the period 1 November 2015 to 31 October 2017:</p> <ul style="list-style-type: none"> (a) the amount of home care fees for Mai; (b) if the approved provider has been paid the transfer portion of Mai's unspent home care amount under section 21F by another approved provider—the care recipient portion of that unspent home care amount (worked out under a previous application of this section). <p><i>Calculation:</i> \$6,500 + \$0 = \$6,500</p>	\$6,500
Step 3.	<p>Add the total amounts worked out under steps 1 and 2.</p> <p><i>Calculation:</i> \$28,000 + \$6,500 = \$34,500</p>	\$34,500
Step 4.	<p>Divide the total amount worked out under step 1 by the total amount worked out under step 3, and express the result as a percentage (the Commonwealth percentage).</p> <p><i>Calculation:</i> (\$28,000 ÷ \$34,500) × 100 = 81%</p>	81%
Step 5.	<p>Divide the total amount worked out under step 2 by the total amount worked out under step 3, and express the result as a percentage (the care recipient percentage).</p> <p><i>Calculation:</i> (\$6,500 ÷ \$34,500) × 100 = 19%</p>	19%

Step	Activity	Amount
Step 6.	The Commonwealth portion of Mai's unspent home care amount is the Commonwealth percentage of that amount. <i>Calculation:</i> $81\% \times \$2,300 = \$1,863$	\$1,863
Step 7.	The care recipient portion of Mai's unspent home care amount is: a) the care recipient percentage of that amount; less b) the amount of any home care fees that are payable by Mai to the Provider A, but have not been paid. <i>Calculation:</i> $(19\% \times \$2,300) - \$137 = \$300$	\$300
Step 8.	The transfer portion of a Mai's unspent home care amount is the total of the Commonwealth portion and the care recipient portion of that amount. <i>Calculation:</i> $\$1,863 + \$300 = \$2,163$	\$2,163

Note: Percentages in steps 4, 5, 6 and 7 have been rounded.

Subdivision B – Responsibilities to give notices and make payments in relation to unspent home care amounts

Section 21E sets out approved provider responsibilities to give notices about unspent home care amounts to care recipients.

Subsection 21E(1) outlines that an approved provider must give a notice in accordance with section 21E if the approved provider ceases on a particular day (the **cessation day**) to provide home care to a care recipient.

As the notice must be issued *after* the cessation of home care to the care recipient, the policy intent is that it represents the final financial statement received by the care recipient. It should clearly set out the approved provider's reconciliation of the care recipient's home care package and the arrangements for payment of any unspent home care amounts.

The explanatory note in subsection 21E(1) clarifies that a notice is not required to be given if a care recipient transfers from one home care service to another home care service operated by a single approved provider. The reason is that the approved provider is not ceasing to provide home care to the care recipient.

Paragraph 21E(2)(a) sets out the information that an approved provider must specify in the notice, including:

- the cessation day; and
- the care recipient's unspent home care amount worked out under the calculator at 21C; and
- the Commonwealth portion, care recipient portion and transfer portion of the care recipient's unspent home care amount, which are worked out under the calculator at 21D; and
- the exit amount (if any) that was deducted by the approved provider under step 4 of the calculator in section 21C; and
- the unpaid home care fees (if any) that were deducted by the approved provider under step 7(b) of the calculator in section 21D.

Paragraph 21E(2)(b) outlines that an approved provider must explain in the notice that approved providers have responsibility to pay the care recipient portion, Commonwealth portion and transfer portion depending on three specific circumstances, as outlined in subsections 21F(2) and 21F(3).

These three circumstances are:

1. The care recipient dies

If the approved provider ceases to provide home care to the care recipient because the care recipient dies:

- the care recipient portion must be returned to the care recipient's estate within 14 days after the approved provider is shown the probate of the will of the care recipient or letters of administration of the estate of the care recipient; and
- the Commonwealth portion becomes due and payable by the approved provider to the Commonwealth at the end of 70 days after the cessation day (as provided for under subsection 95-1(3) of the Act as inserted by the Amendment Act; and provided for in subsection 21F(3) of the User Rights Principles).

