Aged Care Legislation Amendment (Increasing Consumer Choice) Act 2016

No. 19, 2016

An Act to amend the law relating to aged care, 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 Legislation Amendment (Increasing Consumer Choice) Act 2016

No. 19, 2016

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

[Assented to 18 March 2016]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Aged Care Legislation Amendment (Increasing Consumer Choice) Act 2016.
2 Commencement

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

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provisions</td>
<td>Commencement</td>
<td>Date/Details</td>
</tr>
<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
<td>18 March 2016</td>
</tr>
<tr>
<td>2. Schedule 1, Part 1</td>
<td>27 February 2017.</td>
<td>27 February 2017</td>
</tr>
<tr>
<td>3. Schedule 1, Part 2, Division 1</td>
<td>27 February 2017.</td>
<td>Never commenced</td>
</tr>
<tr>
<td></td>
<td>However, the provisions do not commence at all if Schedule 1 to the Aged Care Amendment (Red Tape Reduction in Places Management) Act 2016 commences on or before 27 February 2017.</td>
<td></td>
</tr>
<tr>
<td>4. Schedule 1, Part 2, Division 2</td>
<td>The later of:</td>
<td>27 February 2017</td>
</tr>
<tr>
<td></td>
<td>(a) the start of 27 February 2017; and</td>
<td>(paragraph (a) applies)</td>
</tr>
<tr>
<td></td>
<td>(b) immediately after the commencement of Schedule 1 to the Aged Care Amendment (Red Tape Reduction in Places Management) Act 2016.</td>
<td></td>
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<tr>
<td></td>
<td>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.</td>
<td></td>
</tr>
<tr>
<td>5. Schedule 1, Part 3</td>
<td>27 February 2017.</td>
<td>27 February 2017</td>
</tr>
</tbody>
</table>

Note: This table relates only to the provisions of this Act as originally enacted.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
Part 1 Main amendments

**Aged Care Act 1997**

1 **Paragraph 3-2(b)**

   After “for example,”, insert “for residential care services and flexible care services”.

2 **Section 5-1**

   Omit:

   
   - the *aged care service in question*—*places must have been allocated in respect of the service (see Part 2.2). In addition, decisions can be made under Part 2.5 allowing places in a residential care service to become *extra service places* (enabling higher fees to be charged for those places);

   - the recipient of the care—the recipient must (in most cases) be approved in respect of the type of *aged care provided* (see Part 2.3), and (in the case of residential care or flexible care) can be classified in respect of the level of care that is required (see Part 2.4).

   substitute:

   - the *aged care service in question*—for residential care services and flexible care services, *places must have been allocated in respect of the service (see Part 2.2). In addition, decisions can be made under Part 2.5 allowing places in a residential care service to become *extra service places* (enabling higher fees to be charged for those places);

   - the recipient of the care—the recipient must (in most cases) be approved in respect of the type of *aged care provided* (see Part 2.3). In the case of home care, the recipient must be a
3 Section 5-2 (table item 2, column headed “Home care subsidy”)
Omit “Yes”, substitute “No”.

4 Section 5-2 (after table item 3)
Insert:

<table>
<thead>
<tr>
<th>3A</th>
<th>Prioritisation of home care recipients</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

5 Paragraph 8-1(2)(b)
Omit “‘aged care service’, substitute “residential care service or flexible care service”.

6 Subparagraphs 8-1(2)(b)(i) and (ii)
Omit “aged care service”, substitute “service”.

7 At the end of subsection 8-1(2)
Add:
; and (c) if the approval is in respect of home care—each home care service in relation to which the person notifies the Secretary of the information required by section 9-1A.

8 Subsections 8-1(3) and (4)
Repeal the subsections, substitute:

(3) The approval begins to be in force on the day stated, in accordance with paragraph 8-5(2)(aa), in the notice given to the person under subsection 8-5(1).

9 Subsection 8-3(1)
Repeal the subsection, substitute:
(1) In deciding whether the applicant is suitable to provide aged care, the Secretary must consider:

(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.

