



Aged Care Amendment (Movement of Provisionally Allocated Places) Act 2019

No. 71, 2019

An Act to amend the *Aged Care Act 1997*, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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Aged Care Amendment (Movement of Provisionally Allocated Places) Act 2019

No. 71, 2019

An Act to amend the *Aged Care Act 1997*, and for related purposes

[Assented to 20 September 2019]

The Parliament of Australia enacts:

1 Short title

This Act is the *Aged Care Amendment (Movement of Provisionally Allocated Places) Act 2019*.

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Act 2019

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	21 September 2019

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Aged Care Act 1997

1 At the end of subsection 15-5(2)

Add:

- ; or (c) a variation that has the effect of moving *provisionally allocated places to a different *region within the same State or Territory.

2 Subsection 15-5(7)

After “*provisional allocation”, insert “as mentioned in paragraph (2)(a) or (b)”.

3 At the end of section 15-5

Add:

- (8) In deciding whether to vary the *provisional allocation as mentioned in paragraph (2)(c), the Secretary must be satisfied that the variation is justified in the circumstances, having regard to the following:
 - (a) whether the variation would meet the objectives of the planning process set out in section 12-2;
 - (b) the financial viability of the *aged care service in respect of which the *places were *provisionally allocated;
 - (c) if the places were provisionally allocated to meet the needs of a particular group—whether those needs would be met after the variation;
 - (d) if the places were provisionally allocated to provide a particular type of *aged care—whether that type of aged care would be provided after the variation;
 - (e) if, after the variation, the places would be provisionally allocated in respect of a different aged care service:
 - (i) the financial viability of that aged care service; and
 - (ii) the suitability of the premises used, or proposed to be used, to provide care through that aged care service;

- (f) the extent to which the needs of the aged care community in the different *region and the region for which the places were provisionally allocated have changed since the provisional allocation was made;
- (g) the extent to which the needs of the aged care community in the different region and the region for which the places were provisionally allocated would be better met by making the variation than by not making the variation;
- (h) how the development of the aged care service, in respect of which the places were provisionally allocated, has progressed;
- (i) whether the allocation of places would take effect within a shorter period of time and within the existing provisional allocation period, if the variation were to be made;
- (j) any other matters set out in the Allocation Principles.

4 After section 15-5

Insert:

15-5A Variation of region that involves moving provisionally allocated places to a service with extra service status

- (1) The Secretary must not vary a *provisional allocation of *places to move places to a different *region as mentioned in paragraph 15-5(2)(c) if:
 - (a) the variation would result in residential care in respect of the places being provided through a residential care service in the different region; and
 - (b) that residential care service has, or a *distinct part of that service has, *extra service status;unless subsection (2) or (3) applies to the variation.
- (2) The Secretary may make the variation if the Secretary is satisfied that the *places other than the *provisionally allocated places to which the variation relates could, after the variation, form one or more *distinct parts of the residential care service concerned.

Note: The places to which the variation relates would not have *extra service status because of the operation of section 31-3.

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- (3) The Secretary may make the variation if the Secretary is satisfied that:
- (a) granting the variation would be reasonable, having regard to the criteria set out in section 32-4; and
 - (b) granting the variation would not result in the maximum proportion of *extra service places under section 32-7, for the State, Territory or region concerned, being exceeded; and
 - (c) any other requirements set out in the Allocation Principles are satisfied.

Note: These *places would have *extra service status because of the operation of section 31-1. (Section 31-3 would not apply.)

5 Section 31-3 (heading)

Omit “or transfer”, substitute “, transfer or variation”.

6 After subsection 31-3(1)

Insert:

(1A) If:

- (a) the Secretary varies a *provisional allocation of *places as mentioned in paragraph 15-5(2)(c); and
 - (b) as a result of the variation, care in respect of the places would be provided through a residential care service in a different *region; and
 - (c) the variation was in accordance with subsection 15-5A(2);
- the provisionally allocated places are taken, for the purposes of this Part, not to have *extra service status.

7 Application of amendments

The amendments to the *Aged Care Act 1997* made by this Schedule apply in relation to variations of provisionally allocated places made after the commencement of this Act, whether the places were allocated before or after the commencement of this Act.

(125/19)