2. The care recipient transfers home care providers (within 56 days)

If the approved provider is notified, within 56 days after the cessation day, that the care recipient has entered into a home care agreement with a new approved provider:

- the transfer portion must be paid to the new approved provider within 70 days after the cessation day.

3. All other circumstances:

In all other circumstances (i.e. neither circumstances 1 nor 2 applies):

- the care recipient portion must be returned to the care recipient within 70 days after the cessation day; and
- the Commonwealth portion becomes due and payable by the approved provider to the Commonwealth at the end of 70 days after the cessation day (as provided for under subsection 95-1(3) of the Act as inserted by the Amendment Act; and provided for in subsection 21F(3) of the User Rights Principles).

‘Other circumstances’ may apply in situations which include (but are not limited to):

- the care recipient entering permanent residential aged care; or
- the care recipient withdrawing from government-subsidised home care, in favour of other arrangements (such as privately-funded care); or
- the care recipient not notifying their approved provider within 56 days after the cessation day, that they entered into a home care agreement with a new approved provider; or
- the care recipient does not enter into a home care agreement with a new approved provider within 56 days after the cessation day.

Subsection 21E(3) provides that if the Commonwealth portion, the care recipient portion or the transfer portion is nil, the notice must state that the portion is nil. This clarifies the requirements for the notice, to ensure there is full transparency and disclosure to care recipients of the various portions, including nil amounts.

Subsection 21E(4) specifies that the notice must be given within 56 days after the cessation day.

Subsection 21E(5) specifies that the notice must be given to the care recipient or if the care recipient has died, the care recipient’s legal personal representative.

The explanatory note under subsection 21E(5) outlines that a copy of the notice may also be required to be given to a new approved provider of a care recipient under subsection 21G(2). In effect, when a transfer portion is paid to another approved provider, the notice must be given to the new approved provider at the time the transfer portion is paid.

Section 21F sets out the approved provider responsibility to pay the care recipient portion, Commonwealth portion and transfer portion.

Subsection 21F(1) provides that a care recipient portion, Commonwealth portion or transfer portion of a care recipient’s unspent home care amount is payable when:

- the approved provider ceases to provide home care to the care recipient; and
- that portion is more than nil (i.e. there is an amount to pay).

The first note under Subsection 21F(1) clarifies that the portions are not required to be paid in accordance with this section if a care recipient transfers from one home care service to another home care service operated by a single approved provider.

The reason is that the approved provider is not ceasing to provide home care to the care recipient.

The second note under Subsection 21F(1) clarifies that a notice may be required to be given under section 21G in relation to a payment made under that section.

Paragraph 21F(2) deals with the payment of the care recipient portion and transfer portion. It specifies that the approved provider must pay the care recipient portion and transfer portion of a care recipient's unspent home care amount in accordance with the following circumstances:

1. The care recipient dies

If the approved provider ceases to provide home care to the care recipient because the care recipient dies:

- the care recipient portion must be returned to the care recipient's estate within 14 days after the approved provider is shown the probate of the will of the care recipient or letters of administration of the estate of the care recipient.

2. The care recipient transfers home care providers (within 56 days)

If the approved provider is notified, within 56 days after the cessation day, that the care recipient has entered into a home care agreement with a new approved provider:

- the transfer portion must be paid to the new approved provider within 70 days after the cessation day.

3. All other circumstances:

In all other circumstances (i.e. neither circumstances 1 nor 2 applies):

- the care recipient portion must be returned to the care recipient within 70 days after the cessation day.

'Other circumstances' may apply in situations which include (but are not limited to):

- the care recipient entering permanent residential aged care; or
- the care recipient withdrawing from government-subsidised home care, in favour of other arrangements (such as privately-funded care); or
- the care recipient not notifying their approved provider within 56 days after the cessation day, that they entered into a home care agreement with a new approved provider; or
- the care recipient not entering into a home care agreement with a new approved provider within 56 days after the cessation day.

These timeframes provide a reasonable and appropriate timeframe for approved providers to reconcile home care package funds and prepare an accurate notice. The timeframes aim to ensure that care recipients can have access to the relevant unspent home care amount within an acceptable period of time, to support ongoing care and services.