10 Subsection 8-3(2)

Omit “paragraphs (1)(b) to (h)”, substitute “paragraph (1)(a), (b), (d), (e) or (f)”.

11 Subsection 8-3(5)

Omit “to (h)”, substitute “to (f)”.

12 Subsection 8-3(6)

Omit “paragraphs (1)(b), (c), (d), (f), (g) and (ga)”, substitute “paragraphs (1)(a) and (e)”.

13 Subsection 8-3(6A)

Repeal the subsection.

14 Before paragraph 8-5(2)(a)

Insert:
(aa) the day the applicant was approved as a provider of *aged care; 

15 Paragraph 8-5(2)(b) 
Omit “*aged care”, substitute “aged care”.

16 Paragraph 8-5(2)(d) 
Omit “a statement that the approval is in respect of those *aged care services”, substitute “that the approval is in respect of each residential care service or flexible care service”.

17 Subparagraphs 8-5(2)(d)(i) and (ii) 
Omit “aged care service”, substitute “service”.

18 Paragraph 8-5(2)(da) 
Repeal the paragraph, substitute: 
(da) if the approval is in respect of home care—that the approval is in respect of each home care service in relation to which the person notifies the Secretary of the information required by section 9-1A;

19 Paragraphs 8-5(2)(e) and 8-6(2)(a) 
Repeal the paragraphs.

20 Before section 9-1 
Insert:

9-1A Obligation to notify Secretary about home care services 
(1) An approved provider must notify the Secretary of the following information in relation to each home care service through which the approved provider proposes to provide home care: 
(a) the name and address of the service; 
(b) any other information of a kind specified in the Approved Provider Principles for the purposes of this section.

Note: Approved providers have a responsibility under Part 4.3 to comply with this obligation. Failure to comply with a responsibility can result in a sanction being imposed under Part 4.4.
(2) The notification must be made before the approved provider first provides home care through the home care service.

(3) The notification must be in the form approved by the Secretary.

(4) If there is a change in any of the information notified under subsection (1), the approved provider must, within 28 days of the change, notify the Secretary of the change.

21 **Subsections 9-1(3B) and 9-2(2A)**
Repeal the subsections.

22 **Paragraph 10-1(1)(a)**
Repeal the paragraph.

23 **Section 10-2**
Repeal the section.

24 **Section 11-1**
Omit “ aged care”, substitute “residential care or flexible care”.

25 **Section 11-4**
Omit “a type of ” subsidy”, substitute “ residential care subsidy or flexible care subsidy”.

26 **Subsections 12-1(1), 12-3(1) and 12-4(1)**
Omit “each type of ” subsidy”, substitute “ residential care subsidy and flexible care subsidy”.

27 **Subsection 12-4(3)**
Omit “a type of ” subsidy”, substitute “ residential care subsidy or flexible care subsidy”.

28 **Subsections 12-5(1) and 12-6(1)**
Omit “each type of ” subsidy”, substitute “ residential care subsidy and flexible care subsidy”.

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8 **Aged Care Legislation Amendment (Increasing Consumer Choice) Act**
No. 19, 2016
29 Subsection 12-6(2)
Omit “a particular type of *subsidy, the whole of the State or Territory comprises the region”, substitute “*residential care subsidy or *flexible care subsidy, the whole of the State or Territory comprises the region in respect of that type of *subsidy”.

30 Subsection 14-1(1)
Omit “a particular type of *subsidy”, substitute “*residential care subsidy or *flexible care subsidy”.

31 Paragraph 16-2(4)(a)
Omit “(even if the approval has not yet begun to be in force)”.

32 Paragraph 18-5(1)(b)
Repeal the paragraph.

33 Section 21-1
After “receive”, insert “one or more of the following”.

34 Paragraphs 21-1(a) and (b)
Omit “or”.

35 Paragraph 21-2(b)
Repeal the paragraph, substitute:
(b) those needs can be met appropriately through residential care services; and

36 Paragraph 21-3(a)
After “physical,”, insert “medical,”.

37 Paragraph 21-3(b)
Repeal the paragraph, substitute:
(b) those needs can be met appropriately through home care services; and

38 Paragraph 21-4(a)
After “physical,”, insert “medical,”.
39 After section 22-2

Insert:

22-2A Priority for home care services

(1) If the Secretary approves a person as a recipient of home care, the Secretary must determine the person’s priority for home care services.

Note: The determination is reviewable under Part 6.1.

(2) The Secretary may, at any time, vary a person’s priority for home care services determined under subsection (1), including any priority for home care services varied under this subsection.

Note: The variation is reviewable under Part 6.1.

(3) Any determination of a person’s priority for home care services under this section, including any determination as varied under subsection (2), must be consistent with the care needs of the person.

40 Subsection 22-4(2)

Omit “The”, substitute “Subject to subsection (2A), the”.

41 After subsection 22-4(2)

Insert:

(2A) If the person has applied for approval as a recipient of home care, the assessment must include an assessment of the person’s priority for home care services.

42 After paragraph 22-6(2)(c)

Insert:

(c(a) if the person is approved as a recipient of home care—the person’s priority for home care services (see section 22-2A);

43 At the end of subsection 22-6(3)

Add:

; or (c) varies the person’s priority for home care services under subsection 22-2A(2).
44 After Part 2.3

Insert:

Part 2.3A—Prioritisation of home care recipients

Division 23A—Introduction

23A-1 What this Part is about

A person must be determined to be a "prioritised home care recipient before an approved provider can be paid "home care subsidy for providing home care to the person.

Division 23B—Prioritised home care recipients

23B-1 Determination that a person is a prioritised home care recipient

(1) The Secretary may, by written notice given to a person who is approved under Part 2.3 as a recipient of home care, determine:
   (a) that the person is a "prioritised home care recipient; and
   (b) the person’s level of care as a prioritised home care recipient.

   Note: The determined level of care may affect any amount of "home care subsidy payable in respect of the person: see paragraph 48-2(3)(a).

(2) If the approval of the person as a recipient of home care is limited under subsection 22-2(3) to one or more levels of care, the level of care determined under paragraph (1)(b) of this section may be different from, but must not be higher than, the highest level of care in relation to which the approval is limited under subsection 22-2(3).

(3) The determination takes effect on the day the determination is made.

(4) In deciding whether to make a determination under subsection (1) in relation to a person, the Secretary must consider the following:
   (a) the period of time since:

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No. 19, 2016  Aged Care Legislation Amendment (Increasing Consumer Choice) Act 2016  11
(i) the day the person was approved under Part 2.3 as a recipient of home care; or
(ii) if the Prioritised Home Care Recipients Principles specify a later day—that day;

(b) the person’s priority for home care services determined under section 22-2A;

(c) any other matters specified in the Prioritised Home Care Recipients Principles.

(5) In deciding whether to make a determination under subsection (1) in relation to a person, the Secretary may also consider whether there are exceptional circumstances that justify making the determination.

(6) A determination under subsection (1) not a legislative instrument.

23B-2 Variations of level of care in relation to which a person is a prioritised home care recipient

(1) The Secretary may, by written notice given to a person who is a *prioritised home care recipient, vary the determination made under subsection 23B-1(1) in relation to the person to increase the person’s level of care as a prioritised home care recipient.

(2) If the approval of the person as a recipient of home care is limited under subsection 22-2(3) to one or more levels of care, the level of care as varied under subsection (1) of this section may be different from, but must not be higher than, the highest level of care in relation to which the approval is limited under subsection 22-2(3).

(3) The variation takes effect on the day the variation is made.

(4) Before deciding to vary a determination under subsection (1), the Secretary must consider the following:

(a) the period of time since:

(i) the day the person was approved under Part 2.3 as a recipient of home care; or
(ii) if the Prioritised Home Care Recipients Principles specify a later day—that day;

(b) the person’s priority for home care services determined under section 22-2A;
(c) any other matters specified in the Prioritised Home Care Recipients Principles.