Paragraph 21F(3) provides when the Commonwealth portion becomes due and payable. Where circumstances 1 or 3 apply (see description above) the Commonwealth portion of the care recipient's unspent home care amount is due and payable by the approved provider to the Commonwealth at the end of 70 days after the cessation day. The Commonwealth portion is not due and payable when circumstance 2 applies.

The Commonwealth portion of a care recipient's unspent home care amount is dealt with separately through paragraph 21F(3) because it is a recoverable amount, as provided for in subsection 95-1(3) of the Act (as inserted by the Amendment Act).

In practice, this means that approved providers must notify the Commonwealth of the Commonwealth portion through the aged care payment system (i.e. the home care claim form or the Aged Care Online Services system). The Commonwealth portion will be recovered, either through deductions in future home care subsidy payments made to the approved provider, or through a debt notice.

The note under paragraph 21F(3) explains that the Commonwealth portion of a care recipient's unspent home care amount is a recoverable amount and may, under section 95-3 of the Act, be deducted from other amounts payable to the approved provider. Section 21G sets out the approved provider responsibility to provide notices to other approved providers of home care, or the Commonwealth.

Subsection 21G(1) outlines that the requirements under the section apply if an approved provider ceases on a particular day (*the cessation day*) to provide home care to a care recipient.

Subsection 21G(2) provides that the outgoing approved provider must give a copy of the notice (given under section 21E) to the new approved provider at the time the transfer portion is paid to the new approved provider. A notice given under section 21E does not need to be provided to a new approved provider where the transfer portion is nil. The new approved provider requires a copy of the notice so it can include relevant amounts in its reconciliation of the care recipient's home care package, when it ceases to provide home care to the care recipient (refer to example 4).

Subsection 21G(3) outlines how the approved provider gives notice of the Commonwealth portion. Within 70 days after the cessation day, the approved provider must give a notice to the Secretary (in a form approved in writing by the Secretary) of the Commonwealth portion of the care recipient's unspent home care amount.

In practice, approved providers must notify the Commonwealth of the Commonwealth portion through the aged care payment system (i.e. the home care claim form or the Aged Care Online Services system). The Commonwealth portion will be recovered, either through deductions in future home care subsidy payments made to the approved provider, or through a debt notice.

A notice of the Commonwealth portion of the care recipient's unspent home care amount must be given, regardless of whether the Commonwealth portion is due and payable to the Commonwealth under subsection 21F(3) or the Commonwealth portion is nil. Receiving notices of nil amounts will ensure there is a mechanism to examine approved provider compliance with the new requirement.

Example 3: Provider responsibilities

Following on from example 2:

- Mai commenced a level 2 home care package with Provider A on 1 November 2015.
- After a period of two years, Mai decides to take her package to Provider B.
- Mai and Provider A agree on a cessation day of 31 October 2017.
- On 5 November 2017, Mai enters into a home care agreement with Provider B.
- On 6 November 2017, Provider A is notified that Mai has entered into a home care agreement with Provider B.

In example 1:

Provider A worked out the care recipient's unspent home care amount (unspent home care amount) as \$2,300.

In example 2:

Provider A worked out the following amounts:

- Commonwealth portion of the Mai's unspent home care amount: \$1,863
- Care recipient portion of the Mai's unspent home care amount: \$300
- Transfer portion of the Mai's unspent home care amount: \$2,163

The table below indicates both providers' responsibilities.

Provider A responsibilities	Reference
Within 31 days of the cessation day, Provider A is required to indicate Mai's cessation day through the aged care payment system (i.e. the home care claim form or the Aged Care Online Services system).	Accountability Principles
Within 56 days after the cessation day, Provider A is required to issue a notice of the unspent home care amount to Mai.	Section 21E of the User Rights Principles
Within 70 days after the cessation day, Provider A must make payment of the transfer portion of Mai's unspent home care amount (\$2,163) to Provider B. At the same time, Provider A must issue a copy of the notice with details of Mai's unspent home care amounts to Provider B.	Subsections 21F(2) and 21G(2) of the User Rights Principles
Provider A must retain: <ul style="list-style-type: none"> • a copy of the notice of the unspent home care amount; • records relating to the payment of the transfer portion of Mai's unspent home care amount; and • copies of notices of published exit amounts. 	Records Principles