(5) Before deciding to vary a determination under subsection (1), the Secretary may also consider whether there are exceptional circumstances that justify varying the determination.

23B-3 Cessation of determinations

A determination that a person is a *prioritised home care recipient ceases to have effect if:

(a) the person dies; or
(b) the person’s approval as a recipient of home care ceases to have effect; or
(c) the person is not provided with home care within the period specified in the Prioritised Home Care Recipients Principles; or
(d) the person ceases, in the circumstances specified in the Prioritised Home Care Recipients Principles, to be provided with home care.

23B-4 Use of computer programs to make decisions

(1) The Secretary may arrange for the use, under the Secretary’s control, of computer programs for making decisions on the making or varying of determinations under this Division.

(2) A decision made by the operation of a computer program under an arrangement made under subsection (1) is taken to be a decision made by the Secretary.

(3) The Secretary may substitute a decision for a decision (the initial decision) made by the operation of a computer program under an arrangement under subsection (1) if the Secretary is satisfied that the initial decision is incorrect.

45 Section 40-1

Omit:
A number of approvals and other decisions may need to have been made under Chapter 2 before a particular kind of payment can be made (see section 5-2). Receipt of payments under this Chapter gives rise to certain responsibilities, that are dealt with in Chapter 4.

substitute:

A number of approvals and other decisions may need to have been made under Chapter 2 before a particular kind of payment can be made (see section 5-2). For example, an approved provider can only receive subsidy for providing residential care or flexible care in respect of which a *place has been allocated. Receipt of payments under this Chapter gives rise to certain responsibilities, that are dealt with in Chapter 4.

46  At the end of section 45-1

Add:

However, any *unspent home care amount (which may include home care subsidy) of a care recipient must be dealt with by an approved provider in accordance with the User Rights Principles.

47  Section 46-1

Repeal the section, substitute:

46-1  Eligibility for home care subsidy

(1) An approved provider is eligible for *home care subsidy in respect of a day if the Secretary is satisfied that:

(a) the approved provider is approved under Part 2.1 as a provider of home care; and

(b) on that day there is in force a *home care agreement under which a care recipient approved under Part 2.3 in respect of home care is to be provided with home care by the approved provider through a home care service; and

(c) the home care service is a notified home care service; and
(d) the care recipient is a *prioritised home care recipient; and

(e) on that day the approved provider provides the care recipient with such home care (if any) as is required under the home care agreement; and

(f) the approved provider has agreed in the claim relating to the day to deal with the care recipient’s *unspent home care amount in accordance with the User Rights Principles.

Note: Eligibility may also be affected by Division 7 (relating to a person’s approval as a provider of *aged care services) or Division 20 (relating to a person’s approval as a recipient of home care).

(2) For the purposes of paragraph (1)(c), a home care service is a notified home care service if the approved provider has notified the Secretary of the information required by section 9-1A in relation to the home care service.

48 Section 46-3

Repeal the section.

49 Paragraph 56-2(f)

Omit “care recipient’s *place in the service”, substitute “care recipient to receive home care through the service”.

50 Paragraph 63-1(1)(c)

Repeal the paragraph, substitute:

(c) to comply with Division 9 in relation to notifying and providing information;

51 Section 85-1 (after table item 25)

Insert:

<table>
<thead>
<tr>
<th>25A</th>
<th>To determine a person’s priority for home care services subsection 22-2A(1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>25B</td>
<td>To vary a person’s priority for home care services subsection 22-2A(2)</td>
</tr>
</tbody>
</table>

52 Paragraph 86-9(1)(b)

After “*places”, insert “(if any)”.