Provider B responsibilities	Reference
Within 28 days of the commencement of home care services to Mai, Provider B is required to indicate the entry date for Mai via the submission of an Aged Care Entry Record to DHS.	Accountability Principles
On receipt of the transfer portion of Mai's unspent home care amount (\$2,163) from Provider A, Provider B must separately identify the amount in the next monthly statement provided to Mai.	Paragraph 21B(2)(f) of the User Rights Principles
Provider B must retain a copy of the notice of Mai's unspent home care amount. This will enable Provider B to include relevant amounts in its reconciliation of Mai's home care package, when it ceases to provide home care to Mai.	Records Principles

Example 4: Mai leaves home care

Following on from example 3:

- Mai enters into a home care agreement and commences a level 2 home care package with Provider B on 5 November 2017.
- An agreement exit amount of \$500 is explained to Mai by Provider B and disclosed in the home care agreement.
- Shortly after commencing care with Provider B, Mai is re-assessed by an ACAT as having home care needs at Level 4. After a period of waiting on the national prioritisation system, Mai is assigned a Level 4 package.
- Mai chooses to remain with Provider B and Mai's home care agreement and individualised budget is revised to match Mai's increased care needs at Level 4.
- After a period of home care Mai's care needs change and Mai is re-assessed by an ACAT as having care needs best met by permanent residential care.
- Mai's nominated representative advises Provider B that Mai will cease home care on 4 May 2019.
- On 5 May 2019, Mai transitions into permanent residential aged care. Mai has \$122 in home care fees that are payable to Provider B but have not been paid.

Provider B undertakes the following calculations after Mai ceases home care:

Calculation of Mai's unspent home care amount

Step	Activity	Amount
Step 1.	<p>Work out the total of the following amounts that are paid to Provider B in relation to the period 5 November 2017 to 4 May 2019:</p> <p>(a) the amount of home care subsidy for Mai; (b) the amount of home care fees for Mai; (c) the amount (if any) of the transfer portion of Mai's unspent home care amount paid under section 21F by Provider A</p> <p><i>Calculation:</i> $\\$56,000 + \\$5,300 + \\$2,163 = \\$63,463$</p>	\$63,463
Step 2.	<p>Work out the total amount spent or committed during the period by Provider B for Mai in relation to the period 5 November 2017 to 4 May 2019.</p>	\$59,863
Step 3.	<p>Subtract the total amount worked out under step 2 from the total amount worked out under step 1. If the result is negative, the amount is taken to be nil.</p> <p><i>Calculation:</i> $\\$63,463 - \\$59,863 = \\$3,600$</p>	\$3,600
Step 4.	<p>If an exit amount may be deducted by the Provider B in accordance with section 21H, subtract the exit amount from the amount worked out under step 3</p> <p><i>Calculation:</i> $\\$3,600 - \\$500 = \\$3,100$</p>	\$3,100
Step 5.	<p>The amount worked out under step 3 or 4, as the case requires, is Mai's <i>unspent home care amount</i>.</p>	\$3,100

Calculation of the Commonwealth portion, care recipient portion and transfer portion

Step	Activity	Amount
Step 1.	<p>Work out the total of the following amounts that are paid to Provider B in relation to the period 5 November 2017 to 4 May 2019:</p> <p>(a) the amount of home care subsidy for Mai;</p> <p>(b) if Provider B has been paid the transfer portion of Mai's unspent home care amount by Provider A — the Commonwealth portion of that unspent home care amount.</p> <p><i>Calculation:</i> $\\$56,000 + \\$1,863 = \\$57,863$</p>	\$57,863
Step 2.	<p>Work out the total of the following amounts that are paid to Provider B in relation to the period 5 November 2017 to 4 May 2019:</p> <p>(a) the amount of home care fees for Mai;</p> <p>(b) if Provider B has been paid the transfer portion of Mai's unspent home care amount by Provider A — the care recipient portion of that unspent home care amount.</p> <p><i>Calculation:</i> $\\$5,300 + \\$300 = \\$5,600$</p>	\$5,600
Step 3.	<p>Add the total amounts worked out under steps 1 and 2.</p> <p><i>Calculation:</i> $\\$57,863 + \\$5,600 = \\$63,463$</p>	\$63,463
Step 4.	<p>Divide the total amount worked out under step 1 by the total amount worked out under step 3, and express the result as a percentage (the <i>Commonwealth percentage</i>).</p> <p><i>Calculation:</i> $(\\$57,863 \div \\$63,463) \times 100 = 91\%$</p>	91%
Step 5.	<p>Divide the total amount worked out under step 2 by the total amount worked out under step 3, and express the result as a percentage (the <i>care recipient percentage</i>).</p> <p><i>Calculation:</i> $(\\$5,600 \div \\$63,463) \times 100 = 9\%$</p>	9%

Step	Activity	Amount
Step 6.	<p>The Commonwealth portion of Mai's unspent home care amount is the Commonwealth percentage of that amount.</p> <p><i>Calculation:</i> $91\% \times \\$3,100 = \\$2,821$</p>	\$2,821
Step 7.	<p>The care recipient portion of Mai's unspent home care amount is:</p> <p>(a) the care recipient percentage of that amount; less</p> <p>(b) the amount of any home care fees that are payable by Mai to Provider B, but have not been paid.</p> <p><i>Calculation:</i> $(9\% \times \\$3,100) - \\$122 = \\$157$</p>	\$157
Step 8.	<p>The transfer portion of Mai's unspent home care amount is the total of the Commonwealth portion and the care recipient portion of that amount.</p> <p><i>Calculation:</i> $\\$2,821 + \\$157 = \\$2,978$</p>	\$2,978

Note: Percentages in steps 4, 5, 6 and 7 have been rounded.

The table below indicates the responsibilities of Provider B.

Provider B responsibilities	Reference
<p>Within 31 days of the cessation day, Provider B is required to indicate the Mai's cessation day through the aged care payment system (i.e. the home care claim form or the Aged Care Online Services system).</p>	<p>Accountability Principles</p>
<p>Within 56 days after the cessation day, Provider B is required to issue a notice of the unspent home care amount to Mai.</p>	<p>Section 21E of the User Rights Principles</p>
<p>Within 70 days after the cessation day, Provider B must make payment of the care recipient portion of the unspent home care amount (\$157) to Mai.</p> <p>At the same time, Provider B must notify the Commonwealth of the Commonwealth portion (\$2,821) through the aged care payment system, for recovery either through deductions in future home care subsidy payments to Provider B, or through a debt notice.</p>	<p>Subsections 21F(2), 21F(3) and 21G(3) of the User Rights Principles</p>
<p>Provider B must retain:</p> <ul style="list-style-type: none"> • a copy of the notice of the unspent home care amount; • records relating to the payment of the care recipient portion of the Mai's unspent home care amount; • copies of notices of published exit amounts. 	<p>Records Principles</p>

Subdivision C – Responsibilities in relation to exit amounts

Section 21H sets out approved provider responsibilities in relation to exit amounts.

Before entering into a home care agreement, or varying a home care agreement (by mutual consent between the approved provider and care recipient), a provider must be transparent and upfront with the care recipient as to the maximum exit amount that will apply upon leaving that home care provider.

Subsection 21H(1) sets out that an exit amount must not be deducted in working out a care recipient's unspent home care amount when an approved provider ceases to provide home care to the care recipient unless the following conditions are in place:

- (a) the home care agreement entered into between the approved provider and the care recipient specifies an agreement exit amount (whether that amount was specified at the time the agreement was entered into or later); and
- (b) a published exit amount was given to the Secretary under section 21J before that agreement exit amount was first specified in the home care agreement.

The purpose of paragraph 21H(1)(b) is to clarify that an approved provider must provide their maximum exit amount to the Secretary for publication *before* an agreement exit amount is included in a home care agreement.

The note under subsection 21H(1) outlines that an exit amount must not be deducted if the care recipient transfers from one home care service to another home care service operated by a single approved provider. The reason is that the approved provider is not ceasing to provide care to the care recipient.

Subsection 21H(2) sets out the conditions and limitations of deducting an exit amount from a care recipient's unspent home care amount.