53 After paragraph 86-9(1)(b)

Insert:

(ba) if the service is a home care service—the number of care recipients provided with care through the service;

54 At the end of section 95-1

Add:

(3) The *Commonwealth portion of a care recipient’s *unspent home care amount is a recoverable amount if:

(a) the unspent home care amount relates to *home care subsidy, or home care fees, paid to an approved provider; and

(b) after this subsection commenced, the approved provider was paid an amount of home care subsidy in respect of the care recipient (whether or not the unspent home care amount relates to that payment of subsidy); and

(c) the Commonwealth portion is not payable under the User Rights Principles to any other approved provider of home care.

55 Section 96-1 (after table item 16)

Insert:

17 Prioritised Home Care Recipients Part 2.3A Principles

56 Subsection 96-2(1)

Repeal the subsection, substitute:

Employees etc. of Agencies and Commonwealth authorities

(1) The Secretary may, in writing, delegate all or any of the powers and functions of the Secretary under this Act, the regulations or any Principles made under section 96-1 to a person engaged (whether as an employee or otherwise) by:

(a) an Agency (within the meaning of the Public Service Act 1999); or

(b) an authority of the Commonwealth.
57 **Clause 1 of Schedule 1**

Insert:

*Commonwealth portion* of a care recipient’s "unspent home care amount has the meaning given by the User Rights Principles.

58 **Clause 1 of Schedule 1 (definition of place)**

Omit “, home care”.

59 **Clause 1 of Schedule 1**

Insert:

*prioritised home care recipient* means a person in relation to whom a determination under section 23B-1 is in effect.

*unspent home care amount* of a care recipient has the meaning given by the User Rights Principles.

**Aged Care (Transitional Provisions) Act 1997**

60 **Paragraph 3-2(b)**

After “for example,”, insert “for residential care services and flexible care services”.

61 **Section 40-1**

Omit:

A number of approvals and other decisions may need to have been made under Chapter 2 of the *Aged Care Act 1997* before a particular kind of payment can be made (see section 5-2 of that Act). Receipt of payments under this Chapter gives rise to certain responsibilities, that are dealt with in Chapter 4 of this Act and Chapter 4 of the *Aged Care Act 1997*.

substitute:

A number of approvals and other decisions may need to have been made under Chapter 2 of the *Aged Care Act 1997* before a
particular kind of payment can be made (see section 5-2 of that Act). For example, an approved provider can only receive subsidy for providing residential care or flexible care in respect of which a *place has been allocated. Receipt of payments under this Chapter gives rise to certain responsibilities, that are dealt with in Chapter 4 of this Act and Chapter 4 of the *Aged Care Act 1997.

62 At the end of section 45-1
Add:

However, any *unspent home care amount (which may include home care subsidy) of a care recipient must be dealt with by an approved provider in accordance with the User Rights Principles.

63 Section 46-1
Repeal the section, substitute:

46-1 Eligibility for home care subsidy

(1) An approved provider is eligible for *home care subsidy in respect of a day if the Secretary is satisfied that:

(a) the approved provider is approved under Part 2.1 of the *Aged Care Act 1997 as a provider of home care; and

(b) on that day there is in force a *home care agreement under which a care recipient approved under Part 2.3 of the *Aged Care Act 1997 in respect of home care is to be provided with home care by the approved provider through a home care service; and

(c) the home care service is a notified home care service; and

(d) the care recipient is a *prioritised home care recipient; and

(e) on that day the approved provider provides the care recipient with such home care (if any) as is required under the home care agreement; and

(f) the approved provider has agreed in the claim relating to the day to deal with the care recipient’s *unspent home care amount in accordance with the User Rights Principles.

Note: Eligibility may also be affected by Division 7 of the *Aged Care Act 1997 (relating to a person’s approval as a provider of aged care)

(2) For the purposes of paragraph (1)(c), a home care service is a notified home care service if the approved provider has notified the Secretary of the information required by section 9-1A of the Aged Care Act 1997 in relation to the home care service.

64 Section 46-3

Repeal the section.

65 Subsection 96-2(1)

Repeal the subsection, substitute:

Employees etc. of Agencies and Commonwealth authorities

(1) The Secretary may, in writing, delegate all or any of the powers and functions of the Secretary under this Act, the regulations or any Principles made under section 96-1 to a person engaged (whether as an employee or otherwise) by:

(a) an Agency (within the meaning of the Public Service Act 1999); or

(b) an authority of the Commonwealth.

66 Clause 1 of Schedule 1 (definition of place)

Omit “, home care”.

67 Clause 1 of Schedule 1

Insert:

prioritised home care recipient has the same meaning as in the Aged Care Act 1997.

unspent home care amount of a care recipient has the meaning given by the User Rights Principles.
Part 2—Contingent amendments

Division 1—Amendments if Part 1 of this Schedule commences before the Aged Care Amendment (Red Tape Reduction in Places Management) Act 2016

Aged Care Act 1997

68 Paragraph 16-14(4)(a)

Omit “(even if the approval has not yet begun to be in force)”.

Division 2—Amendments contingent on the Aged Care Amendment (Red Tape Reduction in Places Management) Act 2016

Aged Care Act 1997

69 Paragraph 16-13(4)(a)

Omit “(even if the approval has not yet begun to be in force)”.

20 Aged Care Legislation Amendment (Increasing Consumer Choice) Act 2016

No. 19, 2016
Part 3—Application and transitional provisions

70 Definitions

In this Part:

*commencement time* means the time when this Part commences.

*new law* means the *Aged Care Act 1997* as in force immediately after the commencement time.

*old law* means the *Aged Care Act 1997* as in force immediately before the commencement time.

71 Amendments relating to approval of providers

(1) The amendments of sections 8-1 and 8-5 of the *Aged Care Act 1997* made by this Schedule apply in relation to any application to be approved as a provider of aged care:

(a) made after the commencement time; or

(b) made, but not determined, before the commencement time.

(2) The amendments of subsection 8-3(1) of the *Aged Care Act 1997* made by this Schedule apply in relation to:

(a) any application to be approved as a provider of aged care made after the commencement time; and

(b) any change of circumstances referred to in paragraph 9-1(1)(a) of that Act that occurs after the commencement time; and

(c) any request made to an approved provider under subsection 9-2(1) or paragraph 9-3B(2)(a) of that Act after the commencement time; and

(d) any approval revoked under paragraph 10-3(1)(b) of that Act after the commencement time.

(3) If:

(a) a person has, before the commencement time, been approved under section 8-1 of the *Aged Care Act 1997* as a provider of aged care; and

(b) at the commencement time:
Schedule 1 Amendments
Part 3 Application and transitional provisions

(i) the approval has not yet begun to be in force because of the operation of subsection 8-1(3) of that Act; and
(ii) the approval has not ceased to have effect under that Act;

the approval begins to be in force on the day this item commences.

(4) Subitem (3) has effect despite subsection 8-1(3) of the new law.

72 Obligation to notify Secretary about home care services etc.

(1) This item applies if, immediately before the commencement time, an allocation of a place to an approved provider in respect of a particular home care service is in effect.

(2) The approved provider is taken, on the commencement of this item, to have notified the Secretary in relation to the service in accordance with subsections 9-1A(1) to (3) of the new law.

73 Approvals to no longer lapse

The repeal of section 10-2 of the Aged Care Act 1997 by this Schedule applies in relation to any approval of an aged care provider that is in force at or after the commencement time.

74 Applications relating to allocations of home care places

(1) If:

(a) a person has, before the commencement time, made an application under section 13-1 of the Aged Care Act 1997 for an allocation of places in respect of home care subsidy; and

(b) the Secretary has not, before the commencement time, notified the person under section 14-8 of that Act in relation to the application;

the application is taken never to have been made.

(2) If:

(a) a person has, before the commencement time, made an application under section 16-2, 16-7, 17-2 or 17-7 of the Aged Care Act 1997 relating to a place in respect of home care subsidy; and
(b) the Secretary has not, before the commencement time, given notice under section 16-5, 16-7, 17-5 or 17-7 of that Act (as the case may be) in relation to the application;

the application is taken never to have been made.