The effect of subsections 21H(1) and 21H(2) is that they allow for:

- published exit amounts to be updated by approved providers; and
- home care agreements to be varied to include or update the agreement exit amount.

In both of these scenarios the exit amount deducted by an approved provider cannot be more than any of the following:

- the published exit amount that was most recently given to the Secretary by the approved provider before the agreement first specified the agreement exit amount; and
- the exit amount in the most recent home care agreement; and
- the amount worked out under step 3 of the calculator in section 21C (i.e. to ensure the exit amount does not result in a debt for the care recipient).

Example 5. Deduction of the exit amount

With reference to example 4:

- Mai wishes to move her home care package from Provider A to Provider B.
- Provider B has given the Secretary a maximum exit amount of \$500 (the published exit amount).
- Mai is offered a home care agreement from Provider B. The provider explains the conditions of the home care agreement to Mai and her carer, including the \$500 exit amount, which is disclosed in the home care agreement.
- Mai enters into a home care agreement with Provider B.
- Following a period of home care, Mai leaves Provider B and enters permanent residential aged care.

In calculating the unspent home care amount, the exit amount deducted by Provider B (under step 4 of the calculator in section 21C) cannot be more than any of the following amounts:

- the published exit amount for Provider B that was most recently given to the Secretary before Mai's home care agreement was in place (\$500);
- the exit amount included in Mai's home care agreement (\$500); and
- the amount worked out under step 3 of the unspent home care amount calculator (\$3,600).

Therefore, the maximum exit amount that can be deducted by Provider B is \$500.

Section 21J sets out approved provider responsibilities in relation to published exit amounts.

Subsection 21J(1) specifies that an approved provider must provide the Secretary with a maximum exit amount for publication if an agreement exit amount is to be included in a home care agreement. This published exit amount represents the maximum exit amount that may be included in the agreement and deducted by the approved provider from the care recipient's unspent home care amount when the approved provider ceases to provide home care to the care recipient.

Responsibilities in relation to the published exit amount apply to the approved provider, in respect of all home care services operated by that approved provider. This means that home care services operated by a single approved provider must have the same published exit amount. However, a single approved provider may choose to include different exit amounts in home care agreements for each of its home care services, as long as these agreement exit amounts are no more than the approved provider's published exit amount.

The policy intent of subsection 21J(1) is to make maximum exit amounts for each approved provider transparent and publicly available so that they can be considered when searching for and selecting a home care provider from 27 February 2017. The language used in subsection 21J(1) with regard to the home care agreement is slightly different to the language used in section 61-1 of the Act because it covers an approved provider's preparation of a home care agreement (i.e. before the home care

agreement is offered to the care recipient or entered into between a care recipient and an approved provider).

Subsection 21J(2) outlines that approved providers must provide the notice of the published exit amount in a form approved, in writing, by the Secretary.

Item 50: Subsection 22(1) (note)

This item aligns the explanatory note with changes made by the Amendment Act to sections 46-1 of the Act and Transition Provisions Act. The change clarifies home care is provided by an approved provider ‘through a home care service’, rather than ‘from a home care service’.

Item 51: Paragraph 23(2)(cba)

Section 23 of the User Rights Principles specifies provisions that a home care agreement between a care recipient and an approved provider must contain.

Item 51 removes the words ‘on or after 27 February 2017,’ from paragraph 23(2)(cba), as inserted by item 2 of the Amending Principles, because they are not necessary once amendments commencing 27 February 2017 are in effect.

The amended paragraph 23(2)(cba) sets out that a home care agreement must contain a statement of the maximum exit amount (the *agreement exit amount*) that may be deducted under the agreement if the following conditions apply:

- the approved provider ceases to provide home care to the care recipient; and
- the provider intends to deduct an exit amount from the care recipient’s unspent home care amount.

Item 52: Paragraph 23(2)(cc)

Section 23 of the User Rights Principles specifies provisions that a home care agreement between a care recipient and an approved provider must contain.