75 Planning the allocation of places

The amendments of Division 12 of the Aged Care Act 1997 made by this Schedule apply in relation to the financial year beginning on 1 July 2016 and each later financial year.

76 Cessation of places for home care subsidy

(1) This item applies if, immediately before the commencement time, an allocation of a place to an approved provider in respect of home care subsidy is in effect.

(2) At the commencement time, the allocation of the place ceases to have effect.

77 Priority for home care services

(1) Subsection 22-2A(1) of the new law applies to persons approved under Part 2.3 of the Aged Care Act 1997 as recipients of home care after the commencement time.

(2) If, as at the commencement time, a person is approved under Part 2.3 of the Aged Care Act 1997 as a recipient of home care, the Secretary may, at any time, determine the person’s priority for home care services.

(3) A determination of a person’s priority for home care services under subitem (2) must be consistent with the care needs of the person.

(4) A determination of a person’s priority for home care services under subitem (2) is taken, for the purposes of the new law, to be a determination of the person’s priority for home care services under subsection 22-2A(1) of the new law.

(5) If the Secretary determines a person’s priority for home care services under subitem (2), the Secretary must notify the person in writing.
78 Prioritised home care recipients

(1) This item applies if an approved provider is eligible under section 46-1 of the Aged Care Act 1997 or section 46-1 of the Aged Care (Transitional Provisions) Act 1997 for home care subsidy in respect of the day (the relevant day) immediately preceding the day this item commences, because:

(a) during the relevant day the approved provider holds an allocation of a place for home care subsidy that is in force under Part 2.2 of the Aged Care Act 1997; and

(b) during the relevant day there is in force a home care agreement under which a care recipient, approved under Part 2.3 of the Aged Care Act 1997 in respect of home care, is to be provided with home care in respect of the place by the approved provider.

(2) At the commencement time, the Secretary is taken to have, by written notice given to the care recipient on the day this item commences, made a determination under section 23B-1 of the new law that the care recipient is a prioritised home care recipient in relation to the level of care being provided to the care recipient immediately before the commencement time.

(3) This item does not prevent the variation or cessation, on or after the commencement time, of a determination referred to in subitem (2).

79 Unspent home care amount

(1) Paragraph 46-1(1)(f) of the Aged Care Act 1997 and the Aged Care (Transitional Provisions) Act 1997, as inserted by this Schedule, applies in relation to any unspent home care amount that relates to home care subsidy, and home care fees, that were or are payable in respect of 1 July 2015 or any later day.

(2) Subsection 95-1(3) of the Aged Care Act 1997, as inserted by this Schedule, applies in relation to any Commonwealth portion of unspent home care amount that relates to home care subsidy that was or is payable in respect of 1 July 2015 or any later day.
80 Responsibilities of approved providers
To avoid doubt, paragraph 63-1(1)(e) of the old law continues to apply in relation to a place allocated in respect of home care subsidy that is transferred before the commencement time.

81 Information about number of places included in home care services before commencement
The Secretary may, at any time after the commencement time, make publicly available the number of places included in a home care service immediately before the commencement time.

82 Delegation
The amendments of subsection 96-2(1) of the Aged Care Act 1997 and the Aged Care (Transitional Provisions) Act 1997 made by this Schedule do not affect the continuity of any delegation that is in force under those subsections immediately before the commencement time.

83 Transitional rules
(1) The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act.

(2) To avoid doubt, the rules may not do the following:
   (a) create an offence or civil penalty;
   (b) provide powers of:
       (i) arrest or detention; or
       (ii) entry, search or seizure;
   (c) impose a tax;
   (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
   (e) directly amend the text of this Act.

(3) This Act (other than subitem (2)) does not limit the rules that may be made for the purposes of subitem (1).
[Minister’s second reading speech made in—
House of Representatives on 11 February 2016
Senate on 3 March 2016]