Item 52 repeals paragraph 23(2)(cc) of the User Rights Principles, which requires that a home care agreement must contain a statement that any amount of home care fees paid by the care recipient to the approved provider that has not been spent, and that is not refundable under paragraph 52D-1(2)(d) of the Act and section 13 of the Fees and Payments Principles 2014 (No. 2), will not be refunded to the care recipient if the provider ceases to provide home care to the care recipient.

Repealing paragraph 23(2)(cc) is consistent with the Amendment Act and other changes to the User Rights Principles that support portability of home care packages and unspent home care amounts for the care recipient.

Item 52 sets out that a statement must be included in the home care agreement that any care recipient portion or transfer portion of the care recipient’s unspent home care amount will be paid in accordance with Division 3A of Part 2 of the User Rights Principles. This ensures that the home care agreement outlines the terms for payment of any care recipient portion or transfer portion of the care recipient’s unspent home care amount.

Item 53: At the end of Division 2 of Part 5

Division 2 of Part 5 sets out transitional provisions relating to the Amending Principles.

Section 30 details the application of amendments made by Part 2 of Schedule 1 to the Amending Principles.

Subsection 30(1) sets out that the amendments to paragraph 21B(2)(f) apply in relation to notices given commencing 27 February 2017. If, after 27 February 2017, the transfer portion of the care recipient's unspent home care amount is received by another approved provider, the new approved provider must include the amount that was received in the care recipient's next monthly statement.

Subsection 30(2) sets out that Division 3A of Part 3 applies in relation to any unspent home care amount of a care recipient if the care recipient is provided with home care on or after 27 February 2017. In effect, this means that the new arrangements in relation to unspent home care amounts apply on or after 27 February 2017. If a care recipient exits home care with an approved provider before 27 February 2017, approved providers can retain any funds that have not been spent from a care recipient's home care package.

Subsection 30(3) sets out that amendments to paragraph 23(2)(cc) (provisions of home care agreement) apply in relation to home care agreements entered into from 27 February 2017. Home care agreements entered into on or after 27 February 2017 must include a statement that any care recipient portion or transfer portion of the care recipient's unspent home care amount will be paid in accordance with Division 3A of Part 2 of the User Rights Principles.

Section 31 details the transitional provisions for exit amounts specified in home care agreements before commencement. It addresses the situation where an agreement exit amount is included in a (new or varied) home care agreement before 27 February 2017 and this agreement exit amount is not subsequently varied after 27 February 2017.

In this situation, the effect of section 31 is that the exit amount deducted (in working out a care recipient's unspent home care amount when an approved provider ceases to provide home care to the care recipient) must not be more than the published exit amount on 27 February 2017.

This provision is necessary because:

- published exit amounts may not be published until 27 February 2017; and
- home care agreements that include an exit amount before 27 February 2017 require a reference point (i.e. the published exit amount on 27 February 2017) in order for paragraph 21H(2)(a) (exit amount must not be higher than published exit amount) to work.

Item 54: At the end of subclause 1(2) of Schedule 2

Schedule 2 of the User Rights Principles sets out the rights and responsibilities of a care recipient when receiving home care.

Item 54 outlines that each care recipient has the right to choose the approved provider that is to provide home care to him or her, and to have flexibility to change that approved provider if he or she wishes.

This new right captures the fundamental change being brought about by the Amendment Act, which is for funding for a home care package to 'follow' the care recipient.

Item 55: At the end of subclause 2(3) of Schedule 2

Schedule 2 of the User Rights Principles sets out the rights and responsibilities of care recipients when receiving home care.

Item 55 provides that each care recipient has the responsibility, before the care recipient changes approved providers, to tell the approved provider and their staff of the day the care recipient intends to cease to receive home care services from the approved provider.

The new responsibility provides a positive obligation on care recipients to inform the approved provider that they are intending to change approved providers. This supports clear communication between care recipients and approved providers and will help to prompt a discussion on a mutually agreeable cessation day.

It is a joint responsibility of the care recipient and the approved provider to agree upon a cessation day. The cessation day should be agreed between the care recipient and the approved provider with due consideration of the circumstances, the terms of the home care agreement, and the legislation governing home care.

Statement of Compatibility with Human Rights

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

Aged Care Legislation Amendment (Increasing Consumer Choice) Principles 2016

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

Overview of the Legislative Instrument

Amendments are required to various Principles under the *Aged Care Act 1997* (the Act) that are consequential to amendments made to the Act by the *Aged Care Legislation Amendment (Increasing Consumer Choice) Act 2016* (the Amendment Act) to give effect to the first stage of the home care reforms announced by the Government in the 2015-16 Federal Budget. This instrument makes changes to the following Principles:

- *Accountability Principles 2014*; to introduce an additional requirement for approved providers to notify the Commonwealth within 31 days of a care recipient ceasing care through a home care service.
- *Allocation Principles 2014*; to remove home care from the operation of the Allocation Principles.
- *Approval of Care Recipients Principles 2014*; to allow people to be assessed and approved as eligible for home care at a specific package level.
- *Approved Provider Principles 2014*; to give effect to the simplified approved provider criteria under the Amendment Act.
- *Quality Agency Principles 2013*; to require approved home care providers to give self-assessment information to the Australian Aged Care Quality Agency when requested.
- *Records Principles 2014*; to require approved providers to keep records relating to unspent home care amounts and published exit amounts.
- *Sanctions Principles 2014*; to introduce a new sanction to address non-compliance with the responsibility to treat unspent home care amounts in the manner to be set out in the User Rights Principles.
- *Subsidy Principles 2014*; to limit the payment of home care supplements to a single approved provider in respect of a care recipient on a day.
- *User Rights Principles 2014*; to set out responsibilities for the treatment of unspent home care amounts and exit amounts, and to outline a new care recipient right and responsibility.

Human Rights Implications

The legislative instrument engages the following human rights:

- the right to an adequate standard of living;
- the right to the enjoyment of the highest attainable standard of physical and mental health;
- the right to choice for persons with disabilities;
- the right to protection from exploitation, violence and abuse; and
- the right to culture.

This legislative instrument promotes the right to an adequate standard of living and the right of everyone to the enjoyment of the highest attainable standard of physical and mental health as set out in Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights. The legislative instrument will enable home care packages to be assigned to people who have been approved for home care, who will be able to direct government funding to an approved provider of their choice. This will provide the choice and flexibility to ensure a care recipient is able to receive care that fulfils their individual needs to meet these standards. The legislative instrument will also give effect to increased competition within the home care sector, leading to increased quality and innovation in the delivery of care.

This legislative instrument also promotes the rights of persons with disabilities, particularly in regard to choice and independence, as contained in Article 3(a) of the Convention on the Rights of Persons with Disabilities (CRPD). The legislative instrument will provide older persons with disabilities with greater choice and flexibility in deciding who provides their care. For example, people seeking home care (and their carers) will be able to choose a service that specialises in care for people with specific needs, such as dementia care or other special needs. The provisions in the User Rights Principles in relation to unspent home care amounts will lower some of the barriers to portability and increase choice for older people with disabilities.

This legislative instrument engages the right to protection from exploitation, violence and abuse as contained in article 20(2) of the International Covenant on Civil and Political Rights. Enabling the Quality Agency to request self-assessment information from approved home care providers on their performance against quality standards, and requiring providers to keep additional records relating to unspent home care amounts will help ensure that the care recipients enjoy an adequate standard of living and the highest attainable standards of physical and mental health and ensure that they are protected from exploitation, violence and abuse.

This legislative instrument is compatible with the right to culture as contained in article 15 of the International Covenant on Economic, Social and Cultural Rights and article 27 of the International Covenant on Civil and Political Rights. The instrument will allow people to choose a service that takes account of his or her cultural, linguistic and religious preferences.

To the extent that this legislative instrument limits any rights by limiting the payment of home care subsidy to a single approved provider in the case of overlapping claims,

the limitation is reasonable. The limitation is mitigated by the fact that the legislative instrument does not remove a care recipient's ability to access home care services for that period. Further, the limitation will only apply in circumstances where a person is already receiving care.

Conclusion

This legislative instrument is compatible with human rights as it promotes the human rights to an adequate standard of living, the highest attainable standard of physical and mental health, the right to choice for persons with disabilities, the right to protection from exploitation violence and abuse, and the right to culture.